

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

LaVaughn Caradine,

Petitioner,

v.

The Inspector General.

Docket No. C-12-504

Decision No. CR2637

Date: October 3, 2012

DECISION

Petitioner's counsel, Gregory N. Wittner, filed a request for hearing on Petitioner's behalf on March 12, 2012. The case was assigned to me for hearing and decision on March 29, 2012. I held a prehearing conference on April 17, 2012. I granted the Inspector General's (I.G.'s) request to consider a motion to dismiss prior to development of the case for hearing. I set a briefing schedule on the motion to dismiss, as reflected in my Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence dated April 17, 2012 (April 17 Order). The I.G. timely filed his motion to dismiss, memorandum in support of the motion, and exhibits on May 11, 2012. Pursuant to the April 17 Order, Petitioner's response to the motion to dismiss was due on June 18, 2012.

On June 18, 2012, Mr. Wittner filed a motion asking me to extend Petitioner's deadline for filing a response to Wednesday, July 11, 2012. On June 21, 2012, I denied the motion. On June 27, 2012, I denied Mr. Wittner's motion for reconsideration. Mr. Wittner never filed a response on Petitioner's behalf. On July 24, 2012, I issued an Order to Show Cause, giving Petitioner until August 2, 2012, to show cause why the case should not be dismissed for abandonment pursuant to 42 C.F.R. § 1005.2(e)(3) or as a sanction pursuant to 42 C.F.R. § 1005.14 for failure to comply with my April 17 Order.

I stated that if Petitioner did not intend to abandon his request for hearing, Petitioner's response to the I.G.'s motion to dismiss should be filed with his response to the Order to Show Cause, effectively extending to August 2, 2012, the time by which Petitioner's response could be filed.

On July 30, 2012, Mr. Wittner filed Petitioner's answer to my Order to Show Cause and a motion to withdraw as Petitioner's counsel. He also filed the "Affidavit of LaVaughn Caradine" dated July 27, 2012. Mr. Wittner moved to withdraw as Petitioner's counsel citing a conflict between himself and the "Board." There is no conflict with the "Board." Mr. Wittner failed to file a timely response to the I.G.'s motion to dismiss. Rather than simply default Petitioner or rule upon the motion to dismiss based on the existing record, I gave Mr. Wittner an additional opportunity to file a response to the motion to dismiss with his response to the Order to Show Cause. Mr. Wittner failed to zealously represent his client when he elected to simply withdraw from representation of Petitioner and failed to file a response to the Order to Show Cause and a response to the I.G.'s motion to dismiss.

Petitioner's July 27, 2012 affidavit advised that he no longer wanted Mr. Wittner to represent him. By Order of July 31, 2012, I acknowledged Mr. Wittner's request to withdraw as counsel. I informed Petitioner, however, that who he retains as counsel is a matter of his choice, and that it was not necessary for Mr. Wittner to request leave to withdraw, as his services have been terminated by Petitioner. I informed Petitioner that it was up to Petitioner to determine who would be representing him and to decide whether Mr. Wittner's withdrawal at this stage of the proceedings caused him undue prejudice.

My July 31 Order informed Petitioner that until such time as new counsel entered an appearance on behalf of Petitioner, all future notices and communication would be with Petitioner, LaVaughn Caradine, at the address noted for Petitioner by Mr. Wittner in his March 12, 2012 letter requesting a hearing on Petitioner's behalf, 965 Hamilton, St. Louis, Missouri 63112 (unless advised otherwise by Petitioner). To ensure that Mr. Wittner's withdrawal caused no avoidable prejudice to Petitioner, I granted Petitioner an additional 45 days, until September 14, 2012, to file his response to the I.G.'s motion to dismiss. If Petitioner elected to retain counsel, he was to advise his new counsel to file a notice of appearance. Petitioner was also to advise his new counsel that the I.G.'s motion to dismiss has been pending since May 11, 2012, and that no further extension of time to respond to the motion would be granted. Petitioner was notified that if he failed to file a response to the motion to dismiss by September 14, 2012, I would conclude that he had waived a response and I would decide the motion upon the record before me.

Petitioner has failed to file a response. Accordingly, Petitioner has waived the right to respond.

