

the intermediary hearing officer(s), except that the hearing officer(s) may extend the time limit upon a good cause showing by the provider.

(b) The intermediary hearing officer(s) may find good cause to extend the time limit only if the provider demonstrates in writing it could not reasonably have been expected to file timely due to extraordinary circumstances beyond its control (such as a natural or other catastrophe, fire, or strike), and the provider's written request for an extension is received by the intermediary hearing officer(s) within a reasonable time (as determined by the intermediary hearing officer(s) under the circumstances) after the expiration of the applicable 180-day limit prescribed in § 405.1811(a)(3) of this subpart.

(c) The intermediary hearing officer(s) may not grant a request for an extension under this section if—

(1) The provider relies on a change in the law, regulations, CMS Rulings, or general CMS instructions (whether based on a court decision or otherwise) or a CMS administrative ruling or policy as the basis for the extension request; or

(2) The date of receipt by the intermediary of the provider's extension request is later than 3 years after the date of the intermediary or other determination that the provider seeks to appeal.

(d) If an extension request is granted or denied under this section, the intermediary hearing officer(s) must give prompt written notice to the provider, and mail a copy to each party to the appeal. The notice must include an explanation of the reasons for the decision by the hearing officer(s) and the facts underlying the decision.

(e)(1) A decision denying an extension request under this section and dismissing the appeal is final and binding on the provider, unless the dismissal decision is reviewed by a CMS reviewing official in accordance with § 405.1834(b)(2)(i) of this subpart or reopened and revised by the intermediary hearing officer(s) in accordance with § 405.1885 through § 405.1889 of this subpart. The intermediary hearing officer(s) promptly mails the decision to the appropriate component of CMS

(currently the Center for Medicare Management) (as specified in § 405.1834(b)(4) of this subpart).

(2) A decision granting an extension request under this section is not subject to immediate review by a CMS reviewing official (as described in § 405.1834(b)(3) of this subpart). Any decision may be examined during the course of CMS review of a final jurisdictional dismissal decision or a final hearing decision by the intermediary hearing officer(s) (as described in §§ 405.1834(b)(2)(i) and 405.1834(b)(2)(ii) of this subpart).

[73 FR 30245, May 23, 2008]

§ 405.1814 Intermediary hearing officer jurisdiction.

(a) *General rules.* (1) After a request for an intermediary hearing is filed under § 405.1811 of this subpart, the intermediary hearing officer(s) must do the following:

(i) Determine in accordance with paragraph (b) of this section whether or not it has jurisdiction to grant a hearing on each of the specific matters at issue in the hearing request.

(ii) Make a preliminary determination of the scope of its jurisdiction (that is, whether the request for hearing was timely, and whether the amount in controversy requirement has been met), if any, over the matters at issue in the appeal before conducting any of the following proceedings:

(A) Determining its authority to decide a legal question relevant to a matter at issue (as described in § 405.1829 of this subpart);

(B) Permitting discovery (as specified in § 405.1821 of this subpart); or

(C) Conducting a hearing (as specified in § 405.1819 of this subpart);

(2) The hearing officer(s) may revise a preliminary jurisdictional determination at any subsequent stage of the proceedings in an appeal, and it must promptly notify the parties of any revised determination.

(3) Under paragraph (c)(1) of this section, each intermediary hearing decision (as described in § 405.1831 of this subpart) must include a final jurisdictional finding for each specific matter at issue in the appeal.

§ 405.1815

42 CFR Ch. IV (10–1–13 Edition)

(4) If the hearing officer(s) finally determines it lacks jurisdiction over every specific matter at issue in the appeal, it issues a jurisdictional dismissal decision under paragraph (c)(2) of this section.

(5) Final jurisdictional findings and jurisdictional dismissal decisions by the hearing officer(s) are subject to the CMS reviewing official procedure in accordance with paragraph (d) of this section and § 405.1834(b)(2)(i) and (b)(2)(ii) of this subpart.

(b) *Criteria.* Except for the amount in controversy requirement, the jurisdiction of the intermediary hearing officer(s) to grant a hearing is determined separately for each specific matter at issue in the intermediary or Secretary determination for the cost reporting period under appeal. The hearing officer(s) has jurisdiction to grant a hearing over a specific matter at issue in an appeal only if the provider has a right to an intermediary hearing under § 405.1811. Certain matters at issue are removed from the jurisdiction of the intermediary hearing officer(s); these matters include, but are not limited to, the following:

(1) A finding in an intermediary determination that expenses incurred for certain items or services furnished by a provider to an individual are not payable under title XVIII of the Act because those items and services are excluded from coverage under section 1862 of the Act and part 411 of the regulations. Review of these findings is limited to the applicable provisions of sections 1155, 1869, and 1879(d) of the Act, and of subpart I of part 405 and subpart B of part 478, as applicable.

(2) Certain matters affecting payments to hospitals under the prospective payment system, as provided in section 1886(d)(7) of the Act and § 405.1804 of this subpart.

(3) Any self-disallowed item except as permitted in § 405.1811(a)(1)(ii) of this subpart.

(c) *Final jurisdictional findings, and jurisdictional dismissal decisions by intermediary hearing officer(s).* (1) In issuing a hearing decision under § 405.1831 of this subpart, the intermediary hearing officer(s) must make a final determination of its jurisdiction, or lack thereof, for each specific matter at issue in the

hearing decision. Each intermediary hearing decision must include specific findings of fact and conclusions of law as to the jurisdiction of the hearing officer(s), or lack thereof, to grant a hearing on each matter at issue in the appeal.

(2) If the hearing officer(s) finally determines it lacks jurisdiction to grant a hearing for every specific matter at issue in an appeal, it must issue a jurisdictional dismissal decision. Each jurisdictional dismissal decision by the hearing officer(s) must include specific findings of fact and conclusions of law explaining the determination that there is no jurisdiction to grant a hearing on each matter at issue in the appeal. A copy of the jurisdictional dismissal decision must be mailed promptly to each party to the appeal.

(3) A jurisdictional dismissal decision by the intermediary hearing officer(s) under paragraph (c)(2) of this section is final and binding on the parties, unless the decision is reviewed by a CMS reviewing official in accordance with § 405.1834 of this subpart or reopened and revised by the intermediary hearing officer(s) in accordance with § 405.1885 through § 405.1889 of this subpart.

(d) *CMS reviewing official review.* Any finding by the intermediary hearing officer as to whether it has jurisdiction to grant a hearing on a specific matter at issue in an appeal is not subject to further administrative review, except as provided in this paragraph. The intermediary hearing officer's jurisdictional findings as to specific matters at issue in an appeal may be reviewed solely during the course of CMS reviewing official review of one of the intermediary hearing officer decisions specified in § 405.1834(b)(2) of this subpart.

[73 FR 30245, May 23, 2008]

§ 405.1815 Parties to proceedings before the intermediary hearing officer(s).

When a provider files a request for an intermediary hearing in accordance with § 405.1811 of this subpart, the parties to all proceedings before the intermediary hearing officer(s) are the provider and, if applicable, any other entity found by the intermediary hearing