

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dhanbir S. Saluja, M.D.
(OI File No.: H-16-40434-9),

Petitioner,

v.

The Inspector General.

Docket No. C-17-197

ALJ Ruling No. 2017-11

Date: February 23, 2017

RULING

In a notice letter dated April 29, 2016, the Inspector General (IG) advised Petitioner, Dhanbir S. Saluja, M.D., that, pursuant to section 1128(a)(3) of the Social Security Act, the IG was excluding him from participating in Medicare, Medicaid, and all federal health care programs for a minimum period of five years. The letter also advised Petitioner that, if he disagreed with the action, he could request a hearing before an administrative law judge. It warned that the hearing request had to be made in writing “within 60 days of receiving the [IG’s] notice of exclusion.”

By letter dated December 8, 2016, received December 9, Petitioner requested a hearing.

The IG moves to dismiss Petitioner’s hearing request as untimely, citing 42 C.F.R. § 1005.2(c), which provides that the hearing request be filed within 60 days after the notice “is received by the petitioner. . . .” The date of receipt is presumed to be five days after the date of the notice “unless there is a reasonable showing to the contrary.”

Petitioner maintains that he received the notice letter on November 19, 2016, and timely requested a hearing. Petitioner's Affidavit at 1 (¶ 3) (December 8, 2016). The IG sent the letter to 230 Jefferson Street, First Floor, Newark, New Jersey. Petitioner concedes that he once had a medical practice at that location and that he and his wife own the building. Petitioner's Affidavit at 2 (¶¶ 8, 9) (December 8, 2016). However, he left that practice in February 2014, more than two years before the notice was mailed. At the time, he changed his mailing address to his home. Petitioner's Affidavit at 2 (¶ 12) (December 8, 2016).

Petitioner explains that he shared the office with another physician, who notified him of any mail, but that physician left the location in December 2014. Petitioner's Affidavit at 2 (¶ 10) (December 8, 2016). Petitioner visited the building several times in 2015 and early in 2016 (prior to April 29), and no mail had been delivered to that office. Petitioner's Affidavit at 2 (¶¶ 13, 14) (December 8, 2016). He next visited the office on November 19, 2016, when he discovered the notice letter. Petitioner's Affidavit at 2 (¶ 15) (December 8, 2016).

One of the IG's exhibits corroborates Petitioner's statements. According to a public records search, the phone number listed for the Jefferson Street address "may be disconnected" and the website suggests that further investigation may be warranted. IG Ex. 2 at 1. Petitioner explains that the number was, indeed, disconnected and had been since 2014, when he vacated the premises. Petitioner's Affidavit (¶¶ 3, 5) (February 8, 2017).

I find it reasonable that for ten months Petitioner had in place a system for receiving his mail. Thereafter, he periodically checked for mail. After more than a year had passed without any mail deliveries to the address, Petitioner could not have anticipated an important delivery. Thus, I find reasonable his failing to check for mail more than two years after he vacated the premises.

I therefore accept that Petitioner received the notice letter on November 19, 2016. His request was therefore timely. I deny the IG's Motion to Dismiss.

My further instructions and briefing schedule are attached.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge