

# OMHA Case Processing Manual

## Chapter 20 POST-ADJUDICATION ACTIONS

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### 20.0 Chapter overview

(Issued: 05-25-18, Effective: 05-25-18)

This chapter details the various potential post-adjudication actions and how to process them. These actions may occur after a decision, dismissal, or remand is issued. Requests may be made to correct a clerical error, reopen a decision, vacate a dismissal, or review a remand issued by an OMHA adjudicator. OMHA adjudicators then take action to grant or deny such a request, and in some instances may initiate an action on own motion.

In addition, parties may seek Council review of decisions and dismissals. CMS and its contractors, or SSA, may also refer decisions and dismissals to the Council for possible own motion review. The Council may take a number of actions on an appealed or referred case, including remanding the case to OMHA.

**Caution:** When taking the actions described in this chapter, ensure that all PII, PHI, and Federal Tax Information is secured and only disclosed to authorized individuals (internally, those who need to know).

## 20.1 Effectuation questions

(Issued: 05-25-18, Effective: 05-25-18)

### 20.1.1 How are decisions effectuated and what role does OMHA have?

Effectuation is the process by which an OMHA adjudicator's decision is executed. Effectuation may take the form of making payment; issuing refunds; furnishing items, services, or drugs; or recalculating premiums. OMHA sends decisions to an entity that either directly effectuates the decision (for example, SSA, MAOs, or Part D plan sponsors) or that issues instructions to another entity to effectuate the decision (for example, the AdQIC, which issues effectuation instructions to a MAC or MSP recovery contractor that made the initial determination).

#### *OMHA role in effectuation*

OMHA does not have a role in effectuating decisions and cannot direct any of the above entities to take action or otherwise facilitate effectuating a decision.

*Note:* An entity's questions to clarify a decision for effectuation (for example, an AdQIC clarification request) are addressed in OCPM 20.5.4).

### 20.1.2 Where do we refer effectuation questions for . . .

#### 20.1.2.1 Decisions on appeals that went through a Part A QIC or Part B QIC?

- **Providers, suppliers, and Medicaid State agencies** should contact the MAC that made the initial determination for the status of, or questions about, effectuation.
- **Applicable plans** should contact the MSP recovery contractor that made the initial determination for the status of, or questions about, effectuation.
- **Beneficiaries** should contact 1-800-MEDICARE (1-800-633-4227) (TTY 1-800-486-2048) for the status of, or questions about, effectuation.

#### 20.1.2.2 Decisions on appeals in which a QIO issued the reconsideration (under Part A or Part C)?

- **Providers and Medicaid State agencies** should contact the QIO that issued the reconsideration for the status of, or questions about, effectuation.
- **Beneficiaries** should contact 1-800-MEDICARE (1-800-633-4227) (TTY 1-800-486-2048) for the status of, or questions about, effectuation.

### 20.1.2.3 Decisions on appeals that went through the Part C IRE?

- **Providers and Medicaid State agencies** should contact the MAO for the status of, or questions about, effectuation.
- **Enrollees** should contact the MAO for the status of, or questions about, effectuation.

### 20.1.2.4 Decisions on appeals that went through the Part D IRE?

- **Enrollees** should contact the Part D plan sponsor for the status of, or questions about, effectuation.

### 20.1.2.5 Decisions on appeals in which SSA issued the reconsideration?

- **Beneficiaries** should contact SSA at 1-800-772-1213 (TTY 1-800-325-0778) for the status of, or questions about, effectuation.

## 20.1.3 What if a beneficiary or enrollee is having ongoing issues with effectuation?

A beneficiary who indicates that he or she is having ongoing difficulties with an effectuation matter may call 1-800-MEDICARE (1-800-633-4227) (TTY 1-800-486-2048) and request that the 1-800-MEDICARE representative direct the inquiry to the **Medicare Beneficiary Ombudsman**. The **Medicare Beneficiary Ombudsman's** office can assist beneficiaries in resolving issues, including effectuation.

## 20.1.4 What if a party disagrees with the amount of the payment that is made in effectuating a decision?

The amount of payment made by a Part A or Part B contractor, Part C MAO, or Part D plan sponsor in effectuating an ALJ's or attorney adjudicator's decision is a new determination and must be appealed in accordance with the rules for appealing an initial determination.<sup>1</sup> However, the appellant may request that the ALJ or attorney adjudicator correct or reopen the decision in accordance with OCPM 20.5 or 20.6, respectively, if the appellant believes the payment amount is incorrect because of ambiguity or error in the decision.

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<sup>1</sup> 42 C.F.R. §§ 405.1046(a)(3), 423.2046(a)(3). This is true even in the context of a stipulated decision where the amount of payment was specifically at issue before the ALJ or attorney adjudicator and CMS, a CMS contractor, or a plan agreed to the amount of payment in writing or orally at the hearing. See 82 Fed. Reg. 4974, 5074 (Jan. 17, 2017).

## 20.2 Updates to the administrative record

(Issued: 05-25-18, Effective: 05-25-18)

### 20.2.1 When do we have to update the administrative record?

#### *Post-adjudication materials added to the administrative record*

Update the administrative record with any additional documents—including a report of contact when applicable—or correspondence related to requests, submissions, or actions made or taken on an appeal after a decision, dismissal, or remand is issued, *unless* the documents are purely administrative.

For example, update the administrative record with the following:

- Documentation or correspondence from a party or representative concerning returned disposition packages (*see* OCPM 20.3);
- Documentation or correspondence from a party or representative concerning a request to re-send the disposition package (*see* OCPM 20.4);
- Documentation or correspondence concerning a request to correct or clarify a clerical error (*see* OCPM 20.5);
- Documentation or correspondence from a party concerning a request to reopen, or from a non-party concerning a referral for own-motion reopening (*see* OCPM 20.6);
- Documentation or correspondence from a party concerning a request to vacate a dismissal, or from a non-party concerning a referral to the OMHA adjudicator to vacate a dismissal on his or her own motion (*see* OCPM 20.7);
- Documentation or correspondence from a party, CMS or its contractors, or a Part D plan sponsor concerning a request for review of a remand (*see* OCPM 20.8);
- Documentation or correspondence from a CMS contractor or SSA concerning a response to an OMHA remand (*see* OCPM 20.9); and
- Other records such as additional correspondence unrelated to a post-adjudication action (sometimes referred to as “trailer mail”), or records that were inadvertently omitted from the administrative record.
  - Add these other records to the administrative record in accordance with this section when the records are received or discovered.

*Post-adjudication materials not added to the administrative record*

Do not add the following materials to the administrative record:

- Incidental inquiries or communications that invoke no request, review, or action, such as an appreciative note or phone call;
- Documentation related to shipping or transferring the administrative record or lower level case file;
- Courtesy copies of actions taken to appeal or refer a decision or dismissal, or seek review of a remand; and
- CMS, CMS contractor, plan, or SSA clarification requests.

**20.2.2 How do we update the administrative record?**

If the administrative record is a **paper record** and the record has not been mailed, add the new records to the administrative record before mailing the record.

*Note:* Records are not exhibited if they were not considered in making the decision.<sup>2</sup>

If the administrative record is a **paper record** and was mailed, or it is an **electronic record**, contact the appellant and other parties who were active in the appeal to determine whether an appeal was filed with the Council. You may also check, but should not rely solely upon, the DAB's Medicare Operations Division electronic filing (MOD E-File) online appeal status lookup tool at [https://dab.efile.hhs.gov/mod/appeals/public\\_status](https://dab.efile.hhs.gov/mod/appeals/public_status).

- If a request for review is pending with the Council, contact the **Appeals Policy and Operations Division**. The **Appeals Policy and Operations Division** will coordinate with the DAB's Medicare Operation Division to determine how materials will be transmitted.
- If a request for review is not pending with the Council, add the new records to the administrative record through one of the following procedures:
  - If the appeal was processed in **MAS** (that is, the appeal was not processed in ECAPE) and the appeal went through a **QIC** or **IRE**, and the OMHA adjudicator

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<sup>2</sup> See 42 C.F.R. §§ 405.1042(a)(2) ("The record will include marked as exhibits, . . . documents and other evidence used in making . . . the ALJ's or attorney adjudicator's decision . . ."), 423.2042(a)(2) (providing the same).

issued a decision or dismissal, scan and upload the materials to the appeal record in MAS, using a Document Category of *Post Decision Documents* and a Document Type of *Other*.

**Note:** Paper documents and media with electronic documents may be destroyed after the materials are uploaded to MAS and the uploaded version is verified as complete (all pages are included, including the back side of two-sided documents, are present, and legible).

- If the appeal was processed in **MAS** (that is, the appeal was not processed in ECAPE) and the appeal went through a **QIO** or **SSA**, or the OMHA adjudicator issued a remand, mail a completed Post-Adjudication Records Transmittal (OMHA-169) with the materials to the same entity to which we mailed the administrative record (see [OCPM 19.5.2](#)).
- If the appeal was processed in **ECAPE** and the appeal went through a **QIC** or **IRE**, and the OMHA adjudicator issued a decision or dismissal, scan and upload the materials to the appeal record in ECAPE.

**Note:** Paper documents and media with electronic documents may be destroyed after the materials are successfully uploaded to ECAPE and the uploaded version is verified as complete (all pages are included, including the back side of two-sided documents, are present, and legible).

- If the appeal was processed in **ECAPE** and the appeal went through a **QIO** or **SSA**, or the OMHA adjudicator issued a remand, mail a completed Post-Adjudication Records Transmittal (OMHA-169) with the materials to the same entity to which we mailed the administrative record (see [OCPM 19.5.2](#)).

## **20.3 Returned disposition packages**

(Issued: 05-25-18, Effective: 05-25-18)

### **20.3.1 What are disposition packages, where are they sent, and what happens if they are returned?**

The disposition package includes the notice, a copy of the decision, dismissal, or remand order, any attachments listing beneficiaries and/or appeals in multi-beneficiary appeals, and enclosures, such as an index of the administrative record. The disposition package is sent to the recipient's last known address. If the disposition package is returned, the reason for the return and whether updated address information is available determines whether it is re-sent.

### **20.3.2 What do we do if a disposition package sent to a CMS contractor or SSA is returned?**

If the returned disposition package was sent to a CMS contractor or SSA, check the current address tables (available internally) to verify the address used is current for the entity or contractor jurisdiction.

If the returned disposition package was sent to the current entity and address in the tables, contact your Hearing Office Director or designee so the matter can be forwarded to HQ for resolution.

If the returned disposition package was not sent to the current entity or address in the tables, re-send the disposition package to the correct entity and address.

- Draft a Re-sent Records Cover Letter (OMHA-167) indicating where the disposition package was originally sent and that it was returned, dated with the date the cover letter will be placed in the mail;
- Enclose the contents of the returned disposition package with the Re-sent Records Cover Letter (OMHA-167); and
- Update the administrative record (*see* OCPM 20.2) with:
  - 1) The original or a copy of the returned disposition package *envelope*; and
  - 2) The original Re-sent Records Cover Letter (OMHA-167).

### 20.3.3 What do we do if the disposition package sent to a party or representative is returned, with a forwarding address?

If the returned disposition package has a forwarding address:

- Update the contact address in the case processing system;
- Draft a Re-sent Records Cover Letter (OMHA-167) indicating where the disposition package was originally sent and that it was returned, dated with the date the cover letter will be placed in the mail;
- Enclose the contents of the returned disposition package with the Re-sent Records Cover Letter (OMHA-167); and
- Update the administrative record (see OCPM 20.2) with:
  - 1) The original or a copy of the returned disposition package *envelope*; and
  - 2) The original Re-sent Records Cover Letter (OMHA-167).

*Note:* Do not add a copy of the *contents* of the returned disposition package to the administrative record because the originals are already part of the record—only add the returned *envelope*, to document the package was returned and any additional information provided by the mail service, such as an updated address.

### 20.3.4 What do we do if the disposition package sent to a party or representative is returned, without a forwarding address?

If the disposition package is returned as not deliverable as addressed or for other reasons (for example, “no longer at address”), check the contact address in the case processing system to ensure the disposition package was sent to the most recent address of record and to confirm the address used was complete.

If the case processing system has a more complete or updated address:

- Draft a Re-sent Records Cover Letter (OMHA-167) indicating where the disposition package was originally sent and that it was returned, dated with the date it will be placed in the mail;
- Enclose the contents of the returned disposition package with the Re-sent Records Cover Letter (OMHA-167); and



- Update the administrative record (*see* OCPM 20.2) with:
  - 1) The original or a copy of the returned disposition package *envelope*; and
  - 2) The original Re-sent Records Cover Letter (OMHA-167).

*Note:* Do not add a copy of the *contents* of the returned disposition package to the administrative record because the originals are already part of the record—only add the returned *envelope*, to document the package was returned and any additional information provided by the mail service.

If the case processing system does not have a more complete or updated address:

- Attempt to contact the appellant or representative at the phone number of record to obtain an updated or more complete address. Create a report of contact to document the attempt to obtain updated or complete address information, and any address information provided.

If the attempt results in updated or more complete address information, re-send the disposition package as in OCPM 20.3.3.

If the attempt does not result in updated or more complete address information:

- Update the administrative record (*see* OCPM 20.2) with:
  - 1) The original or copy of the returned disposition package *envelope*; and
  - 2) The original disposition package *contents*; and
  - 3) The report of contact documenting the attempt to obtain updated address information.

## 20.4 Requests to re-send the disposition package or its contents

(Issued: 05-25-18, Effective: 05-25-18)

### 20.4.1 What are disposition packages and when will OMHA re-send them?

The disposition package includes the notice, a copy of the decision, dismissal, or remand order, any attachments listing beneficiaries and/or appeals in multi-beneficiary appeals, and enclosures, such as an index of the administrative record. A party may request a second or complete copy of the disposition package or its contents.

If the administrative record has not been mailed (for paper records) **or transferred** (for electronic records) to the entity that holds the permanent record, OMHA still holds the administrative record and must provide the requested documents.

*Note:* A FOIA request is not necessary for a party or representative to obtain copies of the disposition package or its contents from OMHA.

If the administrative record has been mailed (for paper records) **or transferred** (for electronic records) to the entity that holds the permanent record, OMHA will only obtain and re-send the disposition package or the requested contents if the party or representative asserts that:

- The disposition package was not received; or
- The disposition package received is incomplete (for example, only the odd numbered pages of a decision were received, or a document is missing).

After OMHA mails or transfers the administrative record to the entity that holds the permanent record, parties and representatives must direct any other requests for a copy of the disposition package or its contents to the holder of the administrative record. The holder may require a FOIA request.

- For appeals that went through a **Part A QIC** or **Part B QIC**, provide the requesting individual with the AdQIC's fax number for case file requests, available on the current CMS Contractors and SSA Contact List.
- For appeals that went through a **QIO**, provide the requesting individual with contact information for the individual tasked with responding to record requests after OMHA has shipped the case file, as indicated on the current CMS Contractors and SSA Contact List.

- For appeals that went through a **Part C IRE**, direct the requesting individual to visit the Part C IRE’s website (<http://www.medicareappeals.com>) and follow the instructions listed under “Medicare Enrollees > Obtain a Copy of Your Case File.”
- For appeals that went through a **Part D IRE**, direct the requesting individual to visit the Part D IRE’s website (<http://www.medicarepartdappeals.com>) and follow the instructions listed under “Part D Enrollees > Obtain a Copy of Your Case File.”
- For appeals of **SSA** reconsiderations, refer the requesting individual to the SSA FOIA Requester Service Center, at 1-410-965-1727.
- If an appeal is **pending with the Council**, refer the requesting individual to the DAB’s Medicare Operations Division, at 1-866-365-8204.

#### **20.4.2 How do we process a request to re-send the disposition package or its contents?**

A request to re-send the disposition package or its contents may be oral or in writing. If the request is oral, complete a Report of Contact (OMHA-101) to document the request (the report of contact must be added to the administrative record, as discussed in later sections).

Respond in writing to all requests:

- If the request is honored, use one of the cover letters described in the following subsections.
- If the request is not honored, send a Records Request Referral (OMHA-166) explaining why OMHA cannot provide the requested documentation.

#### **20.4.3 What if the disposition package was sent to the party and not the party’s representative?**

If the disposition package was sent to the party instead of the party’s representative, re-send the disposition package to the representative<sup>3</sup> with a Re-sent Records Cover Letter (OMHA-167) indicating:

- 1) The original package was inadvertently sent only to the represented party;
- 2) The individual contacted OMHA and indicated the representative did not receive the disposition package; and

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<sup>3</sup> See 42 C.F.R. § 405.910(i).

3) The date the individual contacted OMHA.

- Obtain the disposition package or use the imaged disposition package uploaded to the case processing system. (Do not issue an amended notice.)
- Date the Re-sent Records Cover Letter (OMHA-167) with the date the cover letter will be placed in the mail with the new copy of the disposition package to document when the disposition package was re-sent.
- Update the administrative record with the originals of the request or report of contact, and any documents sent to the requesting individual (see OCPM 20.2).

**20.4.4 What if the individual asserts the disposition package was not received and there is no address change?**

If the address of record is current and the original package was sent to that address, re-send the disposition package with a Re-sent Records Cover Letter (OMHA-167) indicating:

- 1) The original package was sent to the address of record and not returned;
  - 2) The individual contacted OMHA and indicated the package was not received;
  - 3) The date the individual contacted OMHA; and
  - 4) That the package is being re-sent as a courtesy.
- Obtain the disposition package or use the imaged disposition package uploaded to the case processing system. (Do not issue an amended notice.)
  - Date the Re-sent Records Cover Letter (OMHA-167) with the date the cover letter will be placed in the mail with the new copy of the disposition package to document when the disposition package was re-sent.
  - Update the administrative record with the originals of the request or report of contact, and any documents sent to the requesting individual (see OCPM 20.2).

#### **20.4.5 What if the individual asserts the disposition package was not received and provides a different address?**

If the address of record is not current and the original package was sent to that address, or the package was not sent to the address of record, re-send the disposition package with a Re-sent Records Cover Letter (OMHA-167) indicating:

- 1) The address where the original package was sent and that it was not returned;
- 2) The individual contacted OMHA and indicated the package was not received and provided a different address; and
- 3) The date the individual contacted OMHA.
  - Obtain the disposition package or use the imaged disposition package uploaded to the case processing system. (Do not issue an amended notice.)
  - Date the Re-sent Records Cover Letter (OMHA-167) with the date the letter will be placed in the mail with the new copy of the disposition package to document when the disposition package was re-sent.
  - Update the administrative record with the originals of the request or report of contact, any documents sent to the requesting individual (*see* OCPM 20.2), and, if necessary, ensure appropriate updates are made to the address information in the case processing system.

<p><i>Note:</i> A PII breach must be reported if the disposition package was sent to an incorrect address (for example, the address was not the last known address at the time the disposition package was sent).</p>
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#### **20.4.6 What if the individual asserts the disposition package received was missing documents or incomplete?**

If the requesting individual asserts the disposition package was incomplete (for example, partial documents or missing documents), re-send the disposition package with a Re-sent Records Cover Letter (OMHA-167) indicating:

- 1) The individual contacted OMHA and indicated the disposition package was incomplete; and

## 2) The date the individual contacted OMHA.

- Obtain the disposition package or use the imaged disposition package uploaded to the case processing system. (Do not issue an amended notice.)
  - Verify that the disposition package being sent includes any missing pages or documents identified in the request.
- Date the Re-sent Records Cover Letter (OMHA-167) with the date the letter will be placed in the mail with the new copy of the disposition package to document when the disposition package was re-sent.
- Update the administrative record with the originals of the request or report of contact, and any documents sent to the requesting individual (*see* OCPM 20.2).

*Note:* If the requesting individual is **not entitled to receive the documents** (for example, a beneficiary is requesting documents intentionally omitted because they pertain to another beneficiary), or the request identifies **materials that were not part of the disposition package**, do not re-send the disposition package. Explain in the cover letter why the documentation was not provided or that the requested documentation was not part of the disposition package.

## 20.5 Correcting clerical errors: Amended decisions, dismissals, or remands; clerical edits to data

(Issued: 07-12-19, Effective: 07-21-19)

### 20.5.1 What are clerical errors?

A clerical error may occur in a decision, dismissal, or remand; or when entering data in the case processing system. Clerical errors include, but are not limited to, typographical errors in decisions, dismissals or remands; and data entry errors in the case processing system.

### 20.5.2 Do clerical errors have to be corrected?

Clerical errors should be corrected, and they must be corrected if they are preventing effectuation (*see* OCPM 20.5.5).

- If a clerical error is made in a decision, dismissal, or remand, issue an **amended** decision, dismissal, or remand with corrected information, and update the administrative record (*see* OCPM 20.5.6).
- If there is a clerical error in the data in the case processing system, correct the data via a clerical edit to the case processing system (*see* OCPM 20.5.7).

### 20.5.3 How are clerical errors identified and who may request a correction or clarification?

A party, SSA, CMS, a CMS contractor or Part D plan sponsor, or the Council may request a correction or clarification, or an OMHA adjudicator may issue a correction or clarification on the adjudicator's own motion.

A **party's** request may be sent to the attention of the **adjudicator** who issued the decision, dismissal, or remand; or filed with **Central Operations** at:

OMHA Central Operations  
Attn: Administrative Mail Stop  
200 Public Square, Suite 1260  
Cleveland, OH 44114-2316

- If filed with **Central Operations**, forward the request to the assigned adjudicator if the administrative record was a paper record; or image and upload the request to the appeal record, and assign a task to the adjudicator if the administrative record was an electronic record.

Generally, **SSA**, **CMS** and **CMS contractor**, and **Part D plan sponsor** requests for correction or clarification are sent to the **Appeals Policy and Operations Division** for coordination and oversight.

- **SSA** requests for correction or clarification on an **IRMAA** appeal are sent to **Central Operations** and hand delivered to the assigned adjudicator.
- **Council** requests for correction or clarification are sent to **Central Operations** for coordination.

For AdQIC clarifications, requests for correction or clarification are sent to the **Appeals Policy and Operations Division** for coordination and oversight. The **Appeals Policy and Operations Division** directs the request to the Hearing Office Director or designee of the field office for the applicable adjudicator. As directed by the Hearing Office Director or designee, the field office administration team forwards the AdQIC clarification request to the applicable adjudicator, or Associate Chief ALJ when necessary (see OCPM 20.5.4.1). The **Appeals Policy and Operations Division** tracks clarification requests until resolved.

*Note:* A request for correction or clarification does not stay or extend the 60 calendar day period to request Council review of a decision or dismissal,<sup>4</sup> or the 30 calendar day period to request Chief ALJ review of a remand.<sup>5</sup>

#### **20.5.4 How do we process a request to correct or clarify a decision, dismissal, remand, or data?**

A request to correct or clarify a decision, dismissal, remand, or data may be oral or in writing. If the request is oral, complete a Report of Contact (OMHA-101) to document the request.

Respond in writing to all requests submitted by a **party**:

- If the request is granted, use the appropriate amended notice with the appropriate amended decision or order described in OCPM 20.5.6.3.

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<sup>4</sup> See 42 C.F.R. §§ 405.1102(a) (providing 60 calendar days after receipt of an ALJ or attorney adjudicator's decision or dismissal, to request Council review), 423.2102(a) (providing the same).

<sup>5</sup> See 42 C.F.R. §§ 405.1056(g) (providing 30 calendar days after receipt of an ALJ or attorney adjudicator's remand, to request review by the Chief ALJ), 423.2056(g) (providing the same).



- If the request is not granted, send a Generic Notice (OMHA-120) with an Order Denying Request for Correction or Clarification (OMHA-195) explaining why the request is denied, as discussed in OCPM 20.5.4.4.

**Note:** If an amended decision, dismissal, or remand is issued in response to a request submitted by **SSA, CMS and CMS contractors, the Council, or a Part D plan sponsor**, no separate response is required. If an OMHA adjudicator declines to issue the requested amended decision, dismissal, or remand, the adjudicator must notify the **Appeals Policy and Operations Division**.

#### **20.5.4.1 Who reviews the request?**

The adjudicator who issued the decision, dismissal, or remand reviews the request, to determine whether a clerical error was made.

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), or the assigned adjudicator does not timely respond to the request, the adjudicator's field office Associate Chief ALJ reviews the request.

#### **20.5.4.2 How long do we have to respond to a request?**

For **standard appeals**, the adjudicator takes action to resolve the clerical error or deny the request within 60 calendar days after the request is received, *except* that clarification requests received from an entity responsible for effectuating a decision (for example, SSA) or issuing instructions to an effectuating entity (for example, the AdQIC) must be resolved within 30 calendar days after the request is received.

For **expedited Part D appeals**, the adjudicator takes action to resolve the clerical error or deny the request within 10 calendar days after the request is received.

#### **20.5.4.3 What if we need the administrative record to assess a request?**

If the adjudicator requires the administrative record to consider the request and a paper record is no longer in OMHA's possession, the adjudicator uses the imaged version of the administrative record if one is available in the case processing system. If an imaged version of a paper record is not available, a paper copy of the administrative record may be requested through the field office intake. The field office intake will forward all such requests to Central Operations, which will submit a request to the entity to which the case file was shipped.

- The time between the date a copy of a paper administrative record is requested and the date it is received does not count toward the time frames in OCPM 20.5.4.2 for responding to the request.

#### **20.5.4.4 When may an adjudicator deny a request?**

A request may not be denied if a correction or clarification is necessary for effectuating a decision.

In other circumstances, if the adjudicator does not believe a correction or clarification is warranted, or the time to request a correction or clarification has elapsed (*see* OCPM 20.5.5.1), send a Generic Notice (OMHA-120) with an Order Denying Request for Correction or Clarification (OMHA-195) explaining why the correction or clarification is not being made.

If a request is denied, update the **administrative record** with:

- The request for correction or clarification;
- The notice with order denying the request; and
- Any other documentation relevant to the determination to deny the request that is not already in the administrative record.

See OCPM 20.2 for when and how to update the administrative record.

### **20.5.5 What does an adjudicator consider in determining whether to correct or clarify a decision, dismissal, remand, or data?**

#### **20.5.5.1 When is an amended decision, dismissal, or remand issued?**

An Amended Decision (OMHA-152A), Amended Order of Dismissal (OMHA-173A), or Amended Order of Remand (OMHA-175A) is issued if:

- A clerical error was brought to OMHA's attention or OMHA discovered the error within 180 calendar days of the date the original decision, dismissal, or remand was issued (*unless* the error is preventing effectuation); and
- The clerical error involves:
  - Correcting the identity of a party, participant, or representative (for example, a name or Medicare number (HICN or MBI));

- Correcting dates or descriptions of the claim or items or services at issue (for example, a date of service or procedure code);
- Correcting appeal numbers involved (for example, an OMHA appeal number);
- Correcting hearing dates or attendees; or
- Reconciling the decision outcome described in the decision summary with the decision outcome stated in the conclusions of law when they are inconsistent.

*Note:* The amended decision, dismissal, or remand may be issued after the 180 calendar day period, provided the error was brought to OMHA's attention or discovered by OMHA within the 180 calendar day period.

The amended decision, dismissal, or remand must be of the same type as the original disposition—for example, an **amended decision** amends a **decision**.

- If a decision, dismissal, or remand was issued in error—for example, a decision was issued when a dismissal should have been issued—a decision must be reopened, or a dismissal or remand vacated under other provisions of the OCPM. The appropriate type of decision, dismissal, or remand may then be issued for the re-established appeal.

An **amended decision** may not be issued if the basis for revising the decision would constitute good cause for reopening the decision under [42 C.F.R. section 405.986\(a\)](#). For example, the reopening process is used for a decision if the findings or analysis are altered, or the outcome of the decision, taken as a whole, changes.

#### **20.5.5.2 What is the effect of a pending Council appeal or OMHA review?**

Amended decisions, dismissals, and remands may be issued, and clerical edits to data may be made, regardless of whether the decision or dismissal is pending before the Council, or a remand is under review at OMHA.

If there is a remand review pending at OMHA (*see* OCPM 20.8), a copy of the amended remand order must be sent to the **Appeals Policy and Operations Division**.

*Note:* If an amended decision or dismissal is issued, the updated decision or dismissal is forwarded to the Council by the receiving CMS contractor,

plan, or SSA, when the administrative record is updated.

## **20.5.6 What is the process for correcting a decision, dismissal, or remand—that is, issuing an amended decision, dismissal, or remand?**

### **20.5.6.1 Who may amend a decision, dismissal, or remand?**

The adjudicator who issued the original decision, dismissal, or remand issues the Amended Decision (OMHA-152A), Amended Order of Dismissal (OMHA-173A), or Amended Order of Remand (OMHA-175A).

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), the adjudicator’s field office Associate Chief ALJ determines whether to amend the decision, dismissal, or remand. If an Associate Chief ALJ makes the determination to amend the decision, dismissal, or remand, the Associate Chief ALJ may also sign any resulting amended decision, dismissal, or remand.

### **20.5.6.2 What is required in an amended decision, dismissal, or remand?**

All requirements for a decision, dismissal, or remand apply to the amended version. Issue amended versions of a decision with an Amended Decision (OMHA-152A), an amended version of a dismissal with an Amended Order of Dismissal (OMHA-173A), and an amended version of a remand with an Amended Order of Remand (OMHA-175A). An amended decision, dismissal, or remand includes:

- A summary at the outset of the amended decision, dismissal, or remand indicating when the original decision, dismissal, or remand was issued and the changes made; and

*Example:* This amended decision is issued to correct the dates of service identified in the original decision issued on March 28, 2017.

*Example:* This amended decision is issued to correct the outcome stated in the Summary of the Decision, in the original decision issued on March 28, 2017.

- The corrected information or language in the body of the decision, dismissal, or remand.

**20.5.6.3 What type of notice is required, and does anything else have to be sent with an amended decision, dismissal, or remand?**

- Issue an Amended Decision (OMHA-152A), Amended Order of Dismissal (OMHA-173A), or Amended Order of Remand (OMHA-175A) with the appropriate notice:
  - Notice of Amended Decision (OMHA-1051A);
  - Notice of Amended Dismissal (OMHA-1072A);
  - Notice of Amended Remand (OMHA-1075A);
  - Notice of Amended Decision Affirming Dismissal (OMHA-150A);
  - Notice of Amended Dismissal on Request for Review of a Dismissal (OMHA-171A); or
  - Notice of Amended Remand on Request for Review of a Dismissal (OMHA-176A).
- Date the amended notice with the date that it will be placed in the mail.
- Send the following to all parties and entities entitled to the notice (generally, the same parties and entities to whom the original notice and decision, dismissal, or remand were sent):
  - The notice;
  - The amended decision, dismissal, or remand;
  - A DAB-101 (for amended decisions and dismissals on requests for hearing only); and
  - Any other pertinent enclosures.

**20.5.6.4 What is added to the administrative record when an amended decision, dismissal, or remand is issued?**

Update the administrative record with the following:

- The written or documented oral request for correction or clarification, if one was submitted;

- The amended notice; amended decision, dismissal, or remand; and any other enclosures sent to the parties; and
- Any other documentation relevant to the determination to issue an amended decision, dismissal, or remand that is not already in the administrative record.

See OCPM 20.2 for when and how to update the administrative record.

#### **20.5.6.5 Are updates to the data in the case processing system required?**

Add any required information related to the *amended* decision, dismissal, or remand process to the case processing system (for example, data related to activities to produce and issue the amended decision).

If an amended decision, dismissal, or remand requires edits to data related to the original appeal (for example, disposition outcome data), the edits must be approved in accordance with OCPM 20.5.7.

#### **20.5.7 What is the process for correcting data?**

##### **20.5.7.1 Does anyone have to approve data edits after an appeal is closed in the case processing system?**

No approval is necessary if an edit in the case processing system was requested by a CMS contractor or SSA to facilitate effectuation.

Due to the potential impact of data changes on management information used in OMHA reporting, other clerical edits to the data in the case processing system related to the original adjudication must be reviewed and approved by the Hearing Office Director (this function may not be delegated).

- The Hearing Office Director must send a courtesy copy of clerical edit approvals to the field office Associate Chief ALJ, Director of **Central Operations**, the Director of the **Appeals Policy and Operations Division**, and the Director overseeing management information.

The Hearing Office Director may require documentation to support requests for approval to edit the following data fields:

- Request for hearing or review received date;
  - May require documentation of correct request received date.

- Date the original decision, dismissal, or remand was issued (also known as the decision letter mailed date); or
  - May require documentation of the correct date the original decision, dismissal, or remand was issued.
- Disposition outcome data.
  - May require documentation that the outcome data was entered incorrectly and either: (1) no decision, dismissal, or remand was issued; or (2) an amended decision, dismissal, or remand of the same type (that is, an amended decision is issued to correct a decision, an amended dismissal is issued to correct a dismissal) is being issued to correct the original decision, dismissal, or remand.

#### **20.5.7.2 When is data in the case processing system edited?**

Data in the case processing system is edited to correct data when the original data entered were inaccurate. For example, if the disposition outcome was entered incorrectly for a decision, the case processing system is edited to reflect the outcome of the decision that was issued.

Data in the case processing system may be corrected at any time, provided any necessary approvals are obtained.

*Note:* Any data related exclusively to post-adjudication actions in the case processing system (for example, the date a request for clarification was received on an appeal, the date an amended decision was issued) is additional data related to the appeal and is not considered a clerical edit for purposes of this chapter.

#### **20.5.7.3 How is the appeal record in the case processing system opened for editing?**

An OMHA system administrator can open the case processing system appeal record for edits to correct clerical data errors.

#### **20.5.7.4 How is a request made for edits to data in the case processing system?**

Send a request to the Hearing Office Director, specifying the appeal and data that needs to be edited, including what the corrected data should be, as well as whether an amended decision, dismissal, or remand also needs to be issued.

- The Hearing Office Director reviews the request and if the edit is not requested by a CMS contractor or SSA to facilitate effectuation, approves or denies the request.
- The Hearing Office Director forwards approved requests and requests necessary to facilitate CMS contractor or SSA effectuation to an OMHA system administrator.

#### **20.5.7.5 Who makes the edits to the data in the case processing system?**

An OMHA system administrator will generally make any approved data edits. However, if the edits are substantial, or an amended decision, dismissal, or remand is being issued, the OMHA system administrator may require the adjudication team to make the necessary edits in the case processing system.

- The OMHA system administrator will copy the Hearing Office Director on all communications with the adjudication team.

#### **20.5.7.6 Do we have to provide notice to the parties when we make clerical edits to data in the case processing system?**

No notice to parties is issued for clerical edits to data in the case processing system.



## 20.6 Requests for reopening and reopening a decision

(Issued: 05-25-18, Effective: 05-25-18)

### 20.6.1 When can a decision be reopened?

#### 20.6.1.1 What is a reopening?

A reopening is a remedial action taken to change a binding decision, even if the decision was correct at the time the decision was made.<sup>6</sup>

#### 20.6.1.2 What is needed to reopen a decision?

A decision can be reopened for **good cause**, or **fraud or similar fault**.<sup>7</sup>

#### 20.6.1.3 How long does an adjudicator have to reopen a decision?

A decision can be reopened for **good cause** within 180 calendar days of the date the decision was issued (that is, the date of the notice of decision).<sup>8</sup>

A decision can be reopened because it was procured by **fraud or similar fault** at any time.<sup>9</sup>

#### 20.6.1.4 What is the effect of a pending Council appeal or judicial review?

When an appeal has been filed with the Council, the adjudicator may not reopen his or her decision until all appeal rights have been exhausted.<sup>10</sup> The decision may not be reopened if an appeal is pending with the Council, the appellant's time to request judicial review has not elapsed, or an appeal is pending judicial review.

*Note:* Contact the appellant and other parties who were active in the appeal to determine whether an appeal was filed with the Council. You may also check, but should not rely solely upon, the DAB's Medicare Operations Division electronic filing (MOD E-File) online appeal status lookup.

<sup>6</sup> 42 C.F.R. §§ 405.980(a), 423.1978, 423.1980(a).

<sup>7</sup> 42 C.F.R. §§ 405.980(d)(2), (e)(2), 423.1980(d)(2), (e)(2). *Cf.* § 478.48(c).

<sup>8</sup> 42 C.F.R. §§ 405.980(d)(2), (e)(2), 423.1980(d)(2), (e)(2).

<sup>9</sup> 42 C.F.R. §§ 405.980(d)(2), 423.1980(d)(2). *Cf.* § 478.48(c).

<sup>10</sup> 42 C.F.R. §§ 405.980(a)(4), 423.1980(a)(2).

### 20.6.1.5 Can an adjudicator reopen a dismissal or remand?

No, a reopening is an action taken by an adjudicator to revise his or her **decision**.<sup>11</sup> Other post-adjudication actions may be taken on dismissals and remands. See OCPM 20.7 for vacating a **dismissal** and OCPM 20.8 for vacating a **remand**.

### 20.6.1.6 Can a decision affirming a reconsideration dismissal be reopened?

Yes, a decision affirming a reconsideration dismissal may be reopened under the reopening provisions because it is a decision.

## 20.6.2 Who may reopen a decision?

Except in certain circumstances, the adjudicator who issued the decision determines whether to reopen the decision.

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), the adjudicator's field office Associate Chief ALJ determines whether to reopen the decision. If an Associate Chief ALJ makes the determination, the Associate Chief ALJ adjudicates the re-established appeal.

*Note:* The Council may also reopen an ALJ or attorney adjudicator decision.<sup>12</sup>

## 20.6.3 How is the reopening process initiated . . .

### 20.6.3.1 By an adjudicator?

An adjudicator may initiate, on his or her own motion, the process to determine whether: (1) there is **good cause** to reopen a decision (*see* OCPM 20.6.6.1); or (2) a decision was procured by **fraud or similar fault** (*see* OCPM 20.6.6.2).<sup>13</sup>

### 20.6.3.2 By a party?

A party may initiate the process to determine whether there is **good cause** to reopen a decision.<sup>14</sup> A party's request to reopen a decision must be in writing.

<sup>11</sup> 42 C.F.R. §§ 405.980(a)(1)(iii), 423.1980(a)(1)(iii).

<sup>12</sup> 42 C.F.R. §§ 405.980(a)(1)(iv), 423.1980(a)(1)(iv).

<sup>13</sup> 42 C.F.R. §§ 405.980(d)(2), 423.1980(d)(2).

<sup>14</sup> 42 C.F.R. §§ 405.980(e)(2), 423.1980(e)(2).

*Note:* A request to reopen does not stay or extend the 60 calendar day period to request Council review of the decision, if such review is available.<sup>15</sup>

### 20.6.3.3 By a non-party?

A non-party may not request a reopening. However, a non-party may refer information for the adjudicator to consider, which may result in the adjudicator exercising his or her own motion authority to reopen a decision.

*Example:* HHS OIG or another law enforcement entity may refer a finding of fraud (such as a False Claims Act violation) made by a court of competent jurisdiction or admitted to by a party.

### 20.6.4 Where is a party request to reopen filed or non-party referral made?

A party request to reopen or non-party referral may be filed or made with the **adjudicator** who issued the decision, or filed with **Central Operations** at:

OMHA Central Operations  
Attn: Administrative Mail Stop  
200 Public Square, Suite 1260  
Cleveland, OH 44114-2316

- If filed with **Central Operations**: forward the request or referral to the assigned adjudicator if the administrative record was a paper record; or image and upload the request or referral to the appeal record, and assign a task to the adjudicator if the administrative record was an electronic record. Central Operations must send a courtesy copy of referrals to the Executive Director of Operations.
- If filed with the **adjudicator**, the adjudication team is responsible for alerting the Hearing Office Director. The Hearing Office Director must contact **Central Operations** to coordinate re-establishing the appeal, if that is necessary. The adjudicator must send a courtesy copy of referrals to the Executive Director of Operations.

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<sup>15</sup> See 42 C.F.R. §§ 405.1102(a) (providing 60 calendar days after receipt of an ALJ or attorney adjudicator's decision, to request Council review), 423.2102(a) (providing the same).

## 20.6.5 How do we process a request to reopen or reopening referral?

### 20.6.5.1 Do we have to respond to a request or referral?

We must respond in writing to all **requests** by either granting or denying the request. We do not have to respond to **referrals** if the referral is not accepted.

- If a **request** or **referral** results in a reopening, send a Notice of Reopening (OMHA-197) with an Order of Reopening (OMHA-198), as discussed in OCPM 20.6.7.3.
- If a **request** does not result in a reopening (that is, the request is denied), send a Generic Notice (OMHA-120) with an Order Denying Request to Reopen (OMHA-196), explaining why the request is denied, as discussed in OCPM 20.6.7.1.

### 20.6.5.2 Is a request or referral noted in the case processing system?

When a request to reopen is filed or materials are referred by a non-party, the request or referral is logged in the case processing system.

### 20.6.5.3 Who reviews the request or referral?

The adjudicator who issued the decision reviews the request or referral and assessment by the adjudication team.

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), the adjudicator's field office Associate Chief ALJ reviews the request or referral.

*Note:* If a request to reopen seeks to correct or clarify an error in the decision, and **good cause** to reopen the decision is not found, the request to reopen is treated as a request to correct or clarify the decision and processed in accordance with OCPM 20.5.

### 20.6.5.4 How long do we have to respond to a request or referral?

For **standard appeals**, the adjudicator takes action to reopen the appeal, or deny the request or reject the referral, within 60 calendar days after the request or referral is received.

For **expedited Part D appeals**, the adjudicator takes action to reopen the appeal, or deny the request or reject the referral, within 10 calendar days after the request or referral is received.

#### **20.6.5.5 What if we need the administrative record to assess a request or referral?**

If the adjudicator requires the administrative record to consider a request or referral and a paper record is no longer in OMHA's possession, the adjudicator uses an imaged version of the administrative record if one is available in the case processing system. If an imaged version of a paper record is not available, a paper copy of the administrative record may be requested through the field office intake. The field office intake will forward all such requests to Central Operations, which will submit a request to the entity to which the case file was shipped.

- The time between the date a copy of a paper administrative record is requested and the date it is received does not count toward the time frames in OCPM 20.6.5.4 for responding to the request.

#### **20.6.5.6 When does an adjudicator deny a request?**

If the requirements for reopening a decision are not met, the request is denied. A request may be denied for any of the following reasons:

- The 180 calendar days to reopen for good cause have elapsed, and there is no evidence of fraud or similar fault;
- The adjudicator does not find there is good cause to reopen the decision, and there is no evidence of fraud or similar fault; or
- The request to reopen was not submitted by a party to the appeal.

*Note:* While only a party has a right to request a reopening, an adjudicator has authority to reopen a decision on his or her own motion after receiving information provided through a non-party referral (however, the 180 calendar day time limit continues to apply *unless* the basis for reopening is fraud or similar fault).

## 20.6.6 What does an adjudicator consider in determining whether to reopen?

### 20.6.6.1 What constitutes good cause?

An adjudicator may find good cause to reopen a decision when:

- There is new and material evidence that (1) was not available or known at the time of the decision, and (2) may result in a different conclusion; or
- The evidence that was considered in making the decision clearly shows on its face that an obvious error was made at the time of the decision.<sup>16</sup>

*Note:* A request to reopen a decision based upon a third party payer's error in making a primary payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form does not constitute good cause for reopening.<sup>17</sup>

*Note:* A change of legal interpretation or policy by CMS in a regulation or CMS ruling, or CMS manual or other instruction, or a change in legal interpretation or policy by SSA in a regulation or SSA ruling, or SSA general instruction in entitlement appeals, whether made in response to judicial precedent or otherwise, is not a basis for reopening a decision.<sup>18</sup> However, for **Part D** appeals in which the enrollee has not yet received the drug in dispute, an adjudicator may reopen a decision to apply the current law or CMS or the Part D plan sponsor policy, rather than the law or CMS or the Part D plan sponsor policy in place at the time the coverage determination was made, if the current law or CMS or Part D plan sponsor policy may affect whether the enrollee should receive the drug.<sup>19</sup>

*Note:* The mere submission of additional evidence is not necessarily sufficient to establish good cause to reopen a decision. The information must be “new” (that is, it was not readily available or known to exist at the time of the initial determination), as well as “material” (that is, it may result in a different conclusion). A party should explain how the information

<sup>16</sup> 42 C.F.R. §§ 405.986(a), 423.1986(a). As applicable to claim appeals under Part A and Part B, and as instructive in regards to claim appeals under Part D, “evidence that was considered in making the decision” includes all evidence in the administrative record or any agency file. See [Medicare Claims Processing Manual, pub. 100-04, ch. 34, § 10.11.3](#).

<sup>17</sup> 42 C.F.R. §§ 405.986(c), 423.1986(c).

<sup>18</sup> 42 C.F.R. §§ 405.986(b), 423.1986(b)(1).

<sup>19</sup> 42 C.F.R. § 423.1986(b)(2).

constitutes new and material evidence that establishes good cause.<sup>20</sup>

If the adjudicator is unable to determine whether the information submitted with a reopening request constitutes new and material evidence, the adjudicator may decide to deny the request to reopen.<sup>21</sup>

In addition, if the party is required to establish good cause for submitting evidence for the first time at the OMHA level of appeal and is unable to establish that good cause, the adjudicator may decide to deny the request to reopen because the new and material evidence may not be considered.

### 20.6.6.2 What constitutes fraud or similar fault?

OMHA adjudicators do not make determinations of **fraud**, but adjudicators may consider evidence of fraud that is made part of the administrative record in weighing the evidence and making credibility determinations about the evidence of record and hearing testimony, which may impact the outcome of a case.

Evidence of **fraud** may include an admission of fraud in a guilty plea or settlement action, or a finding of fraud made by a court of competent jurisdiction. The evidence must relate to a material fact used in making the decision, such as whether an item or service was actually furnished, whether the item or service was furnished as billed, or whether the documentation is truthful and accurate.

Evidence of **similar fault** can include evidence that an individual knowingly made an incorrect or incomplete statement, or concealed information that is material to the decision.

- Knowingly is based on the individual's actual knowledge (versus a reasonable person standard).
- Materiality is based on a statement or information (or an omission of a statement or information) that could influence the outcome of the decision.

A similar fault finding may be made if there is reason to believe, based on a preponderance of the evidence (more likely than not) standard, that the individual knew that the evidence provided was false or incomplete. A finding of similar fault may not be made based on speculation or suspicion.

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<sup>20</sup> Medicare Claims Processing Manual, pub. 100-04, ch. 34, § 10.11.2.

<sup>21</sup> Medicare Claims Processing Manual, pub. 100-04, ch. 34, § 10.11.2.

**Evidence of fraud or similar fault** may arise from public or non-public sources, and may be submitted for consideration by parties or non-parties, including referrals from law enforcement and CMS contractors. The source of the evidence is not required to send copies of the evidence to the parties to the appeal; however, if the evidence was not sent to the other parties and the adjudicator decides to reopen the appeal, OMHA is responsible for sending a copy of the evidence to the parties.

An adjudicator may reopen a decision that was procured by fraud or similar fault on his or her own motion. The reopening may occur based on the adjudicator's conclusion that, more likely than not, there is evidence of fraud or similar fault related to a material fact, but the adjudicator reserves findings on the evidence for the revised decision.<sup>22</sup>

### **20.6.6.3 Is a hearing or conference conducted in considering whether to reopen a decision?**

A hearing or conference is not conducted in considering whether to reopen a decision.

## **20.6.7 What notice do we provide and what records are added . . .**

### **20.6.7.1 When a request to reopen is denied?**

If a request to reopen is denied, send a Generic Notice (OMHA-120) with an Order Denying Request to Reopen (OMHA-196) explaining why the request is denied. The notice and order are sent to the individual or entity that submitted the request, the appellant if the appellant did not submit the request to reopen, and any other parties or participants who were sent a copy of the request to reopen.

The **administrative record** of the **original** appeal is updated with:

- The request for reopening;
- The notice and order denying the request; and
- Any other documentation relevant to the determination to deny the request that is not already in the administrative record.

See OCPM 20.2 for when and how to update the administrative record.

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<sup>22</sup> A decision that is changed as a result of a reopening is referred to as a revised decision (see OCPM 20.12.9).



Any required information (data) related to the request to reopen and denial is added to the case processing system record of the **original** appeal.

### **20.6.7.2 When a referral is rejected or obtained evidence is not acted upon?**

If the adjudicator does not reopen the decision when evidence is referred to or obtained by the adjudicator, no notice is sent.

The **administrative record** of the **original** appeal is updated with:

- The evidence referred to the adjudicator or obtained; and
- Any other documentation relevant to the reopening determination.

See OCPM 20.2 for when and how to update the administrative record.

Any required information (data) related to the reopening determination is added to the case processing system record of the **original** appeal.

### **20.6.7.3 When a decision is reopened?**

If the adjudicator reopens a decision, issue a Notice of Reopening (OMHA-197) with an Order of Reopening (OMHA-198) to the parties and CMS contractors, and Part D plan sponsor if applicable, who were sent the notice of decision.

- In the order, provide:
  - 1) The basis for reopening the decision; and
  - 2) Indicate whether a hearing is anticipated before a revised decision is issued (see OCPM 20.12.7 for information on when a hearing may be anticipated).
- If evidence of **fraud or similar fault** was considered in determining whether to reopen the decision, send copies of the evidence with the notice and order if the evidence has not already been shared with the parties and entities.

**Note:** If the decision was on an appeal of an **SSA** reconsideration or dismissal, a copy of the notice and order are sent by the **Central Operations Division** to SSA with a request for the administrative record.

Add all materials related to the reopening, including a request to reopen or evidence referred to the adjudicator, to the **administrative record** of the **re-established** appeal (see OCPM 20.12.3).

Add any required information (data) related to the request to reopen and determination to reopen to the case processing system record of the **original** appeal. Add additional required information (data) related to the reopening, such as the reason for reopening, to the case processing system record of the **re-established** appeal.

#### **20.6.8 Can the determination to reopen or not reopen be reviewed?**

The determination to reopen or not reopen a decision, including a denial of a party request to reopen a decision, is binding and not subject to appeal or other review.<sup>23</sup>

#### **20.6.9 Are there any special requirements for the re-established appeal?**

See OCPM 20.12 for a full discussion of processing a re-established appeal, including special requirements for re-established appeals resulting from a reopening.

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<sup>23</sup> 42 C.F.R. §§ 405.926(l), 405.980(a)(5), 423.1980(a)(4).

## 20.7 Requests to vacate an ALJ's or attorney adjudicator's dismissal and vacating an ALJ's or attorney adjudicator's dismissal

(Issued: 07-12-19, Effective: 07-08-19)

### 20.7.1 When can a dismissal be vacated?

#### 20.7.1.1 What is vacating a dismissal?

Vacating a dismissal sets aside the prior dismissal and allows the appeal to continue.

#### 20.7.1.2 What is needed to vacate a dismissal?

A dismissal can be vacated for **good and sufficient cause**.<sup>24</sup>

#### 20.7.1.3 How long does an adjudicator have to vacate a dismissal?

A dismissal can be vacated within 180 calendar days of the date of the notice of dismissal.<sup>25</sup>

#### 20.7.1.4 What is the effect of a pending Council appeal?

A dismissal may not be vacated if an appeal of the dismissal is pending with the Council. If an appeal is pending before the Council and the adjudicator wants to vacate the dismissal, the adjudicator must contact the **Appeals Policy and Operations Division** for assistance with operational coordination with the Council's support staff.

*Note:* Contact the appellant and other parties who were active in the appeal to determine whether an appeal was filed with the Council. You may also check, but should not rely solely upon, the DAB's MOD E-File online appeal status lookup tool.

#### 20.7.1.5 Can an adjudicator vacate a decision or remand?

A **decision** cannot be vacated, but it can be reopened.<sup>26</sup> A **remand** can be vacated, but under different procedures. See OCPM 20.6 for reopening a **decision** and OCPM 20.8 for vacating a **remand**.

<sup>24</sup> 42 C.F.R. §§ 405.1052(e), 423.2052(e).

<sup>25</sup> 42 C.F.R. §§ 405.1052(e), 423.2052(e).

<sup>26</sup> 42 C.F.R. §§ 405.980(a)(1)(iii), 423.1980(a)(1)(iii).

### 20.7.1.6 Can a dismissal of a request for review of a reconsideration dismissal be vacated?

Yes, a dismissal of a request for review of a reconsideration dismissal can be vacated in the same manner as dismissals of requests for hearing.

### 20.7.2 Who may vacate a dismissal?

The adjudicator who issued the dismissal determines whether to vacate the dismissal.

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), the adjudicator's field office Associate Chief ALJ determines whether to vacate the dismissal. If the Associate Chief ALJ vacates the dismissal, he or she adjudicates the re-established appeal.

*Note:* The Council may also vacate a dismissal of a request for hearing, but may not vacate a dismissal of a request for a review of a reconsideration dismissal.<sup>27</sup>

### 20.7.3 How is the process to vacate a dismissal initiated . . .

#### 20.7.3.1 By an adjudicator?

An adjudicator may initiate the process to determine whether there is **good and sufficient cause** to vacate a dismissal on the adjudicator's own motion.<sup>28</sup>

#### 20.7.3.2 By a party?

A party may initiate the process to determine whether there is **good and sufficient cause** to vacate a dismissal. A party's request to vacate a dismissal must be in writing.

*Note:* A request to vacate a dismissal does not stay or extend the 60 calendar day period to request Council review of the dismissal, if such review is available.

<sup>27</sup> 42 C.F.R. §§ 405.1054, 423.2054.

<sup>28</sup> 42 C.F.R. §§ 405.1052(e), 423.2052(e).

### 20.7.3.3 By a non-party?

A non-party may not request to vacate a dismissal. An adjudicator has authority to vacate a dismissal on his or her own motion after receiving information provided through a non-party referral.

### 20.7.4 Where is a party request or non-party referral filed?

A party request or non-party referral may be filed with the **adjudicator** who issued the dismissal or filed with **Central Operations** at:

OMHA Central Operations  
Attn: Administrative Mail Stop  
200 Public Square, Suite 1260  
Cleveland, OH 44114-2316

- If filed with **Central Operations**: forward the request or referral to the assigned team if the administrative record was a paper record; or image and upload the request or referral to the appeal record, and assign a task to the team if the administrative record was an electronic record. Central Operations must send a courtesy copy of referrals to the Executive Director of Operations.
- If filed with the **adjudicator**, the adjudication team is responsible for alerting the Hearing Office Director. The Hearing Office Director must contact **Central Operations** to coordinate re-establishing the appeal, if that is necessary. The adjudication team must send a courtesy copy of referrals to the Executive Director of Operations.

### 20.7.5 How do we process a request to vacate a dismissal or referral?

#### 20.7.5.1 Do we have to respond to a request or referral?

We must respond in writing to all **requests** by either granting or denying the request. We do not have to respond to **referrals** if the referral is not accepted. (If the referral results in the dismissal being vacated, a notice is sent to the parties.)

- If a **request** or **referral** results in the dismissal being vacated, send a Notice of Vacated Dismissal (OMHA-180) with an Order Vacating Dismissal (OMHA-181), as discussed in OCPM 20.7.7.3.
- If a **request** does not result in the dismissal being vacated (that is, the request is denied), send a Generic Notice (OMHA-120) with an Order Denying Request

to Vacate a Dismissal (OMHA-183) explaining why the request is denied, as discussed in OCPM 20.7.7.1.

### **20.7.5.2 Is a request or referral noted in the case processing system?**

When a request to vacate a dismissal is filed or materials are referred by a non-party, the request or referral is logged in the case processing system.

### **20.7.5.3 Who reviews the request or referral?**

The adjudicator who issued the dismissal reviews the request and assessment of the request or referral by support staff.

- If the adjudicator has separated from OMHA or is not available for more than 20 calendar days (for example, absent or on leave for more than 20 days), the adjudicator's field office Associate Chief ALJ reviews the request or referral.

*Note:* If a request to vacate a dismissal seeks to correct or clarify an error in the dismissal, and **good and sufficient cause** to vacate the dismissal is not met, the request to vacate is treated as a request to correct or clarify the dismissal and processed in accordance with OCPM 20.5.

### **20.7.5.4 How long do we have to respond to a request or referral?**

For **standard appeals**, the adjudicator takes action to vacate the dismissal, or deny the request or reject the referral within 60 calendar days after the request or referral is received.

For **expedited Part D appeals**, the adjudicator takes action to vacate the dismissal, or deny the request or reject the referral within 10 calendar days after the request or referral is received.

### **20.7.5.5 What if we need the administrative record to assess a request or referral?**

If the adjudicator requires the administrative record to consider the request or referral, use the imaged version of a paper administrative record. If there is no imaged version of the paper record available, a paper copy of the administrative record may be requested through the field office intake. The field office intake will forward all such requests to Central Operations, which will submit a request to the entity to which the case file was shipped.

- The time between the date a copy of the paper administrative record is requested and the date it is received does not count toward the time frames in OCPM 20.7.5.4 for responding to the request.

### **20.7.5.6 When does an adjudicator deny a request?**

If the requirements for vacating a dismissal are not met, the request is denied. A request may be denied for any of the following reasons:

- The 180 calendar day period to vacate a dismissal has elapsed;
- The adjudicator does not find there is good and sufficient cause to vacate the dismissal; or
- The request to vacate the dismissal was not submitted by a party to the appeal.

*Note:* While only a party has a right to request the dismissal be vacated, an adjudicator has authority to vacate a dismissal on his or her own motion after receiving information provided through a non-party referral.

## **20.7.6 What does an adjudicator consider in determining whether to vacate a dismissal?**

### **20.7.6.1 What constitutes good and sufficient cause?**

An adjudicator may find good and sufficient cause to vacate a dismissal in circumstances such as:

- The adjudicator determines the dismissal was issued in error (for example, the record demonstrates the reason for dismissing the request was incorrect);
- The dismissal was based on a party's untimely response to a notice of filing defect, and the party shows good cause for the untimely response (using the criteria for good cause for an untimely request for hearing or review);
- The dismissal was based on a party's untimely response to a notice of filing defect, and the party demonstrates that the notice was received more than five days after the date on the notice and the party's response was timely; or
- The dismissal was based on a party's untimely response to a notice of filing defect, and the adjudicator determines the party did not receive the notice.

*Note:* When a dismissal is vacated because a notice of filing defect was not sent or the notice was received late by a party, the case may be subsequently dismissed for the identified procedural deficiency if the deficiency is not cured. In that instance, new appeal rights are provided with the dismissal order for the re-established appeal.

*Note:* New evidence may not establish good and sufficient cause to vacate a dismissal *unless* the party demonstrates that the evidence could not have been submitted before the dismissal was issued or before the response to a notice of filing defect was due.

### **20.7.6.2 Is a hearing or conference conducted in considering whether to vacate a dismissal?**

A hearing or conference is not conducted in considering whether to vacate a dismissal.

## **20.7.7 What notice do we provide and what records are added . . .**

### **20.7.7.1 When a request to vacate a dismissal is denied?**

If a request to vacate a dismissal is denied, issue an Order Denying Request to Vacate a Dismissal (OMHA-183) explaining why the request is denied. Send the order with a Generic Notice (OMHA-120) to the individual or entity that submitted the request, the appellant if the appellant did not submit the request to vacate, and any other parties or participants who were sent a copy of the request to vacate.

The **administrative record** of the **original** appeal is updated with:

- The request to vacate the dismissal;
- The notice and order denying the request; and
- Any other documentation relevant to the determination to deny the request that is not already in the administrative record.

See OCPM 20.2 for when and how to update the administrative record.

Add any required information (data) related to the request to vacate the dismissal and denial to the case processing system record of the **original** appeal.



### 20.7.7.2 When a referral is rejected or obtained evidence is not acted on?

If the adjudicator does not vacate the dismissal when evidence is referred to the adjudicator or obtained by the adjudicator, no notice is sent.

The **administrative record** of the **original** appeal is updated with:

- The evidence referred to the adjudicator or obtained; and
- Any other documentation relevant to the determination not to vacate the dismissal.

See OCPM 20.2 for when and how to update the administrative record.

Add any required information (data) related to the referral determination to the case processing system record of the **original** appeal.

### 20.7.7.3 When a dismissal is vacated?

If the adjudicator vacates a dismissal, send a Notice of Vacated Dismissal (OMHA-180) with an Order Vacating Dismissal (OMHA-181) to the parties and participants who were sent the notice of dismissal.

- In the order, provide the basis for vacating the dismissal.

*Note:* If the dismissal was on an appeal of an **SSA** reconsideration, a copy of the notice and order are sent by the **Central Operations Division** to SSA with a request for the administrative record.

Add all materials related to the action to vacate the dismissal, including a request to vacate or evidence referred to the adjudicator, to the **administrative record** of the **re-established** appeal (*see* OCPM 20.12.3).

Add any required information (data) related to the request to vacate the dismissal and determination to vacate to the case processing system record of the **original** appeal. Add additional required information (data) related to vacating the dismissal to the case processing system record of the **re-established** appeal.

**20.7.8 Can the determination to vacate or not vacate be reviewed?**

The determination to vacate or not vacate a dismissal, including a denial of a party request to vacate a dismissal, is binding and not subject to appeal or other review.<sup>29</sup>

**20.7.9 Are there any special requirements for the re-established appeal?**

See OCPM 20.12 for a full discussion of processing a re-established appeal, including special requirements for re-established appeals resulting from vacating a dismissal.

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<sup>29</sup> Cf. 42 C.F.R. §§ 405.926(l), 405.980(a)(5), 423.1980(a)(4).

## 20.8 Requests to review a remand and vacating a remand

(Issued: 07-12-19, Effective: 07-08-19)

### 20.8.1 When can a remand be vacated?

#### 20.8.1.1 What is vacating a remand?

Vacating a remand sets aside the prior remand order and allows the appeal to continue.

#### 20.8.1.2 On what grounds can a remand be vacated?

A remand can be vacated if the action directed in the remand order is **not authorized** by the regulations (*see* OCPM 20.8.6.1).<sup>30</sup>

#### 20.8.1.3 How long does an adjudicator have to vacate a remand?

There is no time limit on vacating a remand after a remand is issued (that is, the date of the notice of remand).

*Note:* There is a time limit for parties and others to file a request to review a remand (*see* OCPM 20.8.3.2). Once requested, the Chief ALJ or designee must respond to a request to review a remand within certain time limits (*see* OCPM 20.8.5.5).

#### 20.8.1.4 What is the effect of a pending Council appeal?

Remands are not appealable to the Council.<sup>31</sup>

#### 20.8.1.5 Can an adjudicator vacate a decision or dismissal?

A **decision** cannot be vacated, but it can be reopened.<sup>32</sup> A **dismissal** can be vacated, but under different procedures.<sup>33</sup> See OCPM 20.6 for reopening a **decision** and OCPM 20.7 for vacating a **dismissal**.

#### 20.8.1.6 Can a remand of a reconsideration dismissal be vacated?

No, a remand vacating a reconsideration dismissal cannot be vacated.<sup>34</sup>

<sup>30</sup> 42 C.F.R. §§ 405.1056(g), 423.2056(g).

<sup>31</sup> 42 C.F.R. §§ 405.1058, 423.2058.

<sup>32</sup> 42 C.F.R. §§ 405.980(a)(1)(iii), 423.1980(a)(1)(iii).

<sup>33</sup> 42 C.F.R. §§ 405.1052(e), 423.2052(e).

<sup>34</sup> 42 C.F.R. §§ 405.1056(g), 423.2056(g).

## 20.8.2 Who may vacate a remand?

The **Chief ALJ** or **designee** of the Chief ALJ may vacate a remand.<sup>35</sup>

*Note:* The adjudicator who issued the remand may not vacate the remand order on his or her own motion or upon request by a party, CMS or its contractors, or a Part D plan sponsor.

## 20.8.3 How is the process to vacate a remand initiated . . .

### 20.8.3.1 By an adjudicator?

An adjudicator, including the Chief ALJ or designee of the Chief ALJ, may not initiate the process to vacate a remand on his or her own motion.<sup>36</sup>

### 20.8.3.2 By a party, CMS or its contractors, or a Part D plan sponsor?

A party, including an MAO; CMS or its contractors, including QICs and IREs, regardless of their status in the appeal; or a Part D plan sponsor, regardless of its status in an appeal, may request review of a remand.<sup>37</sup>

A request for a review of the remand must be **in writing** and submitted within **30 calendar days** of receiving the notice of remand (presume the notice was received five calendar days after the date of the notice *unless* there is evidence of the actual receipt date).

*Note:* The Request for Review of a Remand (OMHA-107) may be used, but is not required.

### 20.8.3.3 By a non-party?

A non-party may not initiate the process to vacate a remand, *except* as discussed in OCPM 20.8.3.2, for CMS and its contractors that do not have party status, or a Part D plan sponsor.<sup>38</sup>

## 20.8.4 Where is a request filed?

A request may only be filed with **Central Operations** at:

<sup>35</sup> 42 C.F.R. §§ 405.1056(g), 405.1058, 423.2056(g), 423.2058.

<sup>36</sup> 42 C.F.R. §§ 405.1056(g), 423.2056(g).

<sup>37</sup> 42 C.F.R. §§ 405.1056(g), 423.2056(g).

<sup>38</sup> 42 C.F.R. §§ 405.1056(g), 423.2056(g).

OMHA Central Operations  
 Attn: Remand Review Mail Stop  
 200 Public Square, Suite 1260  
 Cleveland, OH 44114-2316

- **Central Operations** forwards the request to the Chief ALJ or designee if the administrative record was a paper record; or images and uploads the request to the appeal record, and assigns a task to the Chief ALJ or designee's team if the administrative record was an electronic record.
- If a request for remand review is misfiled with the **adjudicator** who issued the remand, the adjudication team is responsible for forwarding the request to the Hearing Office Director. The Hearing Office Director must forward any requests misfiled with the **adjudicator** or the **field office** to **Central Operations**.

## 20.8.5 How do we process a request to vacate a remand?

### 20.8.5.1 Do we have to notify the contractor that received the remand order?

Yes, *unless* the contractor requested the review. If someone other than the contractor that received the remand order requested the review, send a Notice to CMS Contractor of Pending Remand Review (OMHA-187) to the contractor that received the remand order.

*Note:* No action is taken to process the remand order while a request for review of a remand is pending.

### 20.8.5.2 Do we have to respond to a request?

We must respond in writing to all requests by either granting or denying the request.

- If a **request** results in the remand being vacated, send a Notice of Vacated Remand (OMHA-177) with an Order Vacating Remand (OMHA-178), as discussed in OCPM 20.8.7.2.
- If a **request** does not result in the remand being vacated (that is, it is denied), send a Generic Notice (OMHA-120) with an Order Denying Request to Vacate a Remand (OMHA-189) explaining why the request is denied, as discussed in OCPM 20.8.7.1.

**20.8.5.3 Is a request noted in the case processing system?**

When a request to vacate a remand is filed, the request is logged in the case processing system.

**20.8.5.4 Who reviews the request?**

The Chief ALJ or designee reviews the request and any assessment of the request by the adjudication team staff.

*Note:* If a request to vacate a remand seeks to correct or clarify an error in the remand, and the remand is authorized by regulation, the request to vacate is treated as a request to correct or clarify the remand, and is assigned to the adjudication team and processed in accordance with OCPM 20.5.

**20.8.5.5 How long do we have to respond to a request?**

For **standard appeals**, the adjudicator takes action to vacate the remand or deny the request within 60 calendar days after the request is received.

For **expedited Part D appeals**, the adjudicator takes action to vacate the remand or deny the request within 10 calendar days after the request is received.

**20.8.5.6 What if we need the administrative record to assess a request?**

If the Chief ALJ or designee requires the administrative record to consider the request, use the imaged version of the paper administrative record. If an imaged version of a paper record is not available, a paper copy of the administrative record may be requested through Central Operations, which will submit a request to the entity to which the case file was shipped.

- The time between the date a copy of a paper administrative record is requested and the date it is received does not count toward the time frames in OCPM 20.8.5.5 for responding to the request.

*Note:* The contractor that received the remand order may have the administrative record.

**20.8.5.7 When does the Chief ALJ or designee deny a request?**

A request may be denied for any of the following reasons:

- The request to review the remand was not filed within 30 days of the party, CMS contractor, or the Part D plan sponsor receiving the notice of remand;
- The request to review the remand was filed by a non-party other than CMS or a contractor, or a Part D plan sponsor;
- The remand involved a dismissal of a request for reconsideration and the remand found the dismissal was in error; or
- The remand is authorized by the regulations.<sup>39</sup>

## **20.8.6 What does the Chief ALJ or designee consider in determining whether to vacate a remand?**

### **20.8.6.1 What remand actions are not authorized by the regulations?**

The Chief ALJ or designee may find that a remand was not authorized by the regulations if the remand order is outside of the scope of the remand authority articulated in the applicable regulations (for example, [42 C.F.R. section 405.1056](#) for Part A and Part B appeals, or [42 C.F.R. section 423.2056](#) for Part D appeals), or the record does not demonstrate that procedures were followed before issuing the remand. Examples include:

- A remand to produce an official copy of a redetermination or reconsideration, or reconstruct the record when the request for information procedures were not used before the remand was issued (for example, [42 C.F.R. section 405.1034](#) procedures for Part A and Part B appeals);
- A remand for no redetermination is issued when the record reflects there was a redetermination, or there is no redetermination required by regulation (for example, when a QIO conducts an initial determination);
- A requested remand is issued and the record does not reflect that the appellant and CMS or its contractor, or a MAO or Part D plan sponsor jointly requested the remand as required, for example, under Part A and Part B pursuant to [42 C.F.R. section 405.1056\(c\)](#);
- A party is not entitled to relief pursuant to [42 C.F.R. sections 426.460\(b\)\(1\)](#), [426.488\(b\)](#), or [426.560\(b\)\(1\)](#);

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<sup>39</sup> [42 C.F.R. §§ 405.1056\(g\)](#), [423.2056\(g\)](#).

- A remand orders consideration of additional evidence, additional explanation for a reconsideration or other determination, or issuance of a new reconsideration or other determination when not clearly authorized by law or directed by the Council or a Federal court; or
- A remand directs a QIC to conduct a reconsideration when the appellant escalated an appeal because the QIC did not issue a reconsideration.

#### **20.8.6.2 Is a hearing or conference conducted in considering whether to vacate a remand?**

A hearing or conference is not conducted in considering whether to vacate a remand.

### **20.8.7 What notice do we provide and what records are added . . .**

#### **20.8.7.1 When a request to vacate a remand is denied?**

If a request to vacate a remand is denied, issue an Order Denying Request to Vacate a Remand (OMHA-189) explaining why the request is denied. The order is sent with a Generic Notice (OMHA-120) to the individual or entity that submitted the request, the appellant if the appellant did not submit the request to vacate, any other parties or participants who were sent a copy of the request to vacate, and the contractor that received the remand if the contractor did not submit the request to vacate.

Update the **administrative record** of the **original** appeal with:

- The request to vacate the remand;
- The notice and order denying the request; and
- Any other documentation relevant to the determination to deny the request that is not already in the administrative record.

See OCPM 20.2 for when and how to update the administrative record, but note that the materials may have to be sent to the contractor that received the remand order because it possesses the administrative record.

Add any required information (data) related to the request to vacate the remand and denial to the case processing system record of the **original** appeal.



### 20.8.7.2 When a remand is vacated?

If the adjudicator vacates a remand, issue a Notice of Vacated Remand (OMHA-177) with an Order Vacating Remand (OMHA-178) using the re-established appeal number (see OCPM 20.12.2) to the parties and participants who were sent the notice of remand, and the contractor that received the remand.

- Provide the basis for vacating the remand in the order.

*Note:* If the remand was on an appeal of an **SSA** reconsideration, a copy of the notice and order are sent by the **Central Operations** to **SSA** with a request for the administrative record.

Add all materials related to the action to vacate the remand to the **administrative record** of the **re-established** appeal (see OCPM 20.12.3).

Add any required information (data) related to the request to vacate the remand and determination to vacate to the case processing system record of the **original** appeal. Add additional required information (data) related to vacating the remand to the case processing system record of the **re-established** appeal.

### 20.8.8 Can a determination to vacate or not vacate be reviewed?

A determination to vacate or not vacate a remand, including a denial of a request to vacate a remand, is binding and not subject to appeal or other review.<sup>40</sup>

### 20.8.9 Are there any special requirements for the re-established appeal?

See OCPM 20.12 for a full discussion of processing a re-established appeal, including special requirements for re-established appeals resulting from a vacated remand.

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<sup>40</sup> 42 C.F.R. § 405.1056(g).

## 20.9 Processing a response to an OMHA remand

(Issued: 07-12-19, Effective: 07-21-19)

### 20.9.1 How can a CMS contractor or SSA respond to a remand?

A CMS contractor or SSA can respond to a remand for a missing determination or records by furnishing the records or explaining the existing record is complete.<sup>41</sup>

Examples include:

- Providing official copies of a missing redetermination or reconsideration;
- Providing a missing lower-level case file; or
- Explaining the absence of the requested record (for example, a QIO does not conduct a redetermination, or the records do not exist).

If the remanding adjudicator believes CMS or SSA did not comply with the remand order, first confirm the correct CMS contractor with jurisdiction or SSA received the remand, then contact the **Appeals Policy and Operations Division** for operational assistance.

### 20.9.2 Where should a CMS contractor or SSA send its response?

The response and case record are sent to **Central Operations** at:

OMHA Central Operations  
Attn: Administrative Mail Stop  
200 Public Square, Suite 1260  
Cleveland, OH 44114-2316

If the response is received in the **field office** (for example, it is sent directly to the remanding **adjudicator**), the Hearing Office Director or designee must contact **Central Operations** to coordinate re-establishing the appeal in the case processing system.

### 20.9.3 What is the effect of a CMS contractor or SSA response to a remand?

The effect of the response—other than a response that is treated as a request to clarify an error in the remand, or that challenges the remand order—is the case is no longer remanded, and the reconsideration is no longer vacated.<sup>42</sup> The appeal is re-established

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<sup>41</sup> 42 C.F.R. §§ 405.1056(a), 423.2056(a).

<sup>42</sup> 42 C.F.R. §§ 405.1056(a)(3), 423.2056(a)(3).

at OMHA and continues from where it was in the adjudication process before the remand.

**Note:** If the remand results in a **new reconsideration**, and a new request for hearing is filed, a new appeal is established.

If a response to a remand seeks to **correct or clarify an error in the remand**, the response is treated as a request to correct or clarify the remand and is processed in accordance with OCPM 20.5.

If a response to a remand **challenges the remand order** (for example, asserts the remand is not authorized by the regulations), the response is treated as a request to review the remand and processed in accordance with OCPM 20.8.

#### **20.9.4 What notice do we provide when a response is received?**

Issue a Notice of Response to Remand (OMHA-194) to the parties and participants who were sent the notice of remand.

- Include a summary of the response, such as a summary of the records submitted or explanation provided for not furnishing records, in the notice.

Add any required information (data) related to the remand and response to the case processing system record of the **original** appeal and/or the **re-established** appeal.

#### **20.9.5 Can the response be reviewed?**

The response is not subject to appeal or other review. If the remanding adjudicator believes CMS or SSA did not comply with the remand order, after confirming that the correct CMS contractor with jurisdiction or SSA received the request, contact the **Appeals Policy and Operations Division** for operational assistance.

#### **20.9.6 What is the process for the re-established appeal?**

See OCPM 20.12 for a full discussion of processing a re-established appeal, including special requirements for re-established appeals resulting from a CMS contractor or SSA response to a remand.

## 20.10 Requests for Council review and referrals for own motion review

(Issued: 07-12-19, Effective: 07-21-19)

### 20.10.1 How are appeals made to the Council?

A party may request Council review of a decision or dismissal issued by an OMHA adjudicator, *except* decisions and dismissals on requests for a review of a dismissal.<sup>43</sup> In addition, SSA, CMS, or a CMS contractor may refer a decision or dismissal issued by an OMHA adjudicator for potential Council own motion review.<sup>44</sup>

### 20.10.2 What is the effect of the Council review?

If an OMHA decision or dismissal is pending before the Council, the decision may not be reopened at OMHA or the dismissal may not be vacated by an OMHA adjudicator (*see* OCPM 20.7.1.4).<sup>45</sup>

### 20.10.3 Do we receive copies of requests for review or referrals?

OMHA adjudicators are not parties to an appeal and are not sent a copy of a party's request for Council review. However, when SSA, CMS, or a CMS contractor refers an appeal to the Council, the referring entity sends a copy of the referral to the Chief ALJ.<sup>46</sup>

*Courtesy copies* of requests for Council review and referrals are not made part of the official record and are not subject to a retention schedule.

*Note:* A copy of a request or referral sent to the OMHA adjudicator (the adjudicator is a "cc" recipient) may be destroyed because the official copy is made part of the administrative record by the Council.

*Note:* A party or other individual seeking a copy of a request or referral should be referred to the Council while the appeal is pending with the Council, or to the appropriate records manager after the appeal has been adjudicated.

*Note:* If a party mistakenly files a request for Council review with OMHA, the request must be forwarded to the Council.

<sup>43</sup> 42 C.F.R. §§ 405.1048(b), 405.1054(b), 405.1100(a), 405.1102(c), 423.2048(b), 423.2054(b), 423.2100(a), 423.2102(c).

<sup>44</sup> 42 C.F.R. §§ 405.1110, 423.2110.

<sup>45</sup> 42 C.F.R. §§ 405.980(a)(4), 423.1980(a)(2).

<sup>46</sup> 42 C.F.R. §§ 405.1110(b)(2), 423.2110(b)(2)(ii).

**Field office** staff should contact the Hearing Office Director. The Hearing Office Director coordinates with the **Appeals Policy and Operations Division** to redirect the misfiled request to the Council.

**Central Operations** staff should contact the Director of Central Operations or the Central Operations Supervisory Attorney. The Director or Supervisory Attorney coordinates with the **Appeals Policy and Operations Division** to direct the misfiled request to the Council.

#### **20.10.4 Can we provide our perspective to the Council on an appealed or referred matter?**

Only parties to the review, and SSA, CMS, or a CMS contractor may submit statements to the Council.<sup>47</sup> OMHA adjudicators may not submit statements to the Council, including statements to further explain the appealed decision or dismissal, or to refute any portion of the own motion review referral.

#### **20.10.5 How do we know when the Council has concluded its action?**

The Council will send remand orders to OMHA Central Operations for further proceedings or action. No formal notice is sent to OMHA or the adjudicator if another action is taken by the Council, such as an adoption, modification, or reversal of an appealed decision.

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<sup>47</sup> 42 C.F.R. §§ 405.1102, 405.1110(b)(2), 405.1120, 423.2102, 423.2110(b)(2)(ii), 423.2120.

## 20.11 Council remands to OMHA

(Issued: 07-12-19, Effective: 07-21-19)

### 20.11.1 When does the Council remand a decision or dismissal?

The Council may remand a case in which additional evidence is needed or additional action by the adjudicator is required. The remand may result from the Council's review of the decision or dismissal, a remand by a Federal court directing the Department to take action, or a "voluntary remand" agreed to by the Department in Federal court.

*Note:* In addition to remands, the Council has the authority to adopt, modify, reverse, or deny review of an appealed decision or dismissal.<sup>48</sup> The Council also has the authority to dismiss the request for hearing or review for any reason the OMHA adjudicator could have.<sup>49</sup>

### 20.11.2 Where does the Council send remands?

For paper remands, the response and case record are sent to **Central Operations** at:

OMHA Central Operations  
Attn: Council Remand Mail Stop  
200 Public Square, Suite 1260  
Cleveland, OH 44114-2316

Digital or electronic copies are coordinated through **Central Operations**.

If a Council remand is received in a **field office** (for example, it is sent directly to the **adjudicator**), the adjudication team is responsible for alerting the Hearing Office Director. The Hearing Office Director must contact **Central Operations** to coordinate re-establishing the appeal.

### 20.11.3 What is the effect of a Council remand?

The effect of a Council remand is that the decision or dismissal that was before the Council is vacated. A new decision, dismissal, or remand must be issued, *unless* the Council instructs an alternative action is acceptable (*see* OCPM 20.11.4).

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<sup>48</sup> 42 C.F.R. §§ 405.1128, 423.2128.

<sup>49</sup> 42 C.F.R. §§ 405.1108(c), 423.2108(c).

The assigned adjudicator must take any action that is ordered by the Council, and may take any additional action that is not inconsistent with the Council's remand order.<sup>50</sup>

*Note:* The Council may provide specific instructions in the remand order, such as to provide the parties with an opportunity for hearing, or remand the appeal to a CMS contractor or SSA with instructions for the contractor or SSA to take certain actions.

*Note:* The Council's order provides the legal authority to take actions that an adjudicator may not otherwise be authorized to take, *except* that a Council instruction to conduct a hearing does not authorize an attorney adjudicator to conduct a hearing—in that instance, the appeal is reassigned to an ALJ.

#### **20.11.4 How can we respond to a Council remand order for missing evidence or information?**

The Council may offer an alternative action to the adjudicator that does not require the adjudicator to conduct a new hearing, issue a new decision, or otherwise take substantive action with respect to the adjudicator's original decision.

*Example:* The Council may remand an appeal to the adjudicator because the hearing recording in the administrative record is nonfunctional or incomplete. In this situation, the Council may give the adjudicator instructions to either return the administrative record to the Council with a complete and functioning copy of the hearing recording, or conduct a new hearing.

If the adjudicator is **able** to furnish the requested evidence or information, the complete administrative record is returned to the Council at the address specified in [OCPM 19.1.2](#), and no new decision, dismissal, or remand is issued. The disposition is set and the case is closed in accordance with [OCPM 19.1.2](#).

*Note:* If the Council indicates the hearing recording is defective, a new copy of the recording must be checked for completeness and to verify the defect is not also in the new copy. If a complete and defect-free recording cannot be produced, a new hearing must be conducted and a new decision must be issued.

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<sup>50</sup> 42 C.F.R. §§ 405.1126(b), 423.2126(a)(2).

If the adjudicator is **unable** to furnish the requested evidence or information, the adjudicator must take any necessary action to complete the record, including conducting a new hearing and issuing a new decision, dismissal, or remand.

**20.11.5 What notice do we provide to appellants when a Council remand is received?**

The Council sends copies of its remand order to the appropriate parties. We do not send additional notice of the remand order or the OMHA appeal being re-established, *unless* the re-established appeal is assigned to a new adjudicator.

- If the re-established appeal is assigned to a new adjudicator, **Central Operations** sends a Notice of Reassignment (OMHA-199) to the appellant.

**20.11.6 Can a Council remand order be challenged or clarified?**

The Council's order is not subject to challenge, and there is no process for clarifying a remand order. If there are questions about a remand order, contact the **Appeals Policy and Operations Division** for operational assistance.

**20.11.7 Are there any special requirements for the re-established appeal?**

See OCPM 20.12 for a full discussion of processing a re-established appeal, including special requirements for re-established appeals resulting from a Council remand.



## 20.12 Processing a re-established appeal

(Issued: 05-25-18, Effective: 05-25-18)

### 20.12.1 What is a re-established appeal?

A reopening is a specific legal term related to decisions. The OCPM uses “re-established appeal” instead of “reopened appeal” to maintain the distinction between the legal action of reopening a decision and the administrative action of re-establishing an appeal that had been at OMHA previously. We recognize that the case processing system uses “reopen” more broadly to reference any administrative action in which a new case processing system record is created for an appeal, which includes but is not limited to a legal reopening.

### 20.12.2 What happens to the case processing system appeal record?

*Note:* If an appeal has been re-established multiple times (for example, a second Council remand was issued), the prior re-established appeal takes the place of the “original appeal” for purposes of this section.

#### *Re-established appeal number*

A new case processing system record is created for the **re-established** appeal. A suffix is added to the **original** appeal number to indicate the **re-established** appeal.

#### *Re-established appeal received date*

The beginning date for the **re-established** appeal processing time (equivalent to the complete request received date) depends on why the appeal is being re-established:

- For a reopened decision (*see* OCPM 20.6), it is the date the determination to reopen the decision was made.
- For a vacated dismissal (*see* OCPM 20.7), it is the date the determination to vacate the dismissal was made.
- For a vacated remand (*see* OCPM 20.8), it is the date the determination to vacate the remand was made.
- For a CMS contractor or SSA response to an OMHA remand (*see* OCPM 20.9), it is the complete request date of the **original** appeal.

- An extension to any applicable adjudication time frame is added, from the date of the remand order to the date the response was received by OMHA (that is, the case was returned to OMHA).<sup>51</sup>
- For a Council remand to OMHA (*see* OCPM 20.11), it is the date OMHA receives the Council remand order.<sup>52</sup>

#### *Assignment of the re-established appeal*

The **re-established** appeal is assigned to the adjudicator of the **original** appeal, *unless*:

- The Council instructs OMHA to assign a case to a new adjudicator, in which circumstance the case is assigned to the Associate Chief ALJ of the originating field office.
  - If this occurs, **Central Operations** must alert the **Executive Director of Operations** and the **Deputy Chief ALJ**.
- The decision, dismissal, or remand was issued by an **attorney adjudicator** and the Council instructs that a hearing must be offered, in which circumstance the case is assigned to an **ALJ** in the standard rotation.
- The **Chief ALJ** instructs **Central Operations** to assign the remand to a new adjudicator, in which circumstance the case is assigned to another adjudicator in the standard rotation (if a hearing may be required, the adjudicator must be an **ALJ**).
- The original adjudicator is unavailable, in which circumstance the case is assigned to another **adjudicator** in the standard rotation (if a hearing may be required, the adjudicator must be an **ALJ**).

If the re-established appeal is assigned to a new adjudicator, **Central Operations** sends a Notice of Reassignment (OMHA-199) to the appellant.

#### *Case processing system data for re-established appeal*

All data in the case processing system record for the **original** appeal is incorporated into the case processing system record for the **re-established** appeal, *except* conference and hearing data, and disposition outcome data. Conference and hearing data, and

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<sup>51</sup> 42 C.F.R. §§ 405.1056(a)(3), 423.2056(a)(3).

<sup>52</sup> 42 C.F.R. §§ 405.1016(b)(2), 423.2016(b)(2).

disposition outcome data in the case processing system record for the **re-established** appeal are unique to the **re-established** appeal.

*Note:* This only applies to data in the case processing system. The administrative record of the **re-established** appeal must contain all documentation related to the **original** appeal, including conference and hearing notices and recordings, and decisions, dismissals, or remands.

- If data on conferences or hearings, or the disposition of the **original** appeal is needed, the data can be accessed in the case processing system record for the **original** appeal.

### 20.12.3 What happens to the administrative record?

The administrative record of the **original** appeal is incorporated into the administrative record of the **re-established** appeal for re-established appeals resulting from:

- Reopening a decision (*see* OCPM 20.6);
- Vacating a dismissal (*see* OCPM 20.7);
- Vacating a remand (*see* OCPM 20.8); or
- A CMS contractor or SSA response to an OMHA remand (*see* OCPM 20.9).

*Note:* Additional documents related to any interim actions that resulted in re-establishing the appeal are added to the administrative record of the **re-established** appeal.

The administrative record used by the Council is the basis for the administrative record of the **re-established** appeal for re-established appeals resulting from:

- A Council remand (*see* OCPM 20.11).

*Note:* In constructing the administrative record for the re-established appeal, additional document categories are necessary for Council and any other proceedings that occurred after the OMHA adjudication of the **original** appeal.

For **all** re-established appeals:

- Additional documents that are created (for example, notices) or submitted (for example, evidence) for the **re-established** appeal are added to the administrative record of the **re-established** appeal in accordance with OCPM provisions for the administrative record; and
- All regulations and OCPM provisions that apply to evidence and the administrative record generally, apply to evidence and the administrative record of the re-established appeal.

#### **20.12.4 Can the re-established appeal address some but not all claims involved in the original appeal?**

The **re-established** appeal may address fewer than all of the claims involved in the **original** appeal for re-established appeals resulting from:

- Reopening a decision (*see* OCPM 20.6); or
- Vacating a dismissal (*see* OCPM 20.7)

However if fewer than all claims are addressed, the case processing system record and administrative record must still contain data and records for all claims involved in the **original** appeal.

- If any claims in the **original** appeal are not decided or remain dismissed in the **re-established** appeal, the claims must be identified in a notice, order, or the revised decision or dismissal to ensure the administrative record for the **re-established** appeal reflects the outcomes of those claims were not changed by the revised decision or dismissal.
- In the case processing system record for the **re-established** appeal, the dispositions of any claims in the **original** appeal that are not decided or remain dismissed in the **re-established** appeal are set to the same outcome as those claims were set in the **original** appeal.

The **re-established** appeal must address all of the claims involved in the **original** appeal for re-established appeals resulting from:

- Vacating a remand (*see* OCPM 20.8); or
- A CMS contractor or SSA response to an OMHA remand (*see* OCPM 20.9).

The **re-established** appeal must address all of the claims involved in the **original** appeal *unless* otherwise instructed by the Council for re-established appeals resulting from:

- A Council remand (see OCPM 20.11).

### 20.12.5 What adjudication time frame applies to the re-established appeal?

The adjudication time frame that applied to the **original** appeal, if any, applies to the **re-established** appeal, starting anew, for re-established appeals resulting from:

- Reopening a decision (see OCPM 20.6);
- Vacating a dismissal (see OCPM 20.7);
- Vacating a remand (see OCPM 20.8), or
- A Council remand (see OCPM 20.11).

The adjudication time frame that began with the **original** appeal, if any, continues in the **re-established** appeal for re-established appeals resulting from:

- A CMS contractor or SSA **response to an OMHA remand** (see OCPM 20.9).

*Note:* The complete request received date of the **re-established** appeal is set to the complete request received date of the **original** appeal, and an extension (that is, a “tolling event” in the case processing system) is added, from the date of the remand order to the date the response was received by OMHA (that is, the date the case was returned to OMHA).<sup>53</sup>

### 20.12.6 What regulations and processes apply to the re-established appeal?

The regulations and processes that applied to the **original** appeal apply to the **re-established** appeal *unless* the regulations or this OCPM section provide otherwise.

### 20.12.7 Is a hearing conducted for the re-established appeal?

An opportunity for a hearing is provided for the **re-established** appeal *unless*:

- 1) The oral hearing was waived in the **original** appeal by all required parties who would be sent a notice of hearing and the adjudicator continues to believe that a hearing is not necessary to decide the case;
- 2) A fully favorable decision can be issued without a hearing in the **re-established** appeal;

<sup>53</sup> 42 C.F.R. §§ 405.1056(a)(3), 423.2056(a)(3).

- 3) A dismissal or remand is issued in the **re-established** appeal; or
- 4) The **original** appeal was an appeal of a reconsideration dismissal.

*Note:* If an **attorney adjudicator** issued the remand in the **original** appeal and a hearing is necessary for a decision, or a request for hearing will be dismissed for a reason that an attorney adjudicator is not authorized to issue for the **re-established** appeal, the **re-established** appeal is reassigned to the field office Associate Chief ALJ, or another ALJ designated by that Associate Chief ALJ.

### **20.12.8 What if CMS or a CMS contractor, or a Part D plan sponsor elected or was granted a status in the original appeal?**

CMS, CMS contractor, and Part D plan sponsor statuses in the **original** appeal continue in the **re-established** appeal. Additional status elections or requests may be submitted for the re-established appeal.

- Send all notices and other documents to CMS, a CMS contractor, or a Part D plan sponsor that had party or participant status in the **original** appeal.

*Note:* For **Part C** appeals, the MAO is always a party.

- If CMS, a CMS contractor, or a Part D plan sponsor attended a hearing for the **original** appeal, such entity is entitled to attend any hearing conducted for the **re-established** appeal. The ALJ may grant leave for additional entities to attend the hearing for the **re-established** appeal.

### **20.12.9 What is required in a decision, dismissal, or remand issued on the re-established appeal?**

A decision, dismissal, or remand issued on the **re-established** appeal, must meet all of the requirements for a decision, dismissal, or remand.

A partially favorable or unfavorable revised decision, or a dismissal or remand that results from **reopening** a decision, must contain the rationale and basis for reopening the **original** appeal decision.<sup>54</sup>

- For other appeals, a discussion of the procedural history of the **original** appeal may be included in the decision, dismissal, or remand issued on the re-

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<sup>54</sup> 42 C.F.R. §§ 405.982, 423.1982.

**established** appeal (for example, the rationale for reopening the decision when the revised decision is favorable, or a summary of the Council’s remand instructions when a decision is issued following a Council remand).

*Note:* A revised decision resulting from a **reopening** does not have to be identified as a “revised decision” in the heading of the decision document.

#### **20.12.10 What type of notice is required for a decision, dismissal, or remand issued on the re-established appeal?**

Issue a notice of decision, notice of dismissal, or notice of remand and accompanying enclosures in accordance with the notice provisions for that type of disposition.

*Note:* Notices include any available appeal rights or right to request a review of the action.

#### **20.12.11 What is the effect of the decision, dismissal, or remand issued on the re-established appeal?**

A **decision** on a request for hearing is binding *unless*:

- The decision is appealed or referred to the Council and the Council takes an action, or the case is escalated (if escalation is available) to judicial review;
  - However, for a revised decision resulting from a reopening, only the claims decided in the revised decision may be appealed.<sup>55</sup>
- The decision is reopened by the adjudicator or the Council;
- Expedited access to judicial review is used; or
- The decision is a recommended decision by order of the Council.<sup>56</sup>

A **decision affirming a reconsideration dismissal** is binding *unless* it is reopened by the adjudicator.<sup>57</sup>

A **dismissal** is binding *unless* appealed or vacated, *except* that a dismissal of a request for review of a reconsideration dismissal is not subject to appeal.<sup>58</sup>

<sup>55</sup> 42 C.F.R. §§ 405.984(f), 423.1984(f).

<sup>56</sup> 42 C.F.R. §§ 405.1048(a), 423.2048(a).

<sup>57</sup> 42 C.F.R. §§ 405.1048(b), 423.2048(b).

A **remand** is binding *unless* it is vacated by the Chief ALJ or designee.<sup>59</sup>

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<sup>58</sup> 42 C.F.R. §§ 405.1054, 423.2054.

<sup>59</sup> 42 C.F.R. §§ 405.1058, 423.2058.



**Revision history**

Date	Description	Sections/subsections updated
07/12/2019	Revised to clarify that the re-established appeal number is used on an order vacating a remand; revised to clarify that requests for paper administrative records are made directly with Central Operations; revised to remove an incorrect statement that an ALJ must make a request for information before a remand for a missing case file is authorized under 42 C.F.R. section 405.1056(a)(2); revised time frame for vacating dismissals from 6 months to 180 calendar days in accordance with revised 42 C.F.R. sections 405.1052(e) and 423.2052(e); revised to replace references to OMHA Program Evaluation and Policy Division with references to Appeals Policy and Operations Division.	20.5.5.2, 20.7.1.3, 20.7.1.4, 20.7.5.6, 20.7.7.3, 20.8.4, 20.8.5.6, 20.8.6.1, 20.8.7.2, 20.9.1, 20.9.5, 20.10.3, 20.11.4, 20.11.6
05/25/2018	Initial Release	N/A

If the table above indicates there are prior versions of this chapter, click [here](#) to view them.