

# OMHA Case Processing Manual

## Chapter 18 REQUESTS FOR INFORMATION AND REMANDS

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### 18.0 Chapter overview

When authorized by the applicable regulations, OMHA adjudicators may use requests for information and remands to obtain information that is missing from an appeal, or request that a prior adjudicating entity take an action or issue a new appeal determination. In addition, an appellant and CMS or a CMS contractor (in a **Part A, B, or C appeal**), or an enrollee and CMS, the IRE, or a Part D plan sponsor (in a **Part D appeal**), or an appellant and SSA (in an **appeal of an SSA reconsideration**) may jointly request that a case be remanded to the prior adjudicator, giving reasons why the appeal should be remanded, and indicating whether a remand will likely resolve the matter in dispute. Within 30 days of receiving a notice of remand, a party, CMS, a CMS contractor (including the IRE), a Part D plan sponsor, or SSA may request that the Chief Administrative Law Judge or a designee review the remand and, if it was not authorized by regulation, vacate the remand order.

*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).

## 18.1 Requests for information

(Issued: 11-30-18, Effective: 11-30-18)

### 18.1.1 What is a request for information, and when can we issue one?

An adjudicator may issue a request for information if he or she believes that the written record is missing information that is essential to resolving the issues on appeal, and that information can be provided only by CMS or its contractors (in a **Part A, Part B, or Part C appeal**), or by CMS or the IRE or the Part D plan sponsor (in a **Part D appeal**), or SSA (in an **appeal of an SSA reconsideration**).<sup>1</sup>

When requesting missing information, OMHA retains jurisdiction over the case.

#### 18.1.1.1 What is “information that is essential to resolving the issues on appeal”?

*“Information that is essential to resolving the issues on appeal”* is evidence that would be determinative for one or more of the issues on appeal. The evidence may relate to coverage, payment, or liability.

*Example:* A beneficiary requests an ALJ hearing for Part B coverage of an oxygen concentrator on a rental basis. On reconsideration, the QIC denied coverage because it found the beneficiary was in a skilled nursing facility (SNF) on the date of service and payment for the oxygen concentrator was included in the Part A payment to the SNF. The record lacks information regarding whether the beneficiary’s SNF stay was covered under Part A. In this scenario, the adjudicator could determine that the record lacks evidence needed to determine whether Part B coverage is appropriate. If the parties cannot furnish the necessary information, the adjudicator can then attempt to obtain information and records from CMS or CMS contractors pertaining to the beneficiary’s Part A coverage status.

#### 18.1.1.2 What is information that “can be provided only by CMS or its contractors”?

Information that “can be provided only by CMS or its contractors” (or the Part D plan sponsor in **Part D appeals**, or SSA in **appeals of SSA reconsiderations**) is information that:

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<sup>1</sup> 42 C.F.R. §§ 405.1034(a), 423.2034(a).

- Is **not publicly available** (that is, is not available to the general public via the internet or in a printed publication); and

*Note:* Information that is available on a CMS, CMS contractor, Part D plan sponsor, or SSA website, or included in an official CMS, HHS, plan, or SSA publication, is considered to be available to the general public.<sup>2</sup> This includes provisions of NCDs or LCDs, procedure code or modifier descriptions, fee schedule data, and contractor operating manual instructions.<sup>3</sup>

- Is **not in the possession of**, and cannot be requested and obtained by, one of **the parties** to the appeal.<sup>4</sup>

*Note:* Medical records and certificates of medical necessity are typically available from one or more parties (for example, the provider or supplier or the beneficiary), and therefore are generally not information that can be provided only by CMS or its contractors, the Part D plan sponsor, or SSA, *unless* the administrative record suggests a prior adjudicator relied on medical documentation that is not present in the case file forwarded to OMHA (*see* OCPM 18.1.2).

Official copies of redeterminations and reconsiderations that were conducted on the appealed claims or issues can be provided only by CMS, CMS contractors, the Part D plan sponsor, or SSA. **Prior to issuing a request for information**, OMHA will confirm whether an electronic copy of the redetermination or reconsideration is available in the case processing system, and if so will accept the electronic copy as an official copy.<sup>5</sup>

*Example:* A beneficiary requests an ALJ hearing for a SNF stay that was denied because the beneficiary did not have a qualifying three-day inpatient hospital stay prior to her SNF admission. The beneficiary submits hospital records, but it is unclear from the records whether the beneficiary was admitted as an inpatient or treated as an outpatient. After determining

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<sup>2</sup> 42 C.F.R. §§ 405.1034(a)(2), 423.2034(a)(2).

<sup>3</sup> 42 C.F.R. §§ 405.1034(a)(2).

<sup>4</sup> 42 C.F.R. §§ 405.1034(a)(2), 423.2034(a)(2).

<sup>5</sup> 42 C.F.R. §§ 405.1034(a)(1), 423.2034(a)(1).

the information is essential to resolving the issue on appeal and verifying that the parties do not have the necessary records, the adjudicator may request that the QIC forward a claims history for the beneficiary's hospital stay that indicates whether the hospital billed the stay (and the claim was processed) as an inpatient or outpatient hospital stay.

*Example:* A beneficiary requests an ALJ hearing for a diagnostic screening test that was denied because Medicare had already paid for the same test for the beneficiary within the preceding year, but the administrative record does not contain evidence indicating when the prior test occurred. After determining the information is essential to resolving the issue on appeal and verifying that the parties do not have the necessary records, the adjudicator may request that the QIC forward a claims history showing that Medicare paid for the prior test, and the date of service on which it was performed.

### **18.1.2 Are there any other limits on the types of information we can request?**

An adjudicator may only request information that is essential to resolving the claims or issues on appeal, but is missing from the administrative record.<sup>6</sup> The following examples are not a basis to issue a request for information:

#### *Creation of content*

CMS, a CMS contractor, a Part D plan sponsor, or SSA may not be required to create content that is not already in its possession, or in the possession of another CMS contractor or plan.

*Example:* Some QIC reconsideration case files reference a "Medical Panel Review" in which a physician or other healthcare professional documents the results of his or her review of the appeal, which is then summarized in the written reconsideration decision. In practice, the medical panel findings may be entered directly into the QIC reconsideration document. If the QIC's reviewing physician or other healthcare professional did not complete a discrete Medical Panel Review form for a given appeal, the OMHA adjudicator cannot require the QIC to create one.

*Example:* If a particular Medicare coverage or payment policy, such as an LCD, is available to the public via the internet or other sources, an adjudicator may

<sup>6</sup> See 42 C.F.R. §§ 405.1034(a), 423.2034(a).

not issue a request for information for the purposes of obtaining an explanation of the coverage or payment policy that applies to the items, services, or issues on appeal. If the adjudicator determines that further explanation of the coverage or payment policy would be helpful, an ALJ may invite CMS, a CMS contractor, or the Part D plan sponsor to participate in a hearing or submit a brief to explain application of the policy at issue to the facts in the record (see [OCPM 6.4](#)).

### *Medical records*

Generally, medical records are not information that can be provided only by CMS or its contractors, a Part D plan sponsor, or SSA; therefore, the adjudicator must request medical records from the parties to the hearing.

**Note:** There are exceptions to this general rule where it is appropriate for an adjudicator to request medical record information from CMS or its contractors, a Part D plan sponsor, or SSA.

If a CMS contractor or Part D plan sponsor relied on a specific piece of medical documentation in issuing its initial determination or appeal decision, and that documentation is not present in the case file forwarded by the entity that conducted the reconsideration, the adjudicator may request that the QIC or IRE forward this information.

Similarly, if a review of the case file suggests that medical records were previously submitted to a CMS contractor or Part D plan sponsor, but the case file contains only procedural information, the adjudicator may request that the QIC or IRE that conducted the reconsideration forward the missing medical records that are referenced in the administrative record.

**Example:** The reconsideration case file forwarded by the QIC contains only procedural documentation, but the Review Results Letter issued by the RAC indicates that the RAC reviewed certain medical records in making its overpayment determination. If the adjudicator determines the information is essential to resolving the issue on appeal, the adjudicator may request the missing information from the QIC.

### 18.1.3 Where do we send requests for information?

Send requests for information only to the **entity that issued the reconsideration** (QIC, IRE, QIO, or SSA), or its successor, even if the missing information may be in the possession of CMS, the Part D plan sponsor, or another CMS contractor.<sup>7</sup> The entity that issued the reconsideration is responsible for obtaining the necessary information from CMS, the CMS contractor, or the Part D plan sponsor.

Send a **copy** of the request to the appellant and any other parties to the appeal who would be entitled to receive a notice of hearing.

### 18.1.4 How are requests for information made?

Requests for information must be made **in writing**, and may be mailed, faxed, or emailed, or sent in accordance with other OMHA-approved procedures (for example, an approved secure file transfer protocol (SFTP)). Add the written request for information to the administrative record.

Oral requests are not permitted.

*Caution:* All applicable PII policy requirements must be followed for written requests. For example, if the request is sent via email and contains PII, use SecureZIP or other OMHA-approved software to encrypt all PII in an attached file.

### 18.1.5 What does a request for information include?

Requests for information are made using Request for Missing Information (OMHA-135) and must include:

- The specific information being requested, and why the adjudicator believes that information can only be provided by CMS, a CMS contractor, a Part D plan sponsor, or SSA;
- The applicable time frame to furnish the information or otherwise respond to the request for information (*see* OCPM 18.1.6); and
- If the requested information was an official copy of a missing redetermination or reconsideration, a statement that if the requested information is not received

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<sup>7</sup> See 42 C.F.R. §§ 405.1034(a), 423.2034(a).

within the time frame specified, the case may be remanded to the prior adjudicator (see OCPM 18.1.7.2).<sup>8</sup>

### 18.1.6 How long does the entity that issued the reconsideration have to respond to a request for information?

The entity that issued the reconsideration has 15 calendar days after receiving the request for information to furnish the information or otherwise respond to the request, directly or through CMS or another contractor (in a **Part A, Part B, or Part C appeal**), or through CMS or the Part D plan sponsor (in a **Part D appeal**). In **expedited Part D appeals** the time frame is 2 calendar days.<sup>9</sup>

*Note:* If an adjudication time frame applies to the case, the adjudication period is extended by the period between the date of the request for information and the date CMS, a CMS contractor, or a Part D plan sponsor responds to the request, or 20 calendar days after the date of the request, whichever occurs first.

In **expedited Part D appeals**, the adjudication period is extended by the period between the date of the request for information and the date CMS, the IRE, or the Part D plan sponsor responds to the request, or 3 calendar days after the date of the request, whichever occurs first.<sup>10</sup> See [OCPM 7.1](#) for additional information regarding adjudication time frames.

### 18.1.7 How do we process the response to a request for information . . .

#### 18.1.7.1 If the missing information is submitted within the time frame specified?

If the requested information is timely received, add the information to the administrative record under the appropriate category and send a copy of the information to all the parties to the appeal.

*Note:* The adjudication period is extended by the period from the date of the request for information until the earlier of:

- The date OMHA receives a response; or
- 20 calendar days after the date of the request (or 3 calendar days after the date of the request for **expedited Part D appeals**)

<sup>8</sup> See 42 C.F.R. §§ 405.1034(c), 405.1056(a), 423.2034(c), 423.2056(a).

<sup>9</sup> See 42 C.F.R. §§ 405.1034(c), 423.2034(c).

<sup>10</sup> See 42 C.F.R. §§ 405.1034(d), 423.2034(d).

(see [OCPM 7.2.2](#)).<sup>11</sup>

### **18.1.7.2 If the missing information is not submitted within the time frame specified?**

#### *Requests for missing appeal determinations*

If the requested information was an official copy of a missing redetermination or reconsideration, and the requested information is not received within the applicable time frame, the adjudicator may issue a remand directing the entity that conducted the reconsideration to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.<sup>12</sup>

#### *All other requests*

If the requested information is not received within the applicable time frame, the adjudicator may contact the **Program Evaluation and Policy Division** for assistance in obtaining the requested information.

*Caution:* The regulations do not permit a remand when the entity that conducted the reconsideration fails to respond to a request for information, *unless* the requested information was an official copy of a missing redetermination or reconsideration.

<sup>11</sup> See 42 C.F.R. §§ 405.1034(d), 423.2034(d).

<sup>12</sup> See 42 C.F.R. §§ 405.1056(a)(1) and (2), 423.2056(a)(1) and (2).



## 18.2 Remand authority

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### 18.2.1 What is a remand?

A remand order vacates a lower-level appeal determination, or a portion of the determination, and returns the case, or a portion of the case, to that level for the prior adjudicator to issue a new appeal determination or take another specified action.<sup>13</sup> In the context of a request for hearing or review of a dismissal, the adjudicator may only remand a case to the entity that issued the reconsideration or the dismissal of the reconsideration request, or its successor.<sup>14</sup>

### 18.2.2 When can we remand a case?

Remands are only permitted when explicitly authorized by regulation. The circumstances in which an adjudicator may remand a case include:

#### *Missing appeal determination*

When an adjudicator requested, but did not receive within the time frame specified in OCPM 18.1.6, an official copy of a missing redetermination or reconsideration for an appealed claim, the adjudicator may issue a remand directing the entity that conducted the reconsideration, or its successor, to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.<sup>15</sup>

**Note:** The regulations also permit the adjudicator to direct another CMS contractor or the Part D plan sponsor to reconstruct the record, or if it is not able to do so, initiate a new appeal adjudication (for example, if the administrative record is missing an official copy of a redetermination in a Part A appeal, it would be appropriate to instruct the MAC to reconstruct the record or conduct a new redetermination). However, the remand order in such a case would still be addressed and sent to the entity that conducted the reconsideration, who is responsible for forwarding it to the other CMS contractor or the Part D plan sponsor.

**Note:** If the entity that conducted the reconsideration, another CMS contractor, or the Part D plan sponsor is able to reconstruct the record for a remanded case and returns the case to OMHA, the case is no longer remanded, and the

<sup>13</sup> See 42 C.F.R. § 405.902.

<sup>14</sup> See 42 C.F.R. §§ 405.1056(a)–(e); 423.2056(a)–(e).

<sup>15</sup> See 42 C.F.R. §§ 405.1056(a)(1), 423.2056(a)(1).

reconsideration is no longer vacated (see [OCPM 20.9](#)). In such cases, any adjudication period that applies to the appeal is extended by the period from the date of the remand until the date the case is returned to OMHA (see [OCPM 7.2.2](#)).<sup>16</sup>

### *No case file produced*

If Central Operations and the field office have made the first and second requests for a case file in accordance with OMHA procedures for requesting a case file, and the entity that conducted the appealed reconsideration or dismissal of a request for reconsideration does not produce a case file, an adjudicator may issue a remand directing the entity that issued the reconsideration, or its successor, to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.<sup>17</sup>

*Note:* If the entity that conducted the reconsideration is able to reconstruct the record for a remanded case and returns the case to OMHA, the case is no longer remanded and the reconsideration is no longer vacated (see [OCPM 20.9](#)). In such cases, any adjudication period that applies to the appeal is extended by the period from the date of the remand until the date the case is returned to OMHA (see [OCPM 7.2.2](#)).<sup>18</sup>

### *No redetermination*

If an adjudicator finds that the QIC or IRE issued a reconsideration and no redetermination was made with respect to the claim or issue under appeal (if a redetermination was required) or the request for redetermination was dismissed, the adjudicator issues a remand to the entity that conducted the reconsideration, or its successor, to re-adjudicate the request for reconsideration.<sup>19</sup>

*Example:* The MAC dismissed the appellant's request for redetermination. The appellant requested a reconsideration, and the QIC issued a reconsideration addressing coverage instead of reviewing the MAC's dismissal. The adjudicator may remand the case and request that the QIC re-adjudicate the appeal to determine whether the MAC's dismissal was in error and if so, vacate the dismissal and remand to the MAC.

<sup>16</sup> See 42 C.F.R. §§ 405.1056(a)(3), 423.2056(a)(3).

<sup>17</sup> See 42 C.F.R. §§ 405.1056(a)(2), 423.2056(a)(2).

<sup>18</sup> See 42 C.F.R. §§ 405.1056(a)(3), 423.2056(a)(3).

<sup>19</sup> See 42 C.F.R. §§ 405.1056(b), 423.2056(b).

*Requested remand*

At any time before OMHA issues a decision or dismissal, the appellant and CMS, a CMS contractor, the Part D plan sponsor, or SSA may **jointly** request a remand of the appeal to the entity that conducted the reconsideration. The request must include the reasons why the appeal should be remanded and indicate whether remanding the case will likely resolve the matter in dispute.<sup>20</sup> An adjudicator may grant the request and issue a remand if he or she determines that remanding the case will likely resolve the matter in dispute.<sup>21</sup>

*Appellant entitled to relief*

If an appellant is entitled to relief after an ALJ in the DAB's Civil Remedies Division or the Board finds that a provision or provisions of an LCD are invalid under the reasonableness standard, or the Board finds that the provisions of an NCD are invalid, an OMHA adjudicator will remand the appeal to the QIC that issued the reconsideration.<sup>22</sup>

*Consideration of a change in condition in a Part D appeal*

An adjudicator remands a case to the IRE if the adjudicator finds that the enrollee wants evidence on his or her change in condition after the coverage determination or at-risk determination to be considered in the appeal.<sup>23</sup>

*Review of a QIC or IRE dismissal*

If an adjudicator determines that the dismissal of a reconsideration request was in error, the adjudicator vacates the dismissal and returns the case to the entity that issued the dismissal, or its successor, to conduct a reconsideration.<sup>24</sup>

*Note:* If the QIC or IRE issues a new reconsideration decision following the order of remand, the appellant must file a new request for hearing. The request for hearing will be docketed under a new OMHA appeal number, and will be assigned to an adjudicator on the basis of the new filing date.

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<sup>20</sup> See 42 C.F.R. §§ 405.1056(c)(1), 423.2056(c)(1).

<sup>21</sup> See 42 C.F.R. §§ 405.1056(c)(2), 423.2056(c)(2).

<sup>22</sup> See 42 C.F.R. § 405.1056(e).

<sup>23</sup> See 42 C.F.R. § 423.2056(e).

<sup>24</sup> See 42 C.F.R. §§ 405.1004(b), 405.1056(d), 423.2004(b), 423.2056(d).

*Instructions to remand*

If the Council remands a case to OMHA with instructions to further remand the case to a prior adjudicator, OMHA will remand the case to the entity that conducted the reconsideration, or its successor. If the instructions from the Council were to remand to a level below the reconsideration level, the order of remand will include instructions for the entity that conducted the reconsideration to remand the case to the prior adjudicating entity in accordance with the Council's instructions.

*Missing one or more claims from reconsideration*

When a **Part A or Part B** request for hearing or review includes multiple claims (such as items or services provided to multiple beneficiaries or on multiple dates of service) but the reconsideration decision does not address all of the claims for which the reconsideration was requested, the adjudicator retains jurisdiction and requests an official copy of the missing reconsideration decision for the unaddressed claim or claims from the entity that conducted the reconsideration (*see* OCPM 18.1.6).

If the entity that conducted the reconsideration or another contractor does not provide a copy of the reconsideration for the missing claim or claims within the applicable time frame for responding to the request for information, the adjudicator may issue a remand directing the entity to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.<sup>25</sup> A Notice of Remand for Incomplete Reconsideration (OMHA-174) instructs the appellant that if a new reconsideration decision is issued on the missing claims, the appellant may appeal the new reconsideration by sending a request for hearing and a copy of the notice of remand, to OMHA at the following mail stop:

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

Upon receipt of the request for hearing, OMHA Central Operations assigns the case to the previous adjudicator, or to a new adjudicator if the previous adjudicator is unavailable.

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<sup>25</sup> See 42 C.F.R. § 405.1056(a)(1).

### 18.2.3 What are the limitations on remand authority?

An adjudicator may only remand a case when authorized by regulation, or when ordered to do so by the Council or a Federal court. The following examples may not form the basis of a remand:

#### *Pass-through remands*

Generally, QICs and IREs do not have the authority to remand a case to the redetermination level. A QIC's authority to remand a case to a MAC is limited to situations where the QIC determines that the contractor's dismissal of a redetermination request was in error.<sup>26</sup> Accordingly, an adjudicator may not remand a case to the QIC or IRE with instructions for the QIC or IRE to further remand the case to the redetermination level, *unless* ordered to do so by the Council or a Federal court.

**Note:** If the record is missing information that is essential to resolving the issues on appeal and that can only be provided by the Part D plan sponsor or a CMS contractor other than a QIC or IRE, the adjudicator may issue a request for information to the QIC or IRE (see OCPM 18.1).

#### *Perceived error in conducting review*

*Unless* specifically authorized in the applicable regulation, an adjudicator may not remand a case on the basis that the adjudicator believes the entity that conducted the reconsideration, or a prior adjudicator, made an error in conducting its review.

**Example:** [Section 1869\(g\)\(4\) of the Act](#) requires that a QIC's reviewing professional have medical expertise in the field of practice that is appropriate for the items or services at issue. An OMHA adjudicator's belief that the QIC's reviewing professional lacked such expertise may form a basis for assigning less weight to the reviewing professional's opinions, but is not a basis for remanding an appeal, *unless* ordered to do so by the Council or a Federal court.

**Example:** In contrast, if an adjudicator determines that a QIC issued a substantive reconsideration in error because the appellant had requested review of a dismissal, remand is specifically authorized under [42 C.F.R. section 405.1056\(b\)](#) or [423.2056\(b\)](#).<sup>27</sup>

<sup>26</sup> See [42 C.F.R. § 405.974\(b\)\(2\)](#).

<sup>27</sup> See [42 C.F.R. §§ 405.1056\(b\), 423.2056\(b\)](#).

*Remands to consider new evidence*

An adjudicator may not remand a case in order for a prior adjudicating entity to consider new evidence that is furnished for the first time at the OMHA level of review, *except* in a **Part D appeal** in which the adjudicator finds that the enrollee wants consideration of evidence on his or her change in condition after the coverage determination or at-risk determination was made (*see* OCPM 18.2.2).<sup>28</sup>

**18.2.4 Can we remand a case that was escalated from a QIC to the OMHA level?**

An adjudicator may only remand a case that was escalated from a QIC to the OMHA level if the case file is missing an official copy of the redetermination, and the QIC does not respond to a request for an official copy of the redetermination, or does respond but is unable to furnish the requested information, within the time frame specified by the adjudicator (*see* OCPM 18.1).

If a QIC escalates a request for reconsideration in error (for example, when a non-appellant requested the escalation, or where the appellant sought review of a contractor's dismissal of a redetermination request), jurisdiction of the case remains with the QIC. Because OMHA does not have jurisdiction over the case, a remand is not appropriate. Instead, OMHA will return the case to the QIC administratively using the Return of Case Escalated in Error form (OMHA-387).

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<sup>28</sup> See 42 C.F.R. § 423.2056(e).

### 18.3 Notices and orders of remand

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#### 18.3.1 What information does a notice of remand contain?

A remand of a **request for hearing** is accompanied by a Notice of Remand (OMHA-1075), which states that there is a right to request a review of the remand by the Chief ALJ or a designee (*see* OCPM 18.4.2).<sup>29</sup> The notice also informs recipients that, if the entity that issued the reconsideration issues a new reconsideration after the remand, and the recipient is dissatisfied with that decision, the recipient must file a new request for hearing.

A remand on a **request for review of a dismissal** of a reconsideration request is accompanied by a Notice of Remand on Request for Review of a Dismissal (OMHA-176), which informs recipients that the dismissal has been vacated and the case was returned to the prior level for a reconsideration. The notice also informs recipients that there is no right to appeal or request review of the remand.<sup>30</sup>

#### 18.3.2 What information is included in an order of remand?

The Order of Remand (OMHA-175) must contain the following information:

- The **date** the request for hearing or review was filed;
- The **reason** the request for hearing or request for review of a dismissal is being remanded;

*Note:* An order of remand must identify the basis for the remand, state the adjudicator's reasons for remanding the case, and include the relevant facts to support the adjudicator's rationale. See OCPM 18.2.2 for circumstances where a remand is permitted. The remand order should discuss the specific provision of [42 C.F.R. section 405.1056](#) or [423.2056](#), or the remand instruction from the Council or Federal Court, that establishes the basis for remand.

*Note:* For remands on a request for review of a dismissal, the order of remand includes a statement that the adjudicator has determined the dismissal of the request for reconsideration was in error, along with rationale to support the finding and an order for the entity that

<sup>29</sup> See [42 C.F.R. §§ 405.1056\(f\), 423.2056\(f\)](#).

<sup>30</sup> See [42 C.F.R. §§ 405.1102\(c\), 423.2102\(c\), 405.1056\(g\), 423.2056\(g\)](#).

dismissed the request for reconsideration to perform a new reconsideration on the merits.<sup>31</sup>

- **Instructions** to reconstruct the record, if applicable, or initiate a new appeal adjudication;

*Note:* Because jurisdiction of the appeal is returned to the QIC or IRE following an order of remand, the adjudicator may not impose a time frame on the QIC or IRE for issuing a new reconsideration, reconstructing the case file, or taking any other action pursuant to the order of remand.

- A **clear statement** that the request for hearing or request for review is remanded; and
- The adjudicator's **signature**.

### 18.3.3 Do we include beneficiary information in the remand order?

In the **caption** of the order, use the beneficiary's first initial, last name, and truncated Medicare number (HICN or MBI).

In the **body** of the order, beneficiary PII and PHI should be limited.

- Use the term "beneficiary" or "enrollee" instead of using names or gender-specific pronouns.
- Characteristics of the beneficiary or beneficiaries should be limited to only those relevant to the reason for remand.
- Identifiers such as general health conditions, age, and residence should not be included *unless* relevant to the reason for remand.

If the appeal includes multiple beneficiaries, create a beneficiary list attachment to the order of remand.

- The attachment should contain a list of beneficiaries identified by first initial and last name, a truncated Medicare number (HICN or MBI), and the date(s) of service, if applicable.

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<sup>31</sup> See 42 C.F.R. §§ 405.1056(d), 423.2056(d).



- Where possible, beneficiary information should be grouped by MAC.

#### **18.3.4 Where do we send the remand disposition package?**

Mail or otherwise transmit:

- A copy of the written Order of Remand (OMHA-175), and
- Notice of Remand (OMHA-1075) or Notice of Remand on Request for Review of a Dismissal (OMHA-176);

To the following at their last known address:

- The appellant (or representative);
- Any parties (or their representatives) who were sent a copy of the request for hearing or request for review; and
- In **Parts A, B, and C appeals**, to CMS or a CMS contractor that elected to be a participant in the proceedings or party to the hearing, or
- In **Part D appeals**, to CMS, the IRE, or the Part D Plan Sponsor if a request to be a participant was granted by the ALJ or attorney adjudicator (see [OCPM 19.5.2.4](#)).

## 18.4 After a remand is issued

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### 18.4.1 What is the effect of a remand order?

When an adjudicator issues a remand on a **request for hearing**, the reconsideration decision is vacated (set aside) and jurisdiction (authority to hear the appeal) returns to the entity that issued the reconsideration. An adjudicator may not reopen the remanded case while another entity has jurisdiction (see [OCPM 20.6.1.5](#)).

If an adjudicator remands a **request for review** of a reconsideration dismissal, the dismissal is vacated and the entity that dismissed the reconsideration request re-adjudicates the appeal.

*Note:* The remand of a request for hearing is binding, *unless* it is vacated by the Chief ALJ or a designee (see [OCPM 20.8.2](#)).

### 18.4.2 May an adjudicator issue an amended remand to correct a clerical error?

An adjudicator may issue an amended remand to correct a clerical error, and must issue an amended remand if the error prevents effectuation of the remand (for example, to correct a transposed Medicare number (HICN or MBI) or appeal number). See [OCPM 20.5](#) for more information on clerical edits.

### 18.4.3 Under what circumstances may a remand be reviewed?

A party, CMS, or a CMS contractor (in **Parts A, B, and C appeals**), or the enrollee, CMS, the IRE, or the Part D Plan Sponsor (in **Part D appeals**) may request that the Chief ALJ review a remand (other than a remand of a dismissal of a request for reconsideration) that the requestor believes was not authorized by regulation.<sup>32</sup> The request may, but is not required to, be submitted using a Request for Review of Remand (OMHA-107) form. See [OCPM 20.8.3.2](#) for more information on requests to review a remand.

A party does not have the right to seek Council review of an adjudicator's remand to a QIC, IRE, or SSA.<sup>33</sup>

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<sup>32</sup> See 42 C.F.R. §§ 405.1056(g), 423.2056(g).

<sup>33</sup> See 42 C.F.R. §§ 405.1102(c), 423.2102(c).

**Revision history**

<b>Date</b>	<b>Description</b>	<b>Sections/subsections updated</b>
11/30/2018	Initial Release	N/A

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