

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Elinor Schottstaedt, M.D.,  
(Provider Enrollment Reconsideration No.: 4409065025000),

Petitioner

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-292

Decision No. CR2131

Date: May 14, 2010

**DECISION**

The request for hearing filed by Petitioner, Elinor Schottstaedt, M.D., is dismissed pursuant to 42 C.F.R. § 498.70(c), because it was not timely filed. Petitioner has not stated good cause to extend the time for filing. Pursuant to 42 C.F.R. § 498.72, I may vacate the dismissal of a request for hearing if a party files a written request within 60 days of receipt of this decision and shows good cause.

**I. Background**

Petitioner is a physician with a medical practice in Scottsdale, Arizona. The Medicare contractor, Noridian Administration Services (NAS), notified Petitioner by letter dated January 6, 2009 that her application to enroll in Medicare as an Independent Diagnostic Testing Facility (IDTF) was denied, because she did not meet the conditions for enrollment. Centers for Medicare and Medicaid Services (CMS) Exhibit (Ex.) 2. Petitioner requested reconsideration by letter dated March 2, 2009. CMS Ex. 3; Petitioner's Exhibit (P. Ex.) 3. On April 24, 2009, the contractor hearing officer issued a reconsideration decision also denying Petitioner enrollment in Medicare as an IDTF. CMS Ex. 1; P. Ex. 2. Petitioner requested a hearing by an administrative law judge (ALJ) by letter dated December 15, 2009. P. Ex. 1.

The case was assigned to me on January 5, 2010 for hearing and decision, and an Acknowledgment and Prehearing Order (Prehearing Order) was issued at my direction. On January 25, 2010, CMS filed a motion to dismiss Petitioner's request for hearing and CMS Exs. 1 through 3. On February 4, 2010, CMS filed a motion for summary judgment. CMS also filed the same exhibits that it filed with its motion to dismiss and also filed CMS Exs. 4 and 5. No response to the CMS motion to dismiss was received from Petitioner. Therefore, on February 22, 2010, I issued an order for Petitioner to show cause in writing not later than March 5, 2010, why the CMS motion to dismiss should not be granted. On March 3, 2010, Petitioner filed her response (P. Response) and Exs. 1 through 4. No objections have been made to my consideration of the exhibits, and all are admitted.

## **II. Discussion**

### **A. Applicable Law**

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) established the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers and suppliers of services. Act §§ 1835(a) (42 U.S.C. § 1395n(a)), 1842(h)(1) (42 U.S.C. § 1395(u)(h)(1)). Administration of the Part B program is through contractors. Act § 1842(a) (42 U.S.C. § 1395u(a)). The Act requires the Secretary of Health and Human Services (Secretary) to issue regulations that establish a process for the enrollment of providers and suppliers. Pursuant to 42 C.F.R. § 424.505, a provider or supplier must be enrolled in the Medicare program and be issued a billing number to have billing privileges to be eligible to receive payment for services rendered to a Medicare-eligible beneficiary. *See* Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, Chapter 10, Healthcare Provider/Supplier Enrollment, § 6.1.1.

Section 1842(h)(8) of the Act (42 U.S.C. § 1395u(h)(8)) gives the Secretary discretion to refuse to enter into an agreement, or to terminate or refuse to renew an agreement, with a provider or supplier. The Secretary has delegated the authority to accept or deny enrollment applications to CMS. Pursuant to the Secretary's regulations, CMS may deny a provider or supplier's enrollment application if the provider or supplier is not in compliance with Medicare enrollment requirements. 42 C.F.R. § 424.530(a)(1).

A provider or supplier enrollment is considered denied when the provider or supplier is determined to be "ineligible to receive Medicare billing privileges for Medicare-covered items or services provided to Medicare beneficiaries" for one or more of the reasons listed in 42 C.F.R. § 424.530. 42 C.F.R. § 424.502. When a provider or supplier's enrollment application has been denied, the CMS contractor notifies the provider or

supplier in writing, explains the reasons for the determination, and provides information regarding the provider or supplier's (the affected party's) right to appeal. 42 C.F.R. § 498.20(a); MPIM, Chapter 10, Healthcare Provider/Supplier Enrollment, §§ 6.2, 13.2. The affected party may submit a written request for reconsideration to CMS. 42 C.F.R. § 498.22(a). CMS must give notice of its reconsidered determination to the affected party giving the reasons for its determination and specifying the conditions or requirements the affected party failed to meet. 42 C.F.R. § 498.25. If the CMS decision on reconsideration is unfavorable to the supplier, the Act provides for a hearing by an ALJ and judicial review. Act § 1866(j) (42 U.S.C. § 1395cc(j)). Pursuant to 42 C.F.R. § 498.40(a)(2), a request for hearing must be filed within 60 days of receipt of the notice of which the affected party seeks review. An ALJ may extend the time for filing a request for hearing for good cause. An ALJ may dismiss a hearing request where that request was not timely filed, and the time for filing was not extended. 42 C.F.R. § 498.70(c).

## **B. Issue**

Whether Petitioner's request for hearing should be dismissed.

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

My conclusions of law are set forth in bold followed by the pertinent facts and analysis.

- 1. Petitioner's request for hearing was not timely filed.**
- 2. Petitioner has not shown good cause for her untimely request for hearing.**
- 3. Dismissal of the request for hearing is appropriate.**

CMS seeks dismissal of Petitioner's request for hearing because it is untimely, and Petitioner has not stated good cause to extend the time for filing the request for hearing. I agree that dismissal is appropriate and grant the CMS motion.

The contract hearing officer's reconsideration determination is dated April 24, 2009. CMS Ex. 1. A presumption exists that Petitioner received the reconsideration determination five days after the date on the decision absent evidence to the contrary. 42 C.F.R. § 498.22(b)(3). Thus, it is presumed that Petitioner received the reconsideration determination on Wednesday, April 29, 2009. Petitioner does not assert that, and offers no evidence that, she received the reconsideration decision on a different date. The regulation requires that a request for hearing be filed within 60 days of receipt to be timely. 42 C.F.R. § 498.40. In this case, the sixtieth day fell on Sunday, June 28, 2009, and Petitioner's request for hearing would be timely if it was postmarked not later than

Monday, June 29, 2009. However, Petitioner's request for hearing is dated December 15, 2009, more than five months late.

Petitioner argues that the CMS motion to dismiss should not be granted. Petitioner argues that she is really requesting review of some denied old claims. If Petitioner's characterization was correct, this case would not be within my jurisdiction, and dismissal would be required on that basis. However, my review of the exhibits reveals that the claims Petitioner wants reviewed were denied, because Petitioner's enrollment as an IDTF was denied. CMS Ex. 5. Therefore, this case would be properly within my jurisdiction as a denial of enrollment, rather than a denial of claims case, if timely filed. Petitioner also argues, apparently with the thought that this explanation excuses the late filing, that her office manager was having personal problems when the appeal should have been filed. However, Petitioner, not her office manager, is responsible to ensure she complies with program participation requirements, and the office manager's personal problems are no excuse for Petitioner's failure to ensure she complied with the law. Petitioner also argues that Medicare is complicated, which I accept as an understatement. However, the reconsideration decision clearly stated: Petitioner's right to request a hearing by an ALJ; the requirement that she do so in writing to the address provided; and that the request must be filed within 60 calendar days of receipt of the decision. Petitioner only needed to read the decision to be aware of her rights. Petitioner offers no argument or evidence that she was unable to read and understand the reconsideration decision. Thus, I am left to infer that Petitioner's failure to timely request review was the result of carelessness, which is never good cause to extend the time for filing a request for hearing.

Petitioner's request for hearing was not timely filed, and she has not stated good cause to extend the time for filing.

### **III. Conclusion**

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

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/s/  
Keith W. Sickendick  
Administrative Law Judge