

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Michele Peetz, FNP-C,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-444

ALJ Ruling No. 2016-11

Date: June 10, 2016

ORDER DENYING REQUEST TO VACATE ORDER OF DISMISSAL

I deny the construed request of Petitioner, Michele Peetz, FNP-C, dated May 10, 2016, that I vacate my previous order dismissing this case. Petitioner has not shown good cause pursuant to 42 C.F.R. § 498.72 for vacatur of the Order of Dismissal that I issued on April 25, 2016.¹ The Order of Dismissal was based on Petitioner's failure to establish good cause to extend the time for filing her request for hearing pursuant to 42 C.F.R. §§ 498.40(a)(2), (c) and 498.70(c).

The Departmental Appeals Board (Board) has stated that pursuant to 42 C.F.R. § 498.40(c)(2), an administrative law judge (ALJ) may extend the time for filing an untimely request for hearing, and that an ALJ may dismiss an untimely request for

¹ I have construed Petitioner's May 10, 2016 letter as a request for vacatur of the Order of Dismissal. While the letter is addressed to "Counsel for CMS" and not to me, Petitioner electronically submitted the letter to the Civil Remedies Division as a new appeal shortly after I issued the Order of Dismissal. The April 25, 2016 Order of Dismissal advised Petitioner of her appeal rights, and I remind Petitioner that if she remains dissatisfied with the dismissal of her request for hearing, she has 60 days from the date of receipt of the April 25, 2016 Order of Dismissal to request review by the Departmental Appeals Board. *See* 42 C.F.R. §§ 498.80 and 498.82(a).

hearing pursuant to 42 C.F.R. § 498.70(c) if good cause is not shown for the untimely filing. *MedStar Health, Inc.*, DAB No. 2684 at 7 (2016). Neither the Board nor applicable regulations provide a definition of “good cause,” and an ALJ has the discretion to deny a petitioner’s request to extend the time for filing a hearing request if no good cause is shown. *Medstar Health*, DAB No. 2684 at 8; *see NBM Healthcare, Inc.*, DAB No. 2477 at 3-4 (2012). An ALJ may vacate his or her dismissal of a request for hearing if a party files a request to vacate within 60 days from receipt of the dismissal notice and the party shows good cause for vacating the dismissal. 42 C.F.R. § 498.72; *see Consolidated Community Resources, Inc.*, DAB No. 2676 at 5 (2016).

Petitioner previously argued, in an attempt to demonstrate good cause for filing an untimely request for hearing, that she sought assistance from her credentialing department, politicians, and others prior to filing her untimely request for hearing. In my Order of Dismissal, I addressed her arguments and explained that Petitioner had not shown good cause for filing her request for hearing almost nine months after the expiration of the 60-day deadline for doing so, stating:

I conclude that Petitioner’s reason for failing to file a timely hearing request does not constitute good cause to extend the filing deadline. Dismissal of a hearing request is appropriate where the reconsidered determination clearly explained the filing requirements and deadlines, the petitioner did not claim that “it reasonably misunderstood what steps it needed to take to exercise its right to a hearing,” and “the only reason for the late filing was that Petitioner was hoping . . . to achieve a satisfactory resolution by means other than a formal hearing request before an administrative law judge.” *Borger Enterprises, LLC, D/B/A Caprock Nursing & Rehab.*, DAB No. 2618 at 3 (2015); *see also Vanguard Vascular & Vein, PLLC, et al.*, DAB No. 2523 at 3-4 (2013) (upholding the dismissal of an untimely hearing request when the reconsidered determination explained in “unambiguous and conspicuous language” that the petitioners had 60 days from their receipt of the reconsidered determination to request a hearing before an ALJ).

Here, the April 20, 2015 reconsidered determination clearly stated that Petitioner had 60 days from receipt of the determination to request a hearing. The determination also provided the postal address for Petitioner to file her request by mail and an alternative electronic filing address and instructions for Petitioner to file her hearing request electronically. In addition, the determination included the office and telephone number to call if Petitioner had any questions. Petitioner does not deny that she was

provided clear notice of her right to appeal and detailed instructions for submitting her request or that she understood those instructions.

Michele Peetz, FNP-C, ALJ Ruling No. 2016-9 at 4 (2016).

In her construed request for vacatur of the Order of Dismissal, Petitioner now additionally contends that she “was not aware of how this process worked” and that she did not have the assistance of legal counsel. As I previously explained, and as detailed above, the April 20, 2015 reconsidered determination provided adequate notice informing Petitioner how she could timely seek review by an ALJ. In fact, the reconsidered decision clearly instructed that she “must file [an] appeal within 60 calendar days after the date of receipt of this decision by writing to the following address,” and that Petitioner should include specified identifying information and a copy of the decision being appealed. While Petitioner has indicated in her submissions dated March 14, 2016 and May 10, 2016, that she sought assistance from politicians, a nursing organization, government agencies, and local colleges after receiving the April 20, 2015 reconsidered decision, she simply did not comply with the straightforward instructions that explained how she could file a timely request for hearing. Furthermore, while Petitioner now reports that she “was not aware” that she “needed to submit the letter of the intent to appeal, thinking the credentialing department had already done so,” she also admitted in the same letter that she “continued to work with her credentialing department *until the end of April 2015* when [she] was advised that the credentialing department had taken the issue to the legal department on [her] behalf and was told *they have gone as far as they are willing to go on [her] behalf, but, [she] was free to look into it on [her] own.*” Petitioner’s May 10, 2016 Letter (emphasis added). Thus, Petitioner admits that well before the deadline to file a request for hearing expired on June 26, 2015, she was aware that her credentialing department would not handle the matter and that she would need to file a request for hearing on her own (or else seek legal representation). Petitioner has not demonstrated that she was prevented from filing a timely request for hearing due to a lack of legal representation. Nor has Petitioner shown that her “ignorance of the Medicare and legal system,” in the face of clear guidance in the April 20, 2015 letter regarding how to file a timely request for hearing, constitutes good cause for her late request for hearing.

For the foregoing reasons, Petitioner’s request for vacatur of the Order of Dismissal is denied.

_____/s/_____
Leslie C. Rogall
Administrative Law Judge