

The Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the case of:)	
)	
Mangat R. Pathak,)	Date: March 4, 2009
)	
Petitioner,)	Docket No. C-09-150
)	Decision No. CR1916
- v. -)	
)	
The Inspector General.)	
_____)	

DECISION

I dismiss the hearing request of Petitioner Mangat R. Pathak because it was untimely filed.

I. Background

On September 30, 2008 the Inspector General (I.G.) sent a letter to Petitioner notifying him that he was excluded from participating in Medicare and other federally funded health care programs. On December 12, 2008 Petitioner filed a request for a hearing.

The I.G. moved to dismiss Petitioner’s hearing request on the ground that it was untimely filed. Petitioner responded to the motion with a letter which he faxed to the Departmental Appeals Board on February 9, 2009.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether I must dismiss Petitioner’s hearing request.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

1. I must dismiss a hearing request that is not timely filed.

Hearings in cases involving the I.G. are governed by regulations at 42 C.F.R. Part 1005. These regulations provide that an individual who is the subject of an adverse determination by the I.G. is entitled to a hearing before an administrative law judge, but only if he or she files a hearing request within 60 days after receiving notice of the I.G.'s determination. 42 C.F.R. § 1005.2(c). The date of receipt of the notice is presumed to be five days after the date of the notice absent some showing to the contrary by the individual who is the addressee. *Id.*

The regulations direct an administrative law judge to dismiss any hearing request that is untimely filed by stating that the judge “will” dismiss any untimely request. 42 C.F.R. § 1005.2(e)(1). An administrative law judge has no discretion to grant a hearing in the case where the hearing request is untimely.

2. I must dismiss Petitioner’s hearing request because it is untimely.

The hearing request in this case is, on its face, untimely. Petitioner has offered no explanation that would refute a finding of untimeliness. Consequently, I must dismiss his hearing request.

Petitioner had 60 days from his receipt of the I.G.’s September 30, 2008 notice to him within which to request a hearing. Petitioner’s presumed deadline for filing a hearing request was December 5, 2008 if one assumes that he received the notice on October 6, 2008.* Petitioner did not file his request until December 12, 2008, a date beyond the presumed deadline. I must conclude that Petitioner’s hearing request is untimely absent proof by him that he actually received the notice on a date that is after October 6, 2008.

* In fact, five days after September 30 is October 5, 2008 but that date was a Sunday.

Petitioner offered no facts to overcome the presumption that he received notice of the I.G.'s exclusion determination by October 6, 2008. Indeed, Petitioner does not even contend that he filed his hearing request timely. In his February 9, 2009, letter responding to the I.G.'s motion to dismiss Petitioner contends that he is not, in fact, culpable for the conduct that underlies his exclusion. He also states the he is "sorry for the misunderstanding about the time for appeal." But, he does not claim that he received the I.G.'s notice letter at a date that is later than the presumed receipt date nor does he deny that his hearing request is untimely.

/s/

Steven T. Kessel
Administrative Law Judge