

# OMHA Case Processing Manual

## Chapter 7 ADJUDICATION TIME FRAMES, CASE PRIORITIZATION, AND ESCALATIONS

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### 7.0 Chapter overview

(Issued: 07-27-18, Effective: 07-27-18)

This chapter discusses adjudication time frames, case prioritization, and escalations. An adjudication time frame is a period of time provided by statute, regulation, or policy for an adjudicator to issue a decision, dismissal, or remand in an appeal. An adjudication time frame may be delayed or extended in certain circumstances, and can be waived by the appellant. In limited circumstances, the adjudicator may request a waiver of the adjudication time frame.

OMHA prioritizes most appeals filed by beneficiaries. Regardless of case prioritization, if an adjudication time frame is not met, a party appealing a Part A or Part B QIC reconsideration may have further rights to escalate the appeal to the Council.

<p><i>Caution:</i> 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).</p>
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## **7.1 Adjudication time frames**

(Issued: 07-27-18, Effective: 07-27-18)

### **7.1.1 What is the adjudication time frame for a Part A or Part B appeal . . .**

#### **7.1.1.1 When a QIC issued a reconsideration?**

The OMHA appeal operates on a 90 calendar day adjudication time frame, beginning on the date the request for hearing is received by the office specified in the QIC's reconsideration (in most instances, OMHA Central Operations).<sup>1</sup> The start of the 90 calendar day adjudication time frame may be delayed or the time frame may be extended in certain circumstances, as discussed in OCPM 7.2.

#### **7.1.1.2 When the appeal is escalated from a QIC to the OMHA level without a reconsideration?**

The OMHA appeal operates on a 180 calendar day adjudication time frame, beginning on the date that the request for escalation is received by OMHA from the QIC.<sup>2</sup> The 180 calendar day adjudication time frame may be extended in certain circumstances,<sup>3</sup> as discussed in OCPM 7.2.2.

#### **7.1.1.3 When a QIC dismissed the request for reconsideration?**

There is no adjudication time frame for Part A and Part B appeals when the QIC has dismissed a request for reconsideration. However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

#### **7.1.1.4 When a QIO issued a reconsideration?**

There is no adjudication time frame for Part A and Part B appeals when the QIO has issued a reconsideration under [section 1155 of the Act](#). However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

#### **7.1.1.5 When SSA issued a reconsideration?**

There is no adjudication time frame for Part A and Part B appeals when SSA has issued a reconsideration. However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

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<sup>1</sup> 42 C.F.R. § 405.1016(a).

<sup>2</sup> 42 C.F.R. §§ 405.970, 405.1002(b), 405.1016(c).

<sup>3</sup> 42 C.F.R. § 405.1016(c), (d).

### **7.1.2 What is the adjudication time frame for Part C appeals?**

There is no adjudication time frame for Part C appeals. However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

### **7.1.3 What is the adjudication time frame for a Part D appeal . . .**

#### **7.1.3.1 When the Part D IRE issued a reconsideration?**

For **standard** Part D appeals, the OMHA appeal operates on a 90 calendar day adjudication time frame, beginning on the date the request for hearing is received by the office specified in the Part D IRE's reconsideration (in most instances, OMHA Central Operations).<sup>4</sup> The start of the 90 calendar day adjudication time frame may be delayed or the time frame may be extended in certain circumstances, as discussed in OCPM 7.2.

For **expedited** Part D appeals, OMHA issues a written decision, dismissal, or remand, as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for hearing is received by the office specified in the Part D IRE's reconsideration (in most instances, OMHA Central Operations).<sup>5</sup> The start of the 10 calendar day adjudication time frame may be delayed, or the time frame may be extended in certain circumstances, as discussed in OCPM 7.2.

#### **7.1.3.2 When the Part D IRE dismissed a request for reconsideration?**

There is no adjudication time frame for Part D appeals when the Part D IRE has dismissed a request for reconsideration. However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

#### **7.1.3.3 When SSA issued a reconsideration?**

There is no adjudication time frame for Part D appeals when SSA has issued a reconsideration. However, if a beneficiary filed the appeal, the case may be subject to prioritization, as discussed in OCPM 7.4.

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<sup>4</sup> 42 C.F.R. § 423.2016(a).

<sup>5</sup> 42 C.F.R. § 423.2016(b)(5).

#### **7.1.4 When the Council remands a case to OMHA, what is the adjudication time frame for . . .**

##### **7.1.4.1 A Part A or Part B appeal?**

If the case was subject to an adjudication time frame (either 90 or 180 calendar days), the remanded case is subject to a 90 calendar day adjudication time frame beginning on the date that OMHA receives the remand from the Council.<sup>6</sup>

##### **7.1.4.2 A standard Part D appeal?**

If the case was subject to an adjudication time frame, the remanded case is subject to a 90 calendar day adjudication time frame beginning on the date that OMHA receives the remand from the Council.<sup>7</sup>

##### **7.1.4.3 An expedited Part D appeal?**

If the standards for an expedited appeal under [42 C.F.R. section 423.2016\(b\)\(1\)](#) continue to be met, the remanded case is processed as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date that OMHA receives the remand from the Council. If the standards for an expedited appeal are no longer met, the appeal is subject to a 90 calendar day adjudication time frame.<sup>8</sup>

#### **7.1.5 What if the adjudication time frame ends on a day the field office is closed?**

If the adjudication time frame ends on a day the field office is closed (for example, on a weekend, Federal holiday, or emergency closure), the end of the adjudication time frame is extended to the next day the field office is open for business.

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<sup>6</sup> [42 C.F.R. § 405.1016\(b\)\(2\)](#).

<sup>7</sup> [42 C.F.R. § 423.2016\(a\)\(3\)](#).

<sup>8</sup> [42 C.F.R. § 423.2016\(b\)\(6\)](#).

## 7.2 Events that delay the start of or extend adjudication time frames

(Issued: 07-27-18, Effective: 07-27-18)

### 7.2.1 When does the adjudication time frame start?

Adjudication time frames generally begin on the date that a timely request for hearing is received by the office specified in the reconsideration,<sup>9</sup> the date an escalation is received by OMHA from the QIC,<sup>10</sup> or the date OMHA receives a remand from the Council.<sup>11</sup> However, the following events **delay** the start of the adjudication time frame:

- If a request for hearing is **misrouted** (filed with an entity other than the entity specified in the reconsideration) and an adjudication time frame applies, the time frame begins on the date the office specified in the reconsideration (in most instances, Central Operations) receives the request.<sup>12</sup>
- If a request for hearing is **untimely** filed and an adjudication time frame applies, the adjudication time frame begins on the date the adjudicator grants an extension to the filing deadline.<sup>13</sup>
- If a request for hearing is **incomplete**, the appellant will be provided with an opportunity to complete the request. If an adjudication time frame applies, it does not begin until the request is complete.<sup>14</sup>
- In a Part A or Part B appeal, if the appellant, *other than an unrepresented beneficiary*, **fails to send a copy of the request for hearing**, any additional materials, or a copy of the submitted evidence or a summary thereof, to the other parties who were sent a copy of the QIC's reconsideration, the appellant is given an additional opportunity to meet the copy requirement. If an adjudication time frame applies, it begins when OMHA receives evidence that the request and related materials were sent to the appropriate parties.<sup>15</sup>

**Note:** If an unrepresented beneficiary fails to send a copy of the request for

<sup>9</sup> 42 C.F.R. §§ 405.1016(b)(1), 423.2016(a)(2), (b)(5)(ii).

<sup>10</sup> 42 C.F.R. § 405.1016(c).

<sup>11</sup> 42 C.F.R. §§ 405.1016(b)(2), 423.2016(a)(3), (b)(6).

<sup>12</sup> 42 C.F.R. §§ 405.1014(c)(2), 423.2014(d)(2).

<sup>13</sup> 42 C.F.R. §§ 405.1014(e)(4), 405.1016(b)(1), 423.2014(e)(5), 423.2016(a)(2), 423.2016(b)(5).

<sup>14</sup> 42 C.F.R. §§ 405.1014(b), 423.2014(c).

<sup>15</sup> 42 C.F.R. § 405.1014(d)(1), (3).

hearing to the other parties, a copy of the beneficiary's request is sent to the other parties who were sent a copy of the QIC reconsideration by OMHA, using a Notice of Request Filed by Unrepresented Beneficiary (OMHA-310). There is no effect on the adjudication time frame.

### 7.2.2 What is a tolling event?

A tolling event is an event that extends an adjudication time frame. The adjudication time frame is paused on the date a tolling event begins and restarts on the date the event ends.

The following events **toll or extend** the adjudication time frame:

- If an appointment of representative is defective, the adjudication time frame is tolled *from the later of*:
  - The date the defective appointment of representative was filed; or
  - The date the current appeal request was filed by the prospective appointed representative,

*Until:*

  - The date when the defect is cured; or
  - The date the party notifies the adjudicator that he or she will proceed with the appeal without a representative.<sup>16</sup>
- When the record is missing information that is essential to resolving the issues on appeal and that information can be provided only by CMS, its contractors, a plan, or SSA, the information may be requested from the entity that conducted the reconsideration. If an adjudication time frame applies, the adjudication time frame is extended by the period *from* the date of the request for information *until the earlier of*:
  - The date that entity responds to the request; or
  - 20 calendar days after the date of the request.<sup>17</sup>

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<sup>16</sup> 42 C.F.R. § 405.910(d)(3).

<sup>17</sup> 42 C.F.R. §§ 405.1034, 423.2034.

- If the adjudicator remands a case that is missing an official copy of a redetermination or reconsideration, or the case file, and the lower-level adjudicating entity is able to reconstruct the record and returns the case to OMHA, the adjudication time frame is extended by the period *from* the date of the remand *until* the date that the case is returned to OMHA.<sup>18</sup>
- If a party submits written or other evidence later than 10 calendar days after receiving the notice of hearing (or 2 calendar days in an expedited Part D appeal), the adjudication time frame is extended by the number of calendar days in the period *from* 10 (or 2) calendar days after receipt of the notice of hearing *until* the date the evidence is received.<sup>19</sup>

*Note:* This includes material evidence an ALJ identifies as missing during the course of the hearing that is later submitted by the appellant, as well as evidence submitted by the appellant after an ALJ has limited testimony and/or argument at the hearing or excused the appellant or its representative from the hearing for uncooperative, disruptive, or abusive behavior during the course of the hearing.<sup>20</sup>

*Note:* The date of receipt of the notice of hearing is presumed to be five calendar days after the notice of hearing was sent.

*Note:* This tolling event does not apply to evidence submitted by an unrepresented beneficiary, *except* in the case of a Part D expedited appeal.

- If a hearing is rescheduled at the request of the appellant, or if the appellant requests a continuance or supplemental hearing, the adjudication time frame is extended by the period *from* the originally scheduled hearing date *until* the rescheduled, continued, or supplemental hearing date.<sup>21</sup>
- If the appellant waives its right to appear at the hearing and subsequently withdraws the waiver, the adjudication time frame is extended for the amount of time necessary to schedule and conduct a hearing, which is generally the period

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

<sup>19</sup> 42 C.F.R. §§ 405.1018(b), (d), 423.2018(b)(2), (b)(3), (c)(2).

<sup>20</sup> 42 C.F.R. §§ 405.1030(d), 423.2030(d).

<sup>21</sup> 42 C.F.R. §§ 405.1020(h), 405.1030(e)(2), 405.1030(f)(2), 423.2020(h), 423.2030(e)(2), 423.2030(f)(2).

from the date the appellant withdraws the hearing waiver to the date of the hearing.<sup>22</sup>

*Example:* In a Part A appeal of a QIC reconsideration, the appellant waives its right to appear at the hearing but subsequently withdraws its waiver. The ALJ team takes 20 calendar days from the date the waiver is withdrawn to schedule and conduct the hearing. The adjudication time frame is extended by 20 days. Thus, the adjudication time frame in this case is 110 calendar days instead of the standard 90 calendar days.

- When a party requests discovery from another party to the hearing, the adjudication time frame is extended for the duration of the discovery, *from* the date a discovery request is granted *until* the date specified for ending discovery.<sup>23</sup>
- If a party requests a copy of all or part of the record and an opportunity to comment on the record, the adjudication time frame is extended by the period *from* the date of receipt of the request *until* the expiration of the time granted for the party's response.<sup>24</sup>
- If a Federal court stays (that is, suspends) the administrative proceedings in a pending appeal, the adjudication time frame is tolled for the duration of the stay order.<sup>25</sup>

*Note:* A general stay order issued by a bankruptcy court does not stay OMHA administrative proceedings.

- If an adjudicator grants the appellant's motion to stay (that is, suspend) the proceedings in a pending appeal, and no other party also filed a request for hearing on the same claim at issue, then the adjudication time frame is tolled for the duration of the stay order.<sup>26</sup>

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<sup>22</sup> 42 C.F.R. §§ 405.1036(b)(2), 423.2036(b)(2).

<sup>23</sup> 42 C.F.R. § 405.1037(f).

<sup>24</sup> 42 C.F.R. §§ 405.1042(b)(2), 423.2042(b)(2).

<sup>25</sup> 42 C.F.R. §§ 405.1016(d)(2)(i), 423.2016(c)(2)(i).

<sup>26</sup> 42 C.F.R. §§ 405.1016(d)(2)(ii), 423.2016(c)(2)(ii).



- If a party objects to the adjudicator assigned to the case, and the adjudicator withdraws, the adjudication time frame is extended by 14 calendar days (or 2 calendar days for an expedited Part D appeal).<sup>27</sup>

### **7.2.3 What if two or more events that delay the start of or extend the adjudication time frame occur during the same time period?**

If two or more events that delay the start of or extend the adjudication time frame overlap, the adjustment to the adjudication time frame begins on the date the earlier event starts and ends on the date that all events have concluded. This ensures that each calendar day on which one or more events occurs counts only once in adjusting the adjudication time frame.

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<sup>27</sup> 42 C.F.R. §§ 405.1026(d), 423.2026(d).

## 7.3 Waivers of the adjudication time frame

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### 7.3.1 Who may waive an adjudication time frame?

Only an appellant may waive an adjudication time frame.<sup>28</sup> A non-appellant's waiver of the adjudication time frame has no effect on the adjudication time frame. If multiple parties filed a request for hearing on the same appeal, they are co-appellants, and each appellant must agree to a waiver in order for the adjudication time frame to be waived. A waiver by only one of the co-appellants has no effect on the adjudication time frame.

### 7.3.2 How long may an appellant waive the adjudication time frame on its appeal?

A waiver may be **complete**, in which case no adjudication time frame applies to issuing a decision, dismissal, or remand. If escalation was available for the appeal, the appellant no longer has the right to escalate the appeal because, as a result of the waiver, there is no adjudication time frame.<sup>29</sup>

Waivers of the adjudication time frame may also be **for a specific period of time, expressed as a number of calendar days**, agreed to by the adjudicator and each of the appellant(s).<sup>30</sup> A waiver of the adjudication time frame for a specific period of time *extends* the time the adjudicator has to issue a decision, dismissal, or remand. If escalation is available for the appeal, the appellant cannot escalate the appeal until the revised (extended) adjudication time frame has expired.<sup>31</sup>

### 7.3.3 How can an appellant initiate a waiver of the adjudication time frame?

An appellant may initiate a waiver of the adjudication time frame on his or her own initiative at any time. The appellant may do so by submitting a statement in writing that indicates he or she is waiving the adjudication time frame *or* by completing section 7 on the Response to Notice of Hearing (OMHA-102).

**Note:** If the appellant submits a statement in writing to indicate that he or she is waiving the adjudication time frame, that writing must be made part of the administrative record in order to document the waiver.

<sup>28</sup> 42 C.F.R. §§ 405.1016(d), 423.2016(d).

<sup>29</sup> 42 C.F.R. § 405.1016(d), (f).

<sup>30</sup> 42 C.F.R. §§ 405.1016(d), 423.2016(c).

<sup>31</sup> 42 C.F.R. § 405.1016(d), (f).

### 7.3.4 May an adjudicator request a waiver of the adjudication time frame from an appellant?

In general, an adjudicator may not solicit a waiver of the adjudication time frame from an appellant.

In limited circumstances, the adjudicator may request a waiver of the adjudication time frame from an appellant when the appellant makes a procedural request that will delay the case or otherwise prevent the adjudicator from issuing a decision, dismissal, or remand within the applicable adjudication time frame. The adjudicator may suggest a waiver for a specific period of time or a complete waiver, based on the circumstances of the case. If the appellant makes a procedural request that would result in the expiration of the adjudication time frame, the adjudicator may grant the request conditionally by requiring the appellant(s) to waive the adjudication time frame for a specific period of time. This ensures sufficient time will be available to accommodate the appellant's procedural request, while preserving the appellant's rights to a decision, dismissal, or remand within a specific period of time, to the extent practicable.

**Examples** of procedural requests that may give rise to a request for waiver of the adjudication time frame include:

- The appellant requests a consolidated hearing, and consolidation would prevent the ALJ from deciding all of the appeals at issue within their respective time frames.<sup>32</sup>
- Before the hearing is scheduled, the appellant requests a hearing date that will not allow sufficient time to conduct the hearing and issue a decision, dismissal, or remand within the applicable adjudication time frame.

*Note:* If the hearing has already been scheduled and the appellant requests a rescheduled hearing, waiving the adjudication time frame is not necessary because a hearing rescheduled at the request of the appellant is an event that extends the adjudication time frame (*see* OCPM 7.2.2).<sup>33</sup>

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<sup>32</sup> 42 C.F.R. §§ 405.1044(a)(2), 423.2044(a)(2).

<sup>33</sup> 42 C.F.R. §§ 405.1020(h), 423.2020(h).

- The appellant requests to participate in an OMHA initiative that requires participants to waive any applicable adjudication time frames for the subject appeals.
- The appellant requests an in-person or VTC hearing, and accommodating the request would not allow sufficient time for the in-person or VTC hearing to be held and a decision, dismissal, or remand to be issued within the applicable adjudication time frame.<sup>34</sup>
- The appellant needs additional time to gather information or evidence, and no event that delays the start of or extends the adjudication time frame will apply.

*Example:* A hearing is conducted on July 1, during which the appellant requests two weeks to gather and submit additional information. However, the adjudication time frame ends on July 8. The ALJ may explain to the appellant that, in order for the request to be granted, the appellant would need to agree to a waiver of the adjudication time frame.

### **7.3.5 When can the adjudicator not request a waiver of the adjudication time frame from the appellant?**

Routine waiver requests from the adjudicator are not permitted. Pre-selecting waiver indicators on forms (for example, pre-checking one of the boxes in section 7 of the Response to Notice of Hearing (OMHA-102)) is also prohibited. Other examples of instances where a request for waiver is not permitted include when:

- The adjudicator is unable to issue a decision, dismissal, or remand within the applicable time frame due to workload volume;
- The adjudicator is unable to issue a decision, dismissal, or remand because of the size or complexity of the case; or
- A hearing is scheduled or rescheduled solely to accommodate the ALJ's schedule, and the hearing date will not allow sufficient time for the ALJ to issue a decision, dismissal, or remand within the applicable time frame.

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<sup>34</sup> 42 C.F.R. §§ 405.1020(i)(4), 423.2020(i)(4).

## 7.4 Case prioritization

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### 7.4.1 Does OMHA prioritize adjudication of any cases?

OMHA prioritizes beneficiary-initiated cases to mitigate the impact that workload may have on adjudication times for individual Medicare beneficiaries.

### 7.4.2 How are cases prioritized?

In general, requests for hearing, requests for review of a dismissal, and escalated requests for reconsideration are processed on a first-in/first-out basis within the following priority categories:

- **Priority 1 (highest priority)**
  - Part D expedited cases
  - Beneficiary-initiated cases designated as Priority 1 by the Chief ALJ, identified in OCPM 7.4.4
  - Any other cases designated as Priority 1 by the Chief ALJ
- **Priority 2**
  - Cases filed by, or on behalf of, a beneficiary that have not been designated as Priority 1 or Priority 3
- **Priority 3**
  - Beneficiary-initiated cases involving representatives, as discussed in OCPM 7.4.3
  - Beneficiary-initiated cases involving assignments of appeal rights, as discussed in OCPM 7.4.3
  - Beneficiary-initiated cases involving agreements to waive payment or collection, as discussed in OCPM 7.4.3
  - Medicaid State agency-appellant cases
  - Provider/supplier-appellant cases
  - Applicable plan-appellant cases involving an MSP recovery

### 7.4.3 Are there any circumstances in which an appeal filed by or on behalf of a beneficiary is not prioritized?

There are **three** situations where a beneficiary-initiated case will not be prioritized, subject to certain exceptions:

#### *Cases involving representatives*

If a beneficiary is represented by another party or by the same representative as another party, the beneficiary's case is treated as a **Priority 3** appeal, *unless*:

- The beneficiary is or would be liable for the costs (other than deductibles and coinsurance) of the items or services in dispute;
- The case involves a pre-service request for coverage; or
- One of the exceptions in OCPM 7.4.4 applies.

*Example:* A beneficiary is represented by a Medicaid State agency that has independent appeal rights under [42 C.F.R. sections 405.906\(b\)](#) and [405.908](#). As such, the beneficiary's case is treated as a Priority 3 appeal.

*Example:* A beneficiary is represented by an attorney who also represents the provider, supplier, or Medicaid State agency involved in the case. Therefore, the beneficiary's case is treated as a Priority 3 appeal.

*Example:* A beneficiary is represented by a provider or supplier that has independent appeal rights under [42 C.F.R. section 405.906\(b\)](#). Thus, the beneficiary's case is treated as a Priority 3 appeal.

*Note:* A provider or supplier that furnished the items or services to a beneficiary that are the subject of the appeal may not charge the beneficiary a fee for representation, and may not represent a beneficiary on an issue described in [section 1879\(a\)\(2\) of the Act](#), unless the provider or supplier waives the right to payment from the beneficiary for the services or items involved in the appeal.<sup>35</sup>  
See OCPM [5.2.1](#).

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<sup>35</sup> [42 C.F.R. § 405.910\(f\)\(3\)](#).

*Cases involving **assignments of appeal rights***

If a provider or supplier that is not a party to the initial determination under [42 C.F.R. section 405.906\(b\)](#) has executed an assignment of appeal rights from the beneficiary in accordance with [42 C.F.R. section 405.912](#), the beneficiary is no longer a party, and the case is treated as a **Priority 3** appeal.

*Cases involving **agreements to waive payment or collection***

If a beneficiary has been absolved of any responsibility for payment or collection of payment by the provider, supplier, Medicaid State agency, or a co-representative thereof, and the agreement is documented in the administrative record (including reports of contact with the beneficiary), the case is treated as a **Priority 3** appeal.

#### **7.4.4 What does the Chief ALJ consider when deciding whether to designate a case as Priority 1?**

Generally, when determining whether to designate a case as Priority 1, the Chief ALJ or a designee considers the unique facts and circumstances of each case.

However, the Chief ALJ has also determined prospectively that there are **two** circumstances in which a beneficiary-initiated case that would not otherwise be prioritized because the beneficiary was represented by another party or by the same representative as another party (*see* OCPM 7.4.3), will nonetheless be prioritized as a **Priority 1** case when requested by the beneficiary or his or her representative and when certain requirements are met (*see* OCPM 7.4.4.1). These two circumstances are:

1. The beneficiary is **financially responsible for related items or services** that have been denied and that the beneficiary has appealed; or

*Example:* The circumstances of the case are:

- Upon reconsideration, the QIC denied coverage for home health services furnished to the beneficiary during period of service A and held the provider liable for those services.
- At the OMHA level, the beneficiary is represented by the provider (or the same representative as the provider) and is appealing the denied services despite the provider being held liable below.
- The same beneficiary also received later home health services

during period of service B, which were also denied, but the beneficiary is liable for period B.

- The beneficiary has appealed period B (even if the appeal has not yet reached the OMHA level).

OMHA prioritizes the beneficiary's appeal of the denied home health services for period A, even though the beneficiary is represented by the provider (or the same representative as the provider) and is not liable for period A.

*Example:* The circumstances of the case are:

- Upon reconsideration, the QIC denied coverage for medical supplies that are furnished on a monthly basis and held the supplier liable for those items.
- At the OMHA level, the beneficiary is represented by the supplier (or the same representative as the supplier) and is appealing the denied items despite the supplier being held liable below.
- The same beneficiary also received later shipments of the monthly supplies, which were also denied, but the beneficiary is liable for the later shipments of the supplies.
- The beneficiary has appealed the later shipments of monthly supplies (even if the appeal has not yet reached the OMHA level).

OMHA prioritizes the beneficiary's appeal of the initial shipments of the monthly supplies, even though the beneficiary is represented by the supplier (or the same representative as the supplier) and is not liable for the initial shipments.

2. When the denial is **preventing the beneficiary from receiving** additional related items or services.

*Example:* The circumstances of the case are:

- Upon reconsideration, the QIC denied coverage for a Part A inpatient hospital stay and held the provider liable for those services.



- At OMHA, the beneficiary is represented by the provider (or the same representative as the provider) and is appealing the denied services despite the provider being held liable below.
- The denial is precluding coverage of post-acute Part A Skilled Nursing Facility services because there was not a qualifying 3-day inpatient hospital stay.

OMHA prioritizes the beneficiary's appeal of the denied Part A inpatient hospital stay, even though the beneficiary is represented by the provider (or the same representative as the provider) and is not liable for the denied inpatient hospital stay.

*Note:* In this example, the denied inpatient hospital stay would have to be of a duration that if covered, would allow the additional related service to potentially be covered. If, for example, the denied inpatient hospital stay was fewer than 3 days, post-acute Part A Skilled Nursing Facility services would not be covered regardless of the outcome because the 3-day inpatient stay requirement could not be met.

*Example:* The circumstances of the case are:

- Upon reconsideration, the QIC denied coverage for medical supplies that are furnished on a monthly basis and held the supplier liable for those items.
- At OMHA, the beneficiary is represented by the supplier (or the same representative as the supplier) and is appealing the denied items despite the supplier being held liable below.
- The supplier is refusing to furnish additional items because it believes the items will continue to be denied.

OMHA prioritizes the beneficiary's appeal of the monthly supplies, even though the beneficiary is represented by the supplier (or the same representative as the supplier) and is not liable for shipments to date.

#### **7.4.4.1 How can an appellant request that the Chief ALJ designate a beneficiary-initiated case as Priority 1 if the case would otherwise not be prioritized?**

The beneficiary (or beneficiary's representative) may request that an appeal be prioritized when filing the request for hearing, or at any time after the request is filed, by sending a written request to **Central Operations** at:

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

For cases the Chief ALJ has determined prospectively may be prioritized as a Priority 1 case (see OCPM 7.4.4), the beneficiary (or beneficiary's representative) would need to submit with his or her request, or upon request from OMHA:

- A list of the appeal numbers and the status of the related appeals, and a declaration stating or affirming that there are pending appeals by the beneficiary at OMHA or lower levels of the Medicare appeals process related to the appealed claim and for which the beneficiary is financially responsible, with respect to cases encompassing the first scenario set forth in OCPM 7.4.4; or
- A declaration stating that the denial under appeal is preventing the beneficiary from receiving additional related items or services, with respect to cases encompassing the second scenario set forth in OCPM 7.4.4.

<p><i>Note:</i> There are no specific documentation requirements for other requests to prioritize based on the unique facts and circumstances of the case.</p>
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#### **7.4.4.2 What if the Chief ALJ or a designee determines that the requirements were not met and decides not to prioritize an appeal?**

If a determination is **made by the Chief ALJ** not to prioritize an appeal because the requirements of OCPM 7.4.4.1 are not met, that determination is final and not subject to appeal.

If the determination was **made by a designee** of the Chief ALJ and is disputed by the appellant, the matter will be referred to the **Director of Program Evaluation and Policy**, and the **Chief ALJ** will make a final, non-appealable priority designation.

#### **7.4.5 How does prioritization affect docketing and assignment of cases by Central Operations?**

Central Operations processes higher-priority level cases before lower-priority level cases for purposes of docketing and assignment.

#### **7.4.6 How does each field office prioritize cases?**

The field office intake departments prioritize cases in the same manner as Central Operations to help ensure that higher-priority level cases are forwarded to the adjudicators before lower-priority level cases. If the assigned cases cannot be decided within the adjudication time frames, cases are prioritized to meet timeliness objectives for higher-priority level cases.

*Note:* Once ECAPE is fully implemented, Central Operations will assign the appeals to the adjudicators who will have immediate access to their assigned cases. The adjudicators will no longer need to wait for the field office intake departments to forward the assigned cases to them.

#### **7.4.7 How do adjudicators prioritize their cases?**

Generally, cases within a priority level are processed on a first-in/first-out basis. However, adjudicators have discretion to prioritize cases within a priority level based upon their review of the case, available resources, and the needs presented by the parties.

## 7.5 Escalations

(Issued: 07-27-18, Effective: 07-27-18)

### 7.5.1 What is escalation?

Escalation allows an appellant to advance certain cases to the next level of appeal when an adjudicator is unable to issue a decision, dismissal, or remand order within the applicable adjudication time frame(s).

### 7.5.2 What type of appeals may be escalated?

Escalation from a QIC to OMHA is available in a Part A or Part B appeal when the QIC is unable to issue a reconsideration within the QIC's adjudication time frame.<sup>36</sup>

Escalation from OMHA to the Council is available in a Part A or Part B appeal when the OMHA adjudicator is unable to issue a decision, dismissal, or remand within an applicable adjudication time frame following a QIC reconsideration (or escalation of an appeal from a QIC to OMHA).<sup>37</sup>

### 7.5.3 What type of appeals may not be escalated?

Escalation is not available:

- In a Part C appeal<sup>38</sup>
- In a Part D appeal
- In an IRMAA appeal
- In an eligibility or entitlement appeal from SSA
- When a QIC issued a dismissal of (as opposed to a decision on) a request for reconsideration
- When a QIO issued a reconsideration under [section 1155 of the Act](#)<sup>39</sup>

### 7.5.4 How can an appellant request escalation from the QIC to OMHA?

When the QIC has not issued a reconsideration within the adjudication time frame, the appellant may file an escalation request with the QIC. The appellant must notify the QIC

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<sup>36</sup> Act § 1869(c)(3)(C)(ii), 42 C.F.R. §§ 405.970, 405.1002(b).

<sup>37</sup> Act § 1869(d)(3)(A), 42 C.F.R. §§ 405.1016(f), 405.1106(b).

<sup>38</sup> 42 C.F.R. § 422.562(d).

<sup>39</sup> 42 C.F.R. § 478.40(c).

in writing that the appellant wishes to escalate the case to OMHA, and *if* the QIC is not able to complete its reconsideration within 5 calendar days of receiving the appellant's escalation request (or 5 calendar days from the end of the adjudication time frame), then the QIC must acknowledge the appellant's escalation request in writing and forward the case file to OMHA.<sup>40</sup>

If a request for escalation from the QIC to OMHA is *mistakenly* filed with OMHA, return the request to the party with instructions to re-file the request with the QIC.

### **7.5.5 When can an appellant escalate a Part A or Part B appeal from OMHA to the Council?**

If the adjudicator does not issue a decision, dismissal, or remand within an adjudication time frame and the appeal continues to be pending with OMHA, an appellant who filed a timely request for hearing may request escalation of the appeal to the Council.<sup>41</sup> An appeal that was escalated from the QIC to OMHA can also be escalated from OMHA to the Council.

### **7.5.6 How can an appellant request escalation from OMHA to the Council?**

The request for escalation must be in writing and filed with OMHA. Appellants may, but are not required to, file requests for escalation using the Request for Escalation to Medicare Appeals Council (OMHA-384).

The appellant must also send a copy of the request for escalation to the other parties who were sent a copy of the QIC reconsideration.<sup>42</sup> Because only the appellant can request escalation, the request for escalation needs to identify the party (or party's representative) requesting the escalation. In order for OMHA to identify the appeal, the request for escalation would also need to include the OMHA appeal number (or the QIC reconsideration number if the OMHA appeal number is not known).

### **7.5.7 Where are requests for escalation from OMHA to the Council filed?**

For appeals that have been **assigned**, requests for escalation should be filed with the assigned adjudicator, at his or her field office.

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<sup>40</sup> 42 C.F.R. §§ 405.970(d), (e), 405.1002(b).

<sup>41</sup> 42 C.F.R. §§ 405.1016(e), (f), 405.1106(b).

<sup>42</sup> 42 C.F.R. §§ 405.1016(f)(1), 405.1106(b).

For **unassigned** appeals, requests for escalation should be filed with Central Operations at:

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

### 7.5.8 What do we do when we receive a request for escalation?

The request for escalation is date stamped with the business day that OMHA received the request. If the request was routed to the incorrect OMHA office, the request is forwarded to the assigned adjudicator or Central Operations, no later than the next business day (using tracked mail, if mailed). The request for escalation is entered into the administrative record and logged into the OMHA case processing system.

If the request for escalation is **valid**, meaning that it meets the requirements of [42 C.F.R. section 405.1016\(f\)\(1\)](#) and is a type of appeal that may be escalated (*see* OCPM 7.5.2), one of the following actions must be taken:

- An adjudicator issues a decision, dismissal, or remand within 5 calendar days of OMHA receiving the request for escalation, or 5 calendar days from the end of the adjudication time frame, whichever occurs later; or
- If an adjudicator is not able to issue a decision, dismissal, or remand within the later of 5 calendar days of OMHA receiving the request for escalation, or 5 calendar days from the end of the adjudication time period, whichever occurs later, then the adjudicator (for assigned appeals) or Central Operations (for unassigned appeals) sends a Notice of Escalation (OMHA-385) to the appellant and to the other parties who were sent a copy of the QIC's reconsideration. The notice states that an adjudicator is not able to issue a decision, dismissal, or remand within the adjudication time frame, that the QIC reconsideration decision will be the decision that is subject to Council review, and that the appeal will be escalated to the Council, and OMHA will forward the case file to the Council.<sup>43</sup> The request for escalation and all other materials filed with OMHA will be sent to the Council along with the case file received from the QIC. After OMHA forwards the case file to the Council, OMHA will close the appeal with a disposition of Escalated without further notice to the parties.

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<sup>43</sup> [42 C.F.R. § 405.1016\(f\)\(2\)](#).

If the request for escalation is **invalid**, for example, if it does not meet the requirements of [42 C.F.R. section 405.1016\(f\)\(1\)](#) or is not a type of appeal that may be escalated (*see* OCPM 7.5.3), the adjudicator (for assigned appeals) or Central Operations (for unassigned appeals) sends a Notice of Invalid Request for Escalation (OMHA-386) to the requester. The notice explains why the request for escalation is invalid, and is sent within 5 calendar days of receiving the request for escalation.<sup>44</sup> An appellant may attempt to cure the defects by submitting a new request for escalation; otherwise, the appeal remains pending with OMHA and is processed in accordance with standard procedures.

### **7.5.9 What if the appellant does not request escalation from OMHA to the Council?**

If the appellant does not request escalation, the appeal remains pending with OMHA for a decision, dismissal, or remand.<sup>45</sup>

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<sup>44</sup> [42 C.F.R. § 405.1016\(f\)\(3\)](#).

<sup>45</sup> [42 C.F.R. § 405.1016\(e\)](#).

**Revision history**

<b>Date</b>	<b>Description</b>	<b>Sections/subsections updated</b>
03/29/2019	Revised case prioritization policy to include inadvertently omitted language	7.4.3
07/27/2018	Initial release	N/A

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