

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Maria Bejacmar-Didier
Request for Reconsideration of Decision No. 2956
Ruling No. 2019-5
September 19, 2019

RULING DENYING REQUEST TO RECONSIDER DECISION

On July 25, 2019, the Board declined to review the administrative law judge decision (ALJ Decision) in *Maria Bejacmar-Didier, Ph.D.*, DAB CR5321 (2019). DAB No. 2956 (2019) (Decision to Decline Review) (decided under DAB Docket No. A-19-88). The ALJ had dismissed Petitioner Maria Bejacmar-Didier's (Petitioner) request for a hearing on her exclusion from participation in federal health care programs by the Inspector General because Petitioner had not filed her hearing request within the time limit provided in 42 C.F.R. §§ 1001.2007(b) and 1005.2(c), a circumstance that required dismissal under 42 C.F.R. § 1005.2(e)(1).

On September 13, 2019, the Board received via DAB E-file a submission identified as a "Request for Reconsideration/Reopening of Board Decision," which consisted of two image files. The first image file is entitled "Motion to Vacate the Dismissal of a Request for Hearing" (Motion) and the second image file contains a two-paragraph statement signed by "Vanessa Didier, Esq.," which appears to be the second page of the Motion. The Board docketed these two submissions as a new appeal under docket number A-19-129. The Board also received four more submissions, each filed via DAB E-File as a new "Request for Reconsideration/Reopening of Board Decision," which the Board uploaded to docket number A-19-129. *See* Memo Re: DAB E-File Tracking Nos. 65704, 65727, 65728 and 65730 (September 17, 2019). As explained below, we construe Petitioner's Motion, together with the other documents now filed under docket number A-19-129, as a request to reconsider our Decision to Decline Review but deny the request.

The regulations in 42 C.F.R. Part 1005 govern Board review of ALJ decisions in Inspector General exclusion appeals. Those regulations do not expressly authorize the Board to reconsider a decision it makes in an exclusion case. Nonetheless, "[t]he Board has recognized . . . that it has inherent authority to reopen and reconsider such a decision under the general principle that an adjudicator may act to correct an error in a decision." *Rosa Velia Serrano*, DAB Ruling No. 2019-2 at 6 (April 25, 2019) (citing *Charles Brian Griffin*, Ruling on Request for Reconsideration, DAB Ruling No. 2017-3, at (May 10, 2017); *Mark B. Kabins, M.D.*, Ruling on Motion for Reconsideration, DAB Ruling No.

2012-1, at 2-3 (Oct. 14, 2011)). However, as the Board reiterated in *Serrano*, “reopening a Board decision ‘is not a routine step’ in the Board’s adjudication process.” *Id.* at 5 (citing *Kabins* at 3). “Rather, ‘it is the means for the parties and the Board to point out and correct any errors that make the decision clearly wrong.’” *Id.* The Board emphasized that “[a] ‘motion for reconsideration is not a vehicle for an aggrieved party to repeat arguments already made and rejected.’” *Id.*

Applying these standards here, Petitioner identifies no error in our Decision to Decline Review, much less a clear error requiring us to reconsider that Decision. At the outset, it is not clear who filed the request for reconsideration because, while the Motion was signed by “Vanessa Didier, Esq.,” it was uploaded to DAB E-File through Petitioner’s user account. It is also unclear whether “Vanessa Didier, Esq.” even represents Petitioner because the Motion was not accompanied by either a signed statement authorizing such representation, as required by the Board’s *Guidelines – Appellate Review of Decisions of Administrative Law Judges in Cases to Which Procedures in 42 C.F.R. Part 1005 Apply, “Starting the Review Process”* subsection (b)¹, or an attorney’s notice of appearance.² Moreover, Petitioner’s Motion relies on a regulation authorizing an ALJ to vacate his or her dismissal of a hearing request for good cause, 42 C.F.R. § 498.72, that does not apply to ALJ or Board review of Inspector General exclusions, which is the type of appeal at issue here.³

¹ The Guidelines are available at <https://www.hhs.gov/about/agencies/dab/different-appeals-at-dab/appeals-to-board/guidelines/procedures/index.html#start>.

² The appending of the term “Esq.” (an honorary title) to a signature on the Motion, without more, is not sufficient to show that the signer is a licensed attorney retained by the Petitioner to represent her in this proceeding.

³ Section 498.72 applies to appeals of determinations that affect participation in the Medicare and Medicaid programs. *See generally*, 42 C.F.R. Part 498.

But even apart from these deficiencies, we find no basis for reconsidering our Decision to Decline Review. Petitioner's Motion and accompanying documents merely reiterate arguments Petitioner made to the ALJ regarding Petitioner's health. Those arguments were not relevant to the ALJ's dismissal of Petitioner's request for hearing and the Board's Decision to Decline Review because the regulations governing exclusion appeals, (see ALJ Decision at 3; Decision to Decline Review at 1), do not allow ALJs to extend the time to file a hearing request for any reason, including health issues; instead, they require ALJs to dismiss a hearing request that is not timely filed. 42 C.F.R. §1005.2(e)(1).

/s/

Christopher S. Randolph

/s/

Constance B. Tobias

/s/

Sheila Ann Hegy
Presiding Board Member