

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Appeals Board

Civil Remedies Division

In the Case of:)	DATE: November 17, 1989
David L. Golden, M.D.,)	
Petitioner,)	Docket No. C-129
- v. -)	DECISION # CR55
The Inspector General.)	

DECISION

This case is before me on Petitioner's request for a hearing challenging his exclusion from participation as a provider in the Medicare and Medicaid programs. I am dismissing the request because it was not timely filed and I do not have good cause to allow a late filing.

By letter dated June 14, 1987, the Inspector General ("I.G.") notified Petitioner that he was being suspended from participation in the Medicare and Medicaid programs for three years, pursuant to Section 1128(a) of the Social Security Act, 42 U.S.C. 1320a-7(a).¹ The reason provided for Petitioner's exclusion was his conviction in a Louisiana state court of an offense related to his participation in the Medicaid program. Petitioner requested a hearing by letter dated June 5, 1989.

On October 2, 1989, the I.G. moved to dismiss the Petitioner's hearing request, arguing that it was not timely filed, and that Petitioner had not shown good

¹ The term "exclusion" is currently used to describe the same action as the term "suspension" did in June 1987.

cause for the untimely filing. Petitioner did not respond to the I.G.'s motion.²

ISSUES

1. Whether Petitioner's hearing request was timely filed.
2. Whether Petitioner had "good cause" for not timely filing his request for hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On June 4, 1987, the I.G. notified Petitioner that he was being excluded from participation as a provider in the Medicare and Medicaid programs (Notice).
2. Petitioner received the I.G.'s Notice on June 16, 1987.
3. The I.G.'s Notice advised Petitioner that if he wanted a hearing on his exclusion, he must file his request within 60 days of his receipt of the Notice.
4. By letter dated June 5, 1989, Petitioner requested a hearing on his exclusion.
5. Petitioner did not file a timely request for a hearing.
6. Petitioner has not shown good cause for allowing his hearing request to be received out of time.

ANALYSIS

The I.G. has moved for summary disposition of Petitioner's request for a hearing. The I.G. contends that there is no material fact in dispute, that Petitioner's request was out of time, and that there is no good cause to allow Petitioner's untimely request.

² In a prehearing order of September 5, 1989, I set October 18, 1989 as the due date for Petitioner's response. As noted in my order, in a telephone conference on August 28, 1989, Petitioner had agreed to the October 18 deadline.

Petitioner did not respond to the I.G.'s motion. In his request for a hearing, he alleged that he had not received the I.G.'s Notice.³ At a prehearing telephone conference on August 28, 1989, he indicated that he would attempt to prove that the person who signed a United States Postal Service certified mail receipt for the I.G.'s Notice was not Petitioner's employee and thus could not receive mail for him.

The I.G. filed in support of its motion copies of certified official documents relating to Petitioner's 1986 state conviction for Medicaid fraud and copies of correspondence concerning his conviction and subsequent exclusion as a provider from the Medicare and Medicaid programs. The I.G. also submitted a copy of an affidavit by one of his program analysts describing the above-mentioned correspondence and attaching other related documents.

Most significant of all of these submissions were copies of postal receipts and a letter signed by a Nidga Huggins. On June 16, 1987, Ms. Huggins receipted for the I.G.'s Notice. I.G. Exhibits (Ex.) 7, 8. On July 10, 1987, Ms. Huggins receipted for a letter to Petitioner from the Louisiana Department of Human Resources advising him that the State was extending a previous one-year exclusion from participation as a provider in the Medicaid program to a term coinciding with the three-year term imposed and directed by the I.G., and enclosing a copy of the I.G.'s Notice. I.G. Ex. 9. On October 19, 1987 Ms. Huggins wrote to the Louisiana Board of Medical Examiners to return an unopened certified letter because Petitioner was "unable to receive his own mail at the present time." Affidavit of William J. Hughes, Attachment 7.

These documents show that during the period in question Ms. Huggins acted in the capacity of someone who received Petitioner's mail for him. Not only did she receipt for his mail, but when he was "unable to receive. . . mail," she returned it. Petitioner did not dispute the authenticity of these documents, nor did he offer any proof to refute the conclusion that these documents prove that he received the I.G.'s Notice in June 1987. Thus, I

³ In a "Position Statement" accompanying his request, Petitioner admits that he was convicted on three counts of Medicaid fraud. The Notice specified conviction on three counts.

find that he did receive the Notice in June 1987 and that his hearing request approximately two years later was out of time.

Although Petitioner does not have a right to a hearing in this case, I have authority to grant him a hearing if he demonstrates good cause for not timely filing a hearing request. However, Petitioner has not credibly offered any cause for not timely filing his hearing request.

CONCLUSION

For the reasons above stated, I find that Petitioner's hearing request was untimely filed, and in the absence of good cause to allow such late filing, I dismiss his request.

/s/

Steven T. Kessel
Administrative Law Judge