

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Care With Dignity Convalescent Hospital,
(CCN: 05-5698),

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-17

Decision No. CR2362

Date: April 26, 2011

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Care With Dignity Convalescent Hospital. Petitioner forfeited its right to a hearing in this case because it failed to comply with my pre-hearing orders and failed to file either a pre-hearing brief or proposed exhibits.

I. Background

Petitioner is a skilled nursing facility doing business in San Diego, California. It participates in the Medicare program. Its participation in Medicare is governed by sections 1819 and 1866 of the Social Security Act and by implementing regulations at 42 C.F.R. Parts 483 and 488. Its hearing rights in this case are governed by regulations at 42 C.F.R. Part 498.

The Centers for Medicare and Medicaid Services (CMS) determined to impose remedies against Petitioner based on surveys of Petitioner's facility that found that Petitioner was not complying substantially with Medicare participation requirements. Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

I issued a pre-hearing order to the parties that directed them to file pre-hearing exchanges consisting of proposed exhibits and briefs addressing all of the issues of the case. CMS complied with my order on February 22 by filing a brief and proposed exhibits. Petitioner's exchange was due 30 days later.

Petitioner failed to file an exchange. I then issued an order to show cause to Petitioner that directed it to either file a pre-hearing exchange or to explain why it had failed to do so. Petitioner filed no response to the order to show cause.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue before me is whether I should dismiss Petitioner's hearing request.

B. Findings of fact and conclusions of law

I make the following findings of fact and conclusions of law. Petitioner failed to comply with my pre-hearing orders in this case. It filed no pre-hearing exchange in response to my initial order nor did it respond to the order to show cause that I issued to it after it failed to file a pre-hearing exchange. More important, Petitioner failed to offer any argument or evidence in response to CMS's pre-hearing exchange and failed to mount any defense to CMS's allegations and evidence of noncompliance. In its exchange CMS filed 35 proposed exhibits, including the written direct testimony of its proposed witnesses, detailing its case against Petitioner. CMS also filed a pre-hearing brief that articulated its fact assertions and its legal arguments. Petitioner was thus put on notice precisely of CMS's case and yet, it failed to file anything in response.

An administrative law judge may dismiss a party's hearing request when that party has no right to a hearing. 42 C.F.R. § 498.70(b). I find that Petitioner forfeited its right to a hearing. First, it failed to comply with any of the pre-hearing orders. I effectively gave Petitioner two opportunities to mount a defense to CMS's allegations and evidence. Notwithstanding, Petitioner filed no pre-hearing exchange in compliance with the deadline I set initially nor did it file anything in response to the order to show cause that I issued. Second, Petitioner abandoned its hearing request. CMS presented a comprehensive case against Petitioner, offering evidence and argument as to why CMS's remedy determinations should be sustained. That case imposed on Petitioner the duty to file evidence and argument of its own if it wanted a hearing. Petitioner filed nothing.

/s/
Steven T. Kessel
Administrative Law Judge