

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Karen Karsif, M.D.,
(NPI: 1760433957),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-777

Decision No. CR2502

Date: February 13, 2012

DECISION

I dismiss as untimely Petitioner's hearing request in this matter.

Petitioner is not entitled to a hearing because she did not file a timely hearing request, and no good cause justifies extending the time for filing.¹

The regulations governing these proceedings mandate that an affected party, who would be entitled to a hearing under 42 C.F.R. Part 498, must file her request for hearing in writing within 60 days of the day she receives notice of the determination that she wishes to appeal, unless the appeal period is extended. 42 C.F.R. § 498.40(a)(2). On motion of a party, or on his/her own motion, an Administrative Law Judge may dismiss a hearing request that was not timely filed, if the time for filing was not extended. 42 C.F.R. § 498.70(c). Receipt of the notice is "presumed to be 5 days after the date on the notice unless there is a showing that it was, in fact, received earlier or later." 42 C.F.R. §§ 498.40(a)(2), 498.22(b)(3).

¹ I make this one finding of fact/conclusion of law.

Here, Petitioner, Karen Karsif, M.D., applied for enrollment in the Medicare Part B program. By letter dated May 5, 2011, the Medicare contractor, National Government Services, Inc., approved her application, effective March 13, 2011. Petitioner Karsif sought reconsideration, challenging the effective date. In a decision letter dated May 23, 2011, the contractor denied her request. The contractor's letter included notice of Petitioner's appeal rights, advising: "You must file your appeal within 60 calendar days after the date of receipt of this decision by writing" The letter then told her to submit her appeal to this office and provided the address of the Civil Remedies Division of the Departmental Appeals Board. The letter also referred her to 42 C.F.R. § 498 for an explanation of her appeal rights.

Although Petitioner's appeal letter has two dates on it -- July 27, 2011 and September 8, 2011 -- the document was postmarked September 9, 2011, and received in this office on September 14, 2011, well after the regulatory filing deadline. Petitioner did not seek an extension of time for filing her appeal. She did not suggest good cause justified late filing.

In an order dated February 1, 2012, I directed Petitioner to show cause why this matter should not be dismissed as untimely. I also directed the Centers for Medicare and Medicaid Services (CMS) to explain its position on whether the appeal should be dismissed as untimely filed. Order to Show Cause (Feb. 1, 2012).

CMS responded by noting that the "evidence available" does not establish that Petitioner timely mailed her appeal. CMS asked that the matter be dismissed as untimely, citing 42 C.F.R. § 498.70(c). Petitioner responded: "We began our appeal process on 7/27/11 to request a review of the denial we received regarding case: 225401113654295" (the case number assigned to her application). Petitioner then repeats the argument she proffered in her appeal letter. Petitioner does not explain what she did on July 27, 2011 that began the appeals process. She does not claim that she mailed her appeal to this office, as instructed by the notice letter. And no evidence suggests that she submitted her appeal prior to September 9, 2011. Petitioner has not asked for an extension of time for filing nor explained why an extension is warranted.

Because Petitioner did not file her hearing request within 60 days of receiving the contractor's notice letter, and no good cause justifies my extending the time for filing, I dismiss Petitioner's hearing request. 42 C.F.R. § 498.70(c).

/s/

Carolyn Cozad Hughes
Administrative Law Judge