

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Melissa West,	)	Date: January 7, 2009
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-08-762
	)	Decision No. CR1882
The Inspector General.	)	
_____	)	

**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss the hearing request filed by Petitioner, Melissa West because she has no right to a hearing.

**I. Background**

On September 24, 2008, Petitioner filed a letter with the Civil Remedies Division of the Departmental Appeals Board. I.G. Ex. 1.<sup>1</sup> In her letter Petitioner complained that she was unable to obtain a job as a certified nursing assistant (CNA) as a consequence of her name apparently being placed on a State registry that listed the names of individuals charged with or convicted of abuse. Petitioner requested that she be assisted in having her name expunged from the registry and stated that, as an alternative possibility, she might appeal the decision to put her name on that document.

The case was docketed as a hearing request involving a possible exclusion determination by the I.G. of Petitioner from participating in the Medicare program and it was assigned to me for a hearing and a decision. I held a pre-hearing conference by telephone. During

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<sup>1</sup> The Inspector General (I.G.) has identified the letter as I.G. Exhibit (Ex.) 1 and I am receiving it into evidence as an exhibit. The letter is also part of the correspondence file that was made in this case.

the conference call the I.G.'s counsel advised that the I.G. appeared not to have any record of having excluded Petitioner. I informed the parties that I would have no authority to hear and decide the case if, in fact, the I.G. had not excluded Petitioner. I told Petitioner that, if she had any remedy to address the possible placement of her name on a State abuse registry, it might lie elsewhere. I directed the I.G. to file a motion addressing the issue of my authority to hear and decide this case.

On November 12, 2008 the I.G. filed a motion asking that I dismiss Petitioner's hearing request. Petitioner had until December 19, 2008 to answer the motion. I have received nothing from Petitioner.

## **II. Issue, findings of fact and conclusions of law**

### **A. Issue**

The issue in this case is whether I have the authority to hear and decide it.

### **B. Findings of fact and conclusions of law**

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

***1. My authority to hear and decide cases is limited to that which has been delegated to me by the Secretary of the United States Department of Health and Human Services.***

My authority to hear and decide cases is strictly limited to that which has been delegated to me by the Secretary. That delegated authority is spelled out in the regulations. In cases involving exclusions, the authority is described at 42 C.F.R. Parts 1001 and 1005.<sup>2</sup> A party who is excluded pursuant to any of the exclusion sections of 42 Part 1001 is entitled to a hearing. 42 C.F.R. § 1005.2(a). Absent a determination to exclude there is simply no authority for me to hear and decide a case.

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<sup>2</sup> There are numerous other delegated hearing and decision authorities, some involving determinations made by the I.G. and others involving determinations made by other agencies in this Department. I do not discuss them because they plainly are not at issue here.

***2. The I.G. made no determination to exclude Petitioner. Therefore, I have no authority to conduct a hearing in this case.***

Counsel for the I.G. represents – and Petitioner does not dispute – that the I.G. performed a search of its list of excluded individuals and entities and also performed a search of its pending exclusion actions. He found nothing, either as an effectuated exclusion, or as an exclusion action that is pending.

Consequently, the I.G. has made no determination against Petitioner pursuant to any of the sections of 42 C.F.R. Part 1001. And, as there is no adverse determination, I have no authority to hear and decide this case and Petitioner has no right to a hearing. I must dismiss her hearing request for that reason.<sup>3</sup>

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/s/

Steven T. Kessel  
Administrative Law Judge

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<sup>3</sup> Alternatively, I could dismiss Petitioner's hearing request as having been abandoned by her given her failure to answer the I.G.'s motion. It is unnecessary that I do so because I so clearly lack any authority to hear and decide her hearing request.