

42 C.F.R. § 405.1122

What evidence may be submitted to the Council.

(a) *Appeal before the Council on request for review of ALJ's or attorney adjudicator's decision.* (1) If the Council is reviewing an ALJ's or attorney adjudicator's decision, the Council limits its review of the evidence to the evidence contained in the record of the proceedings before the ALJ or attorney adjudicator. However, if the ALJ's or attorney adjudicator's decision decides a new issue that the parties were not afforded an opportunity to address at the OMHA level, the Council considers any evidence related to that issue that is submitted with the request for review.

(2) If the Council determines that additional evidence is needed to resolve the issues in the case and the administrative record indicates that the previous decision-makers have not attempted to obtain the evidence, the Council may remand the case to an ALJ or attorney adjudicator to obtain the evidence and issue a new decision.

(b) *Appeal before Council as a result of appellant's request for escalation.* (1) If the Council is reviewing a case that is escalated from the OMHA level to the Council, the Council will decide the case based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ or attorney adjudicator before the case was escalated.

(2) If the Council receives additional evidence with the request for escalation that is material to the question to be decided, or determines that additional evidence is needed to resolve the issues in the case, and the record provided to the Council indicates that the previous decision-makers did not attempt to obtain the evidence before escalation, the Council may remand the case to an ALJ or attorney adjudicator to consider or obtain the evidence and issue a new decision.

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