

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Larry Franklin Horton,

Petitioner

v.

The Inspector General.

Docket No. C-10-188

Decision No. CR2119

Date: April 23, 2010

DECISION

The hearing request of Petitioner, Larry Franklin Horton, is dismissed pursuant to 42 C.F.R. § 1005.2(e)(3) for abandonment.

I. Background

The Inspector General for the Department of Health and Human Services (the I.G.) notified Petitioner by letter, dated September 30, 2009, that he was excluded from participation in Medicare, Medicaid, and all federal health care programs for the minimum statutory period of 5 years pursuant to section 1128(a)(1) of the Social Security Act (Act). The basis cited for Petitioner's exclusion was his conviction in the United States District Court, District of South Carolina, of a criminal offense related to the delivery of an item or service under Medicare or a state health care program.

Petitioner timely requested a hearing by letter dated November 20, 2009. The case was assigned to me for hearing and decision on December 4, 2009. I convened a prehearing conference by telephone on January 5, 2010, the substance of which is memorialized in my January 6, 2010 Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence (Prehearing Order). Petitioner waived his right to representation and to an oral hearing during the prehearing conference.

On February 3, 2010, the I.G. filed a brief in support of Petitioner's exclusion with I.G. exhibits 1 through 4. Pursuant to the Prehearing Order, Petitioner's brief and supporting exhibits were due to be filed not later than March 8, 2010. No filing has been received from Petitioner. On March 18, 2010, the staff attorney assisting me in this matter, Ms. Sapper, emailed Petitioner to inquire as to the status of his submission. Petitioner has not responded to the email. Also, on March 18, 2010, Ms. Sapper telephoned Petitioner. However, Petitioner did not answer the telephone, and there was no answering machine upon which to leave a message. On March 23, 2010, Ms. Sapper again telephoned Petitioner, but there was no answer by Petitioner and no answering machine.

On March 26, 2010, I issued an order for Petitioner to show cause not later than April 2, 2010, why his request for hearing should not be dismissed for abandonment pursuant to 42 C.F.R. § 1005.2(e)(3), or as a sanction pursuant to 42 C.F.R. § 1005.14, for violation of the Prehearing Order. No filing has been received from Petitioner as of the date of this decision.

II. Discussion

A. Issue

Whether Petitioner's request for hearing must be dismissed?

B. Law

An Administrative Law Judge (ALJ) is required to dismiss a request for hearing when a petitioner has abandoned his or her hearing request. 42 C.F.R. § 1005.2(e)(3).

An ALJ may sanction a party to an action for failure to comply with an order. An authorized sanction is dismissal of the action. 42 C.F.R. § 1005.14.

C. Findings of Fact, Conclusions of Law, and Analysis

Petitioner has failed to respond to the CMS brief in support of exclusion. Petitioner has also failed to respond to the Order to Show Cause. I find that Petitioner has abandoned his request for a hearing. Accordingly, I conclude that dismissal is required by 42 C.F.R. § 1005.2(e)(3).

III. Conclusion

For the foregoing reasons, Petitioner's request for hearing is dismissed.

/s/

Keith W. Sickendick
Administrative Law Judge