

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Grace Udoka Edoho-Ukwa
(OI File No. 6-03-40680-9),

Petitioner,

v.

The Inspector General,
U.S. Department of Health and Human Services.

Docket No. C-16-302

Decision No. CR4612

Date: May 20, 2016

DECISION

The request for hearing of Petitioner, Grace Udoka Edoho-Ukwa, is dismissed pursuant to 42 C.F.R. § 1005.2(e)(1)¹ because it was untimely filed, and 42 C.F.R. § 1005.2(e)(4) for failure to raise any issue that may be properly addressed in a hearing.

I. Background

The Inspector General for the United States Department of Health and Human Services (I.G.) notified Petitioner by letter dated May 31, 2005, that she was being excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of 20 years. The I.G. cited section 1128(b)(15) of the Social Security Act (the Act) (42 U.S.C. § 1320a-7(b)(15)) as the basis for Petitioner's exclusion. The I.G. cited as the factual basis for Petitioner's exclusion her association with Grace International Medical Supplies, Inc. and Grace Medical Services and the fact

¹ References are to the 2004 revision of the Code of Federal Regulations (C.F.R.), which was in effect at the time of the agency action, unless otherwise stated.

that those entities were excluded by the I.G. from participation in Medicare and all federal health care programs pursuant to section 1128(a) or (b) of the Act. The I.G. further specified that Petitioner's exclusion is for the same period as the excluded entities with which she was associated. I.G. Exhibit (Ex.) 1.

Petitioner filed a request for hearing (RFH) by mail that was postmarked on February 3, 2016. The case was assigned to me for hearing and decision on February 12, 2016. On February 20, 2016, the I.G. filed a motion to dismiss the request for hearing with I.G. Exs. 1 and 2. A prehearing conference was convened on February 29, 2016. The substance of the prehearing conference is memorialized in my Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence dated March 1, 2016 (Prehearing Order). During the prehearing conference, Petitioner declined to waive an oral hearing; I directed Petitioner to respond to the motion to dismiss not later than March 23, 2016; and I advised the parties that I would rule on the motion to dismiss prior to further case development. Prehearing Order ¶ 5. On March 2, 2016, Petitioner filed a document titled "Request for Continuation of Waiver Hearing." No further filings have been received from Petitioner and the motion to dismiss is considered ripe for ruling. Petitioner did not object to my consideration of I.G. Exs. 1 and 2 and they are admitted as evidence.

II. Discussion

A. Applicable Law

Section 1128(f) of the Act (42 U.S.C. § 1320a-7(f)) establishes Petitioner's rights to a hearing by an administrative law judge (ALJ) and judicial review of the final action of the Secretary of the United States Department of Health and Human Services (Secretary). The Secretary has provided by regulation that an excluded individual has the right to request a hearing before an ALJ. 42 C.F.R. §§ 1001.2007(a)(1), 1005.2(a). The regulations require that a request for hearing be in writing and be filed not more than 60 days from the date of receipt of the notice of exclusion. 42 C.F.R. §§ 1001.2007(b), 1005.2(c). The notice of exclusion is presumed to be received five days after the date on the notice, unless there is a reasonable showing to the contrary. 42 C.F.R. § 1005.2(c). I am required to dismiss a request for hearing that is not filed timely. 42 C.F.R. § 1005.2(e)(1). The regulations grant me no discretion to waive a late filing or to extend the time for filing.

Pursuant to 42 C.F.R. § 1001.2007(a)(1), an individual excluded by the I.G. may request review by an ALJ on the issues of whether: (1) there is a basis for exclusion; and (2) the period of exclusion is unreasonable. However, when the I.G. imposes the minimum period of exclusion authorized by Congress, the regulation provides that there is no issue of the reasonableness of the period of exclusion. 42 C.F.R. § 1001.2007(a)(2). Pursuant to 42 C.F.R. § 1005.2(e)(4), I must dismiss a request for hearing that does not raise an

issue that may be properly addressed in a hearing. I am bound to comply with the regulations. 42 C.F.R. § 1005.4(c)(1).

B. Issue

Whether Petitioner's request for hearing must be dismissed because it was not timely filed and/or fails to raise an issue that may be properly addressed in a hearing?

C. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold followed by the pertinent findings of fact and analysis.

- 1. Petitioner's request for hearing was not timely filed.**
- 2. Petitioner's request for hearing raises no issue that may be properly addressed in a hearing.**
- 3. Petitioner's request for hearing must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(1) and (4).**

There is no dispute that the I.G. mailed Petitioner a letter dated May 31, 2005, notifying her of her exclusion from Medicare, Medicaid, and all federal health care programs. I.G. Ex. 1. Pursuant to 42 C.F.R. § 1005.2(c), there is a rebuttable presumption that the May 31, 2005 notice was received by Petitioner on Monday, June 6, 2005, as June 5, 2005 was Sunday and it is presumed there was no mail delivery on that day. Petitioner has not presented evidence to show or argued that she received the notice of exclusion after June 6, 2005. Pursuant to 42 C.F.R. §§ 1001.2007(b) and 1005.2(c), Petitioner had 60 days to file her request for hearing. The 60th day after her presumed receipt of the notice fell on Friday, August 5, 2005, and that was the deadline for Petitioner to file her request for hearing. 42 C.F.R. § 1005.12(a).

There is no dispute that Petitioner's request for hearing dated February 2, 2016, was postmarked February 3, 2016 (I.G. Ex. 2), and that date is treated as the date of filing. August 5, 2005 was the deadline for Petitioner to file her request for hearing. Therefore, Petitioner's request for hearing was filed more than ten years late. Because Petitioner's request for hearing was late, the I.G. has moved that this case be dismissed.

The regulations grant me no discretion to extend the time for filing a request for hearing or to excuse the late filing of a request for hearing. I am required to dismiss a hearing request that is not timely filed. 42 C.F.R. § 1005.2(e)(1). Petitioner's only possible defense to the motion to dismiss is a showing that she received the May 31, 2005 notice

