

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Marvin Reich, M.D.,
(OI File No. H-13-41667-9),

Petitioner,

v.

The Inspector General.

Docket No. C-14-1958

ALJ Ruling No. 15-1

Date: October 20, 2014

DISMISSAL

Petitioner, Marvin Reich, M.D., is a Florida physician who appeals his two-year exclusion from participation in Medicare, Medicaid, and all federal health care programs. For the reasons discussed below, I dismiss his appeal as untimely filed.

In a letter dated February 28, 2014, the Inspector General (I.G.) advised Petitioner that, based on his conviction “of a misdemeanor offense related to the unlawful manufacture, distribution, prescription, or [dispensing] of a controlled substance” he was excluded from participation in Medicare, Medicaid, and all federal health care programs for a period of two years. With the notice letter, the I.G. sent Petitioner an explanation of his appeal rights: he was entitled to a hearing before an administrative law judge if he filed a written request for review within sixty days after receipt of the notice.

Petitioner filed his hearing request six months later, well after the filing deadline had passed. Although the request is dated July 16, 2014, its envelope is postmarked August 26, 2014. The Civil Remedies Division received it on September 2, 2014.

The regulations governing these appeals provide that an aggrieved party *must* request a hearing within sixty days after receiving notice of the exclusion. 42 C.F.R.

§ 1001.2007(b). 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. 42 C.F.R. § 1005.2(c). The regulations include no good-cause exceptions for untimely filing, providing that the ALJ *will* dismiss a hearing request that is not filed in a timely manner. 42 C.F.R.

§ 1005.2(e)(1); *John Maiorano, R. Ph. v. Thompson*, Civ. Action No. 04-2279, at 6 (D. N.J. 2008), WL 304899.

Petitioner acknowledges timely receipt of the notice, and says that he instructed his attorney to file an appeal, but his attorney failed to do so. Because the regulations provide no good cause exception for untimely filing, I need not consider whether attorney error excuses the late filing. Under the regulations, I have no discretion and must dismiss his appeal as untimely filed.

Petitioner's hearing request is therefore dismissed.

/s/

Carolyn Cozad Hughes
Administrative Law Judge