

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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| _____ |) | |
| In the Case of: |) | |
| |) | |
| Charles J. Anselmo, |) | Date: July 22, 2009 |
| |) | |
| Petitioner, |) | |
| |) | |
| - v. - |) | Docket No. C-09-311 |
| |) | Decision No. CR1979 |
| The Inspector General. |) | |
| _____ |) | |

DECISION

Petitioner, Charles J. Anselmo, asks review of the Inspector General's (I.G.'s) determination to exclude him for ten years from participation in Medicare, Medicaid, and all federal health care programs under section 1128(a)(3) of the Social Security Act. The I.G. has moved for dismissal, arguing that the appeal is untimely.¹ I agree and dismiss Petitioner's appeal.

Petitioner's hearing request must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(1) because it was not timely filed.²

Petitioner was a pharmacist licensed in the State of Texas. On August 14, 2001, he was convicted of a felony, aiding and abetting health care fraud, in violation of 18 U.S.C. sections 1347 and 2. CMS Ex. 3.

In a letter dated May 30, 2003, the I.G. advised Petitioner that, based on his felony conviction, he was excluded from participation in Medicare, Medicaid, and all federal health care programs for a period of 10 years. CMS Ex. 1, at 37. With the notice letter,

¹ The I.G. has filed its motion to dismiss, accompanied by five exhibits (I.G. Exs. 1-5) and two attachments. Petitioner filed a response to the I.G.'s motion, and the I.G. filed a reply.

² I make this one finding of fact/conclusion of law.

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. CMS Ex. 1, at 39. Petitioner filed a hearing request on March 11, 2009, almost *six years* after the notice was sent.

Petitioner does not dispute his timely receipt of the notice, but claims that he did not appeal timely because he misunderstood the terms of his criminal plea agreement, mistakenly thinking that it precluded him from appealing the I.G.'s exclusion. (In reality, it precluded him only from appealing his criminal conviction). Petitioner also asserts that, at the time he received the notice, he reasonably anticipated that he could find employment as a pharmacist, notwithstanding the exclusion. But, because Medicare changed its reimbursement practices, pharmacies that might then have employed him would no longer do so. Finally, Petitioner complains about the I.G.'s delay in imposing his exclusion.

The regulations governing these proceedings grant me virtually no discretion. 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*, No. 04-2279, slip op. at 6, 2008 WL 304899, at *3 (D.N.J. Feb. 1, 2008).

I therefore dismiss Petitioner's request for a hearing pursuant to 42 C.F.R. § 1005.2(e)(1).

/s/

Carolyn Cozad Hughes
Administrative Law Judge