

## **Chapter 3      PROCEDURAL SCREENING**

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**NOTE:** The CMS contractors described in the regulations as Independent Review Entities (IREs) or Independent Outside Entities are commonly referred to as “Part C QICs.” This manual adopts this common usage and uses these terms for ease of identification only.

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### **III-3-1 Procedural Screening, Generally**

An initial screening of the case file and request for hearing must be conducted to determine whether:

- The request for hearing involves an appealable decision (see [III-3-2](#), Appealable Decision);
- The individual or entity filing the request for hearing has standing to appeal (see [III-3-3](#), Standing);
- The amount in controversy threshold is met (see [III-3-4](#), Amount in Controversy);
- The request for hearing is timely filed (see [III-3-5](#), Timely Request for Hearing);
- The request for hearing is complete (see [III-3-6](#), Complete Request for Hearing).

**NOTE:** There are no specific content or copy requirements for requests for hearing after Part C reconsiderations.

## III-3-2 Appealable Decision

### A. Jurisdiction

When reviewing a request for hearing, there must be an appealable action.

An ALJ has jurisdiction over certain actions involving Part C determinations, including:

- Part C QIC reconsideration.
- Part C QIC or QIO dismissal of a request for reconsideration.
- QIO reconsideration involving:
  - Determination of the medical necessity of services or reasonableness or appropriateness of placement of an individual at an acute level of patient care;
  - Determination on the termination of services; or
  - Determination on the discharge of an individual.

An ALJ does not have jurisdiction over certain actions, including:

- Part C QIC dismissal of a request for reconsideration of an MAO's dismissal. [§ 405.972\(e\)](#).
- Part C QIC reconsideration of an MAO's dismissal. [§ 405.974\(b\)\(3\)](#).
- QIO Diagnosis Related Group (DRG) validation. [§ 478.15l](#).
- QIO quality of care determinations. [§ 478.40](#).
- Determinations that result in the enrollee having no further liability to pay for services that were furnished by a Part C (Medicare Advantage) organization. [§ 422.562l\(2\)](#).
- Grievances (any complaint or dispute filed by an enrollee other than one that constitutes an organization determination), including grievances about the quality of care. [§§ 422.562\(b\)](#), [422.564](#).

### B. If No Appealable Action

If there is no appealable action, the request for hearing is dismissed for no right to a hearing.

**NOTE:** Unless otherwise indicated, the Part 405 citations above are made applicable to Part C QIC reconsiderations pursuant to [§ 422.562\(d\)](#).

### **III-3-3 Standing**

**Citations:** §§ 1155 and 1852(g)(5) of the Act; §§ 422.560–422.626, 478.40;

#### **A. Part C QIC Reconsideration**

Any party may request a hearing.

Parties who may request a hearing include:

- The enrollee (including his or her representative);
- An assignee of the enrollee (that is, a physician or other provider who has furnished a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service);
- The legal representative of a deceased enrollee’s estate; or
- Any other provider or entity (other than the MAO) determined to have an appealable interest in the proceeding.

See §§ 422.574, 422.582(d), 422.592, 422.600(a).

**NOTE:** While a MAO is a party to the hearing, the MAO may not request a hearing. §§ 422.600(a), 422.602(c).

#### **B. Part C QIO Reconsideration**

A beneficiary may request a hearing from an ALJ under § 1155 of the Act. § 1155 of the Act; § 478.40; CMS, *Medicare Managed Care Manual (MMCM)*, Pub. 100-16, Ch. 13, §§100 – 130 (MMCM, Ch. 13, §§100 – 130); CMS, *Quality Improvement Organizations Manual*, Pub. 100-10 (QIOM), Ch. 7, § 7500 (QIOM, Ch. 7, § 7500).

**NOTE:** Providers and suppliers do not have hearing rights under § 1155 of the Act.

#### **C. If No Party with Standing**

If there is no party with standing, the request for hearing is dismissed for no right to a hearing.

### III-3-4 Amount in Controversy

**Citations:** § 1852(g)(5) of the Act; §§ 405.1002, 405.1006, 422.600.

#### A. Generally

A party is entitled to a hearing only if the amount in controversy (AIC) threshold is met. § 422.600(a).

The minimum AIC for Part C appeals is computed in accordance with [Part 405, Subpart I](#).

The minimum AIC is revised annually based on a formula prescribed by Congress:

Calendar Year	Minimum AIC	Federal Register Publication
2017	\$160	<a href="#">81 Fed. Reg. 65651 (Sep. 23, 2016)</a>
2016	\$150	<a href="#">80 Fed. Reg. 57827 (Sep. 25, 2015)</a>
2015	\$150	<a href="#">79 Fed. Reg. 57933 (Sep. 26, 2014)</a>
2014	\$140	<a href="#">78 Fed. Reg. 59702 (Sep. 27, 2013)</a>
2013	\$140	<a href="#">77 Fed. Reg. 59618 (Sep. 28, 2012)</a>
2012	\$130	<a href="#">76 Fed. Reg. 59138 (Sep. 23, 2011)</a>
2011	\$130	<a href="#">75 Fed. Reg. 58407 (Sep. 24, 2010)</a>
2010	\$130	<a href="#">74 Fed. Reg. 48976 (Sep. 25, 2009)</a>
2009	\$120	<a href="#">73 Fed. Reg. 55847 (Sep. 26, 2008)</a>
2008	\$120	<a href="#">72 Fed. Reg. 73348 (Dec. 27, 2007)</a>
2007	\$110	<a href="#">71 Fed. Reg. 75250 (Dec. 14, 2006)</a>
2006	\$110	<a href="#">71 Fed. Reg. 2247 (Jan. 13, 2006)</a>
2005	\$100	<a href="#">70 Fed. Reg. 11420, 11423 (Mar. 8, 2005)</a>
2004	\$100	<a href="#">67 Fed. Reg. 62478, 62480 (Oct. 7, 2002)</a>

**NOTE:** For an appeal of a QIO reconsideration, the regulation at § 478.40 specifies a \$200 AIC threshold. [CMS Ruling 02-01](#) aligned the minimum AIC threshold for appeals from a QIO reconsideration with the threshold established by BIPA (\$100) for QIO determinations specified in § 521 of BIPA. See [67 Fed. Reg. 62478, 62480 \(Oct. 7, 2002\)](#). This AIC threshold was subsequently amended by the MMA to adjust annually. As indicated in subsequent rulemaking, the statute and regulations govern the AIC threshold for ALJ hearings, despite any direct inconsistencies with § 478.40. See [69 Fed. Reg. 69251, 69260 \(Nov. 26, 2004\)](#).

#### B. Determination of Appropriate Calendar Year for Minimum AIC

The date OMHA receives a request for hearing determines the minimum AIC to be used.

*Example:* If a request for hearing is sent on December 30, 2012, and received by OMHA on January 2, 2013, the AIC for calendar year 2013 applies to the request.

### C. When to Calculate AIC

The exact AIC must be calculated if the record does not clearly establish whether the minimum AIC is met for the services at issue.

### D. How to Calculate AIC

The AIC is calculated as follows, based on what is appealed:

**1. Payment for an item or service.** [§ 405.1006\(d\)](#).

**Step One.** Find the actual amount charged to the enrollee.

**Step Two.** Subtract any payments already made by the MAO (for example, the amount paid for a lower, allowed level of service).

**Step Three.** Subtract any applicable deductible or coinsurance amounts (for example, a 20% co-payment required under the MA plan's evidence of coverage).

**2. The amount of cost-sharing.**

Find the amount contested by the enrollee for cost-sharing, including any deductible, co-payment, or coinsurance.

**NOTE:** If items or services have not been furnished, and the appeal is based on an MAO's refusal to provide such, the AIC is calculated based on the projected value of the services. [§ 422.600\(c\)](#). If optional or supplemental benefits are involved, but not employer-sponsored benefits limited to employer group members, the projected value of those benefits is used to determine whether the amount in controversy is met. [MMCM, Ch. 13, § 100.2](#).

### E. Calculation of AIC in Specific Situations

**Termination of services.** For cases involving a termination of services (for example, an appeal from a QIO's reconsideration affirming a provider discontinuing covered services), the AIC is calculated using the charges for services furnished after the disputed termination of covered services, or if continued services were not furnished to the beneficiary, the estimated amount that would have been charged if the services had been furnished.

### F. Combining Claims to Meet the Minimum AIC

Formal aggregation as described in Division II for Part A and B cases is not applicable to Part C cases. However, the hearing may be conducted on more than one claim at a time and an enrollee may combine claims to meet the minimum AIC if all claims:

- Belong to the same beneficiary;

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- Have received a Part C QIC reconsideration;
- Are filed within the 60-day timely filing period; and
- Are identified in the hearing request.

MMCM, Ch. 13, § 100.2.

**NOTE:** While the manual refers to claims, Part C appeals involve organization determinations on items or services.

### G. Addressing Insufficient AIC

#### 1. Special procedures for appeals of QIO reconsiderations.

For QIO reconsiderations where the ALJ determines the AIC threshold is not met, the ALJ must notify the parties and allow 15 calendar days from receipt of the notice for the parties to submit additional evidence to demonstrate the AIC threshold is met.

§ 478.44(b).

#### 2. If the minimum AIC is not met, the request for hearing is dismissed for no right to a hearing.

- If the minimum AIC is not met because the request for combining claims is invalid, the reason must be included in the dismissal.

**NOTE:** Unless otherwise indicated, the Part 405 citations above are made applicable to Part C QIC reconsiderations pursuant to §§ 422.562(d) and 422.600(b), and QIO reconsiderations pursuant to § 478.40(c).

### III-3-5 Timely Request for Hearing

Citations: §§ 405.942, 405.1002, 405.1014, 422.602.

#### A. When the Request for Hearing Must be Filed

1. A party must file a request for hearing within 60 calendar days of the date of the notice of reconsideration, unless the ALJ extends the time frame. § 422.602(b).
2. The request for hearing must be sent to the entity specified in the Part C QIC's reconsideration notice; the request is considered filed on the date when it is received (but see subsection B, below). § 422.602(a).
3. When the last day for filing a request for hearing falls on a weekend, Federal holiday, or any other day that the receiving OMHA office is closed for business (for example, due to weather), the time frame for filing is automatically extended to the next business day that the OMHA office is open for business.

*Example.* The QIO issues a reconsideration notice on Tuesday, September 23, 2014. Applying the 60-calendar day period for timely filing, the request for hearing should be filed no later than November 22, 2014. However, November 22, 2014, is a Saturday, so the time frame is automatically extended to the next business day that the OMHA office is open for business, on Monday, November 24, 2014.

#### B. Where the Request for Hearing Must be Filed

A party must file a request for hearing with the entity specified in the notice of reconsideration. However, if a request for hearing is received by an entity other than the entity specified in the notice of reconsideration (for example, an incorrect OMHA entity or an entity outside OMHA, such as SSA or CMS), the date that the incorrect entity received the request must be used to determine timeliness.

**NOTE:** Requests for hearing of a Part C QIC reconsideration are filed with the Part C QIC. Appeals of a QIO determination filed by a Part C enrollee are filed with the entity specified in the reconsideration, which may be OMHA or the QIO.

*Example.* Using the example in paragraph A, the QIO's reconsideration notice identified OMHA Central Operations as the entity where appeals should be filed. If the OMHA Miami Field Office received the request on Friday, November 21, 2014, the Miami Field Office date stamps the request for hearing as received on that date and forwards it to OMHA Central Operations for further processing. However, the November 21, 2014, received date will be used to assess the timeliness of the request, regardless of when OMHA Central Operations receives the request.



### C. Requesting an Extension of Time

A party who has a right to a hearing but does not file a timely request, may ask for an extension of time to make the request. The request for an extension must be in writing ([form HHS-727](#) may be used, but is not required), must give the reasons why the request was not filed within the required time period, and must be filed with the entity specified in the notice of reconsideration. [§§ 405.1014\(c\), 422.602\(b\)](#).

**NOTE:** Any explanation for a late filing is deemed a request for an extension of time to request a hearing.

### D. Addressing Untimely Requests

#### 1. Considerations when evaluating good cause. [§ 405.942\(b\)\(2\)–\(3\)](#).

When evaluating whether an appellant has shown good cause for missing a deadline to request a hearing, an ALJ considers:

- The circumstances that kept the party from making the request on time;
- If the contractor's or OMHA's action(s) misled the party; and
- If the party had or has any physical, mental, educational, or linguistic limitations, including any lack of facility with the English language, that prevented the party from filing a timely request or from understanding or knowing about the need to file a timely request.

An ALJ must evaluate whether an appellant has shown good cause based on the circumstances of the case. Examples of when good cause for late filing may be found to exist include, but are not limited to, the following circumstances:

- The party was prevented by serious illness from contacting OMHA in person, in writing, or through a friend, relative, or other person;
- The party had a death or serious illness in his or her immediate family;
- Important records of the party were destroyed or damaged by fire or other accidental cause;
- The contractor gave the party incorrect or incomplete information about when and how to request a hearing;
- The party did not receive notice of the reconsideration; or
- The party sent the request to a Government agency in good faith within the time limit, and the request did not reach the appropriate entity until after the time period to file a request expired.

**2. Developing good cause.**

If there is no evidence in the file indicating that the appellant has provided a reason for the late filing, an interim letter requesting the appellant show cause (OMHA-110 Interim Letter, available in MATS) must be sent in the following circumstances:

- The appellant is an unrepresented enrollee;
- The appellant is an enrollee not represented by a provider or supplier; or
- There is evidence in the record indicating notice would be appropriate given the circumstances of the case.

*Example 1.* A request for extension is submitted, but no reason is given.

*Example 2.* An appellant is involved in post-reconsideration discussions with the Part C QIC, and was waiting to file the request until the issue with the reconsideration was resolved.

The notice provides 60 calendar days from the date of the letter for an appellant to provide a reason for the late filing. The original interim letter must be placed in the file, and a copy sent to the appellant.

**3. Good cause is found.**

If a request for hearing is untimely, but the ALJ determines that the enrollee established good cause for missing the filing deadline, the ALJ grants an extension for filing the request for hearing.

**4. Good cause is not found.**

If a request for hearing is untimely and there is no good cause for extending the filing deadline, the request is dismissed.

- a. If the appellant did not provide a reason for the untimely filing, the dismissal will include a summary statement relating this fact (for example, “The appellant has not provided any explanation for its late filing; thus, I find that there is no good cause to extend the period for timely filing in this case.”)
- b. If the appellant provided a reason for the untimely filing, the dismissal must explain why the reason does not constitute good cause.

## **III-3-6 Complete Request for Hearing**

### **A. Generally**

The request for hearing must be in writing. [§ 422.602\(a\)](#). There are no standard forms for requesting an ALJ hearing in Part C appeals. In addition, the [§ 405.1014\(a\)](#) (Request for an ALJ hearing) provisions, including content and copy requirements, do not apply because [§ 422.602](#) (Request for an ALJ hearing) addresses a request for hearing in the Part C context and specifies when 405 rules apply to a Part C request for hearing (for example, [§ 422.602\(b\)](#) states that 405 rules apply to an extension of the time frame to file a request for hearing). Compare [§ 422.608](#) (permitting application of 405 rules for Council reviews, which includes 405 rules for filing a request for Appeals Council review).

### **B. Required Elements for a Complete Request for Hearing**

The regulation at [§ 422.602](#) does not specify content requirements for a request for hearing, but requires a request for hearing be filed with the entity specified in the reconsideration notice, which is the Part C QIC . Upon receipt, the Part C QIC forwards the request and case file to OMHA. If a request for hearing on a Part C QIC reconsideration is filed with OMHA, the request is misdirected and should be redirected to the Part C QIC.

If a request for hearing on a QIO reconsideration regarding an MAO determination is filed, the request must contain sufficient information to contact the filing individual or entity, identify the enrollee whose service is at issue, and request the record from the QIO (for example, name of the enrollee and the enrollee's HICN, name, and contact information for the individual or entity filing the request, as well as the name of the QIO that issued the reconsideration).

### **C. Addressing Incomplete Requests for Hearing**

If a request for hearing is appropriately filed directly with OMHA (that is, a request for hearing on a QIO reconsideration of an MAO determination), and the request does not contain sufficient information to identify the enrollee whose service is at issue or the QIO that issued the reconsideration, the information that is provided in the request for hearing must be used to obtain the necessary information.

- The information may be obtained via telephone or letter notice, but a communication by telephone must be documented for the record, using form [OMHA-101 Report of Contact](#).