

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Social Security Administration,
Office of the Inspector General,

Petitioner,

v.

M.K.I.M.,

Respondent.

Docket No. C-13-132

Decision No. CR2772

Date: May 1, 2013

DECISION DISMISSING HEARING REQUEST

The Office of the Inspector General (I.G.) for the Social Security Administration (SSA) filed, on February 4, 2013, a motion to dismiss Respondent's request for hearing filed November 13, 2012. I grant the I.G.'s motion to dismiss and find that Respondent's request for hearing was not timely filed, Respondent has not demonstrated good cause for failing to meet the filing deadline, and Respondent's hearing request fails to raise any issue that may be properly addressed in a hearing .

I. Background

In a July 12, 2010 certified letter, the I.G. warned Respondent of its intention to commence a civil action against him pursuant to section 1129 of the Social Security Act (Act) (42 U.S.C. § 1320a-8). I.G. Ex. 1. That letter advised that any civil monetary penalties (CMPs) imposed would be based on the I.G.'s determination that Respondent made false statements or misrepresentations of material facts, which he knew or should have know were false or misleading. The letter further advised that, due to Respondent's

actions, the I.G. may have erroneously paid him Supplemental Security Income (SSI) payments. I.G. Ex. 1. The letter included a financial disclosure form for Respondent to complete in order for the I.G. to consider his ability to pay a CMP. The letter also included a copy of applicable regulations and informed Respondent that settlement may be available. Respondent signed the certified mail return receipt of the letter on July 16, 2010. I.G. Ex. 1. On July 27, 2010, Respondent submitted the completed financial disclosure form to the I.G. I.G. Ex. 2.

By certified letter dated April 1, 2011, and signed for by Respondent on April 7, 2011, the I.G. notified Respondent that it was imposing a CMP of \$30,000 and an assessment in lieu of damages of \$14,365.67 against him. The CMP was based on the I.G.'s determination that Respondent made false statements or misrepresentations of material fact to SSA regarding his travel outside the United States and that, because of his travel outside of the United States, he received \$14,365.67 in SSI benefits for which he was not entitled. The letter informed Respondent of all applicable due process rights and his obligations. The notice letter also specifically informed him that if he wished to contest the proposed CMP and assessment, he may request a hearing before an administrative law judge and that he must file a written request for a hearing within 60 days of the date of receipt of this letter. The I.G. also enclosed a copy of the regulatory hearing procedures with the letter.

Because no hearing request had been filed 60 days from Respondent's receipt of the I.G. notice letter, by letter dated July 8, 2011, the I.G. informed Respondent that the penalty and assessment of \$44,365.67 was owed and then due. I.G. Ex. 4. Respondent signed the certified mail receipt for this letter on July 15, 2011.

Almost a year and a half later, on November 13, 2012, Respondent filed a request for hearing. I.G. Ex. 6. In the request for hearing he acknowledged the request was late, but it was "due to good cause because I was not aware that I had to file an appeal within 60 days from the time" he received the April 1, 2011 letter. He then claims that he did not file an appeal in a timely matter because he misplaced the letter due to a brain injury sustained in March of 1997 that causes memory loss and other ailments.

I convened a prehearing conference with the parties on January 7, 2013. Counsel for the I.G. confirmed that she intended to file a motion to dismiss, and Respondent admitted he received the I.G.'s letter but did not timely file a hearing request. I set a schedule for the parties' submissions. The I.G. submitted its motion, brief in support of the motion, and I.G. Exhibits 1 through 6. Respondent submitted an answer brief together with three exhibits which he labeled Exhibits A, B and C.

II. Issue

The Respondent has admitted that he did not timely file his request for hearing. Therefore, I am only required to determine whether Respondent has demonstrated good cause for his failure to timely file his hearing request. 20 C.F.R. § 498.(f)(1). If I find that he has not demonstrated good cause, then I must dismiss his hearing request.

III. Findings and Discussion

1. *Respondent has not shown good cause for his untimely hearing request.*

The term “good cause” is not specifically defined by the regulations. The Departmental Appeals Board (Board) has not found it necessary to decide the exact scope of the term “good cause” under 20 C.F.R. Part 498. *See SSA v. Parham*, DAB CR1600 (2007). The Board has sometimes found good cause in other types of cases where circumstances were beyond the ability of a litigant to control. *Id.*

Respondent has not made such a showing here. He has offered no significant proof beyond his own assertions that he suffers from a mental disability that would cause him to suffer from memory loss and misplace items. Respondent claims his hearing request was filed over a year and a half late because he has memory loss from a head injury he suffered from a fall in 1997. He attached some medical records from his hospitalization after the fall in 1997 and some medical records from 2012, but they are not particularly relevant. None of these records indicate that Respondent suffers from such severe memory loss that would make it impossible for him to respond timely. A discharge summary dated March 12, 1997 from his hospitalization in 1997, after he sustained the injury, makes no mention of any severe memory loss. The other records he submitted are for medical visits to a family health center for periods in 2012 and 2013, which occurred well after the time limit for filing a hearing request passed in June 2011.

The only record that shows any mention of memory loss is a visit to a health care provider on April 10, 2012, which indicates that Respondent told a Nurse Practitioner that he recently experienced another seizure and he had memory loss as a result. This does not show that Respondent suffered from such severe memory loss during the relevant time period that would make it impossible for him to timely file a request for hearing. Even if this document was dated closer to the period of Respondent’s default, it does not sufficiently show the extent of any memory loss that Respondent was suffering.

I do not find that any of Respondent’s medical records support a finding that somehow Respondent’s memory loss caused him to misplace the I.G.’s April 1, 2011 letter or his claim that he does not remember that he received the letter. His evidence simply does not support a finding that Respondent was prevented from filing a timely hearing request due to circumstances beyond his control. When Respondent received the first warning notice

from the I.G. on July 16, 2010, he promptly responded to that letter by completing and sending the financial disclosure form to the I.G. on July 27, 2010.¹ Also, in each instance, Respondent signed the certified mail receipt for each of the certified letters the I.G. sent to him. Further, it is uncontested that at no time did SSA appoint a representative payee, either by request or upon SSA's own determination, to handle Respondent's SSI benefits on his behalf.

Therefore, I conclude that Respondent has not shown good cause for his failure to file a timely hearing request.

2. *Respondent's hearing request fails to raise any issue that may properly be addressed in a hearing.*

The I.G. also has set forth an alternative basis for the dismissal of Respondent's hearing request. The I.G. contends that the applicable regulations state that a request for hearing must state the specific issues or findings of fact and conclusions of law in the notice with which Respondent disagrees, and it must state the basis for Respondent's contention that the specific findings and conclusions were incorrect. 20 C.F.R. § 498.202(d)(1) and (2). The I.G. contends that Respondent's request for hearing did not state which of the specific issues or findings of fact and conclusions of law with which he disagreed nor did he state any basis for his contention that the findings and conclusions were incorrect. In fact, besides offering reasons why his request for hearing was late, Respondent's hearing request states that he is requesting a hearing "to discuss the possibility of settlement terms that would permit smaller payments over time."

My authority in proceedings under Part 498 is limited to determining whether SSA had a legal basis to assess a CMP or an assessment against a respondent. 20 C.F.R. § 498.215(a). I do not have authority to compel settlement negotiations as Respondent requests. 20 C.F.R. § 498.204(c)(3). Therefore, because Respondent's hearing request does not state any specific issues, findings of fact and conclusions of law with which he disagrees, and the basis for his contentions, I must find that his hearing request fails to raise an issue that requires a hearing before me, and I must dismiss it pursuant to 20 C.F.R. §498.202(f)(3).

¹ Respondent states he does not remember filling out the financial disclosure form because the form was completed by one of his family members. He claims that he relies on one of his sons or daughter to complete the forms for him. Although he speaks English, he states he is not able to read or write in the English language.

