

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. 2016-9

Date: April 25, 2016

ORDER OF DISMISSAL

I dismiss the hearing request of Petitioner, Michele Peetz, FNP-C, because it was untimely and Petitioner did not establish good cause to extend the time for filing. 42 C.F.R. §§ 498.40(a)(2), (c); 498.70(c).

I. Background and Procedural History

Petitioner is a certified family nurse practitioner. On January 12, 2015, Noridian Healthcare Solutions (Noridian), a Medicare administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), issued a determination retroactively denying Petitioner's application to enroll in Medicare effective November 7, 2006. Petitioner timely requested reconsideration of that determination. On April 20, 2015, Noridian issued a reconsidered determination upholding the enrollment denial. The reconsidered determination notified Petitioner that if she disagreed with the determination, she could request review by an administrative law judge (ALJ) by filing an appeal within 60 calendar days after the date of receipt of the determination.

On March 16, 2016, Petitioner filed a request for an ALJ hearing dated March 14, 2016, nearly 11 months after the date of the reconsidered determination. The Civil Remedies Division received Petitioner's request for review on March 28, 2016.

An initial review of Petitioner's submissions raised questions about the timeliness of her hearing request. Because Petitioner did not explain the delay in filing her hearing request, I issued an order on April 6, 2016, directing Petitioner to show cause why the hearing request should not be dismissed as untimely. I explained that if Petitioner had not filed her hearing request within 60 days of receipt of the reconsidered determination, she must show good cause as to why I should extend the time for filing the request. 42 C.F.R. § 498.40(c).

On April 11, 2016, Petitioner responded to my Order to Show Cause. Petitioner states that she "was notified" of the reconsidered determination in April 2015. To explain the lengthy delay in filing her hearing request, Petitioner states that upon receipt of the decision, she was unsuccessful in obtaining further assistance from her employer. As a result, Petitioner reported that she pursued a variety of alternative avenues to resolve the Medicare enrollment denial in her favor, none of which were successful.

II. Issues

The general issue here is whether I should dismiss Petitioner's hearing request. The specific issues that I must decide are whether Petitioner's hearing request was untimely and, if so, whether Petitioner had good cause to file the request after the deadline.

III. Analysis

A supplier dissatisfied with a reconsidered determination "is entitled to a hearing before an ALJ."¹ 42 C.F.R. § 498.5(l)(2). The procedures to request a hearing are found in 42 C.F.R. § 498.40. In order to exercise the right to a hearing, a supplier must file its request for hearing in writing no later than 60 days from the date that it receives a reconsidered determination. 42 C.F.R. § 498.40(a)(2). Receipt of the notice of a reconsidered determination is presumed to be five days after the date of notice unless shown otherwise. *Id.*; 42 C.F.R. § 498.22(b)(3). A supplier may request that an ALJ extend the date to file a hearing request; however, the supplier must show good cause in order for the ALJ to grant such a request. 42 C.F.R. § 498.40(c). If a hearing request is untimely and there is no good cause to extend the filing date, then an ALJ may dismiss the hearing request. 42 C.F.R. § 498.70(c).

¹ A "supplier" furnishes services under Medicare, and the term supplier applies to physicians and non-physician practitioners and facilities that are not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d). Petitioner is a supplier.

A. Petitioner filed an untimely hearing request.

The reconsidered determination is dated April 20, 2015. As noted, Petitioner acknowledged in her response to my Order to Show Cause that she received notice of the determination in April 2015. Under the regulations, I presume that Petitioner received the determination on Monday, April 27, 2015.² Petitioner had 60 days, until June 26, 2015, in which to file a hearing request. 42 C.F.R § 498.40(a)(2). Petitioner filed her hearing request on March 16, 2016. Consequently, I find that Petitioner’s hearing request was untimely.

B. Petitioner did not establish good cause for extending the regulatory deadline for filing her hearing request.

If a supplier establishes that there was good cause to extend the filing date for a hearing request, then an ALJ may accept an otherwise untimely hearing request. 42 C.F.R. § 498.40(c). The regulations do not define what constitutes “good cause” to extend the filing deadline, and the Departmental Appeals Board “has never attempted to provide an authoritative or complete definition of the term ‘good cause’ in section 498.40(c)(2).” *Brookside Rehab. & Care Ctr.*, DAB No. 2094 at 7 n.7 (2007) (citing *Glen Rose Med. Ctr. Nursing Home*, DAB No. 1852 at 7 n.5 (2002)). Rather, an adjudicator must consider the relevant circumstances of each case to determine whether there is “good cause” to extend the filing deadline. *See NBM Healthcare, Inc.*, DAB No. 2477 at 3-4 (2012) (“[T]he facts of this case do not show good cause under any reasonable definition of that term.”).

In this case, Petitioner provides the following explanation for her untimely request:

I was notified of the Rejection decision In April of 2015. My employer was not able to go any further for me and I then started to work on avenues to have documentation of my grandfathered status. This took longer than anticipated and I was not able to reach my NP school it had closed and only able to get transcript copies. I contacted the American Academy of Nurse practitioners for their assistance and they were not able to help me. I then started researching local congressmen and governmental agencies for assistance. In

² The fifth calendar day following the date of the reconsidered determination fell on a weekend day. Accordingly, I presume that Petitioner received the determination on the following Monday. Civil Remedies Division Procedures §§ 6, 11.

my final attempt I reached out to the local colleges for guidance and this is where I am today.

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.

Furthermore, Petitioner's delay in exercising her appeal rights because she was attempting to pursue alternative avenues for resolving the adverse Medicare enrollment determination in her favor does not constitute good cause for extending the filing deadline. *Borger Enterprises*, DAB No. 2618 at 3. Nothing prevented Petitioner from exercising her formal appeal rights while simultaneously pursuing alternative avenues to resolve the adverse Medicare enrollment determination in her favor. Accordingly, "Petitioner must bear the consequences of focusing [her] time and energy on advocacy tactics other than preparing and filing a timely hearing request." *Id.*

Because Petitioner has made no showing of good cause for filing her hearing request almost nine months after the expiration of the 60-day deadline for doing so, I cannot extend the filing deadline for the hearing request based on good cause.

IV. Conclusion

Petitioner filed an untimely request for hearing and did not show that an extension of the filing deadline is warranted based on good cause. Therefore, I dismiss Petitioner's hearing request.

/s/

Leslie C. Rogall
Administrative Law Judge