

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Aaron C. Pruitt, D.C.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-74

ALJ Ruling No. 2013-7

Date: April 19, 2013

DISMISSAL

Petitioner, Aaron C. Pruitt, D.C., is an Ohio-based chiropractor who challenges the effective date for his enrollment in the Medicare program.

For the reasons discussed below, I dismiss as untimely Petitioner's hearing request.¹

Petitioner is not entitled to a hearing because he did not file a timely hearing request and no good cause justifies extending the time for filing.

The regulations governing these proceedings mandate that an affected party, who would be entitled to a hearing under 42 C.F.R. Part 498, must file his request for hearing in writing within 60 days of the day he receives notice of the determination that he wishes to appeal, unless the appeal period is extended. 42 C.F.R. § 498.40(a)(2). Receipt of the

¹ The Centers for Medicare and Medicaid Services (CMS) has submitted a motion/brief (CMS Br.) and 13 exhibits (CMS Exs. 1-13). Petitioner has submitted a letter and several unmarked documents.

notice is “presumed to be 5 days after the date on the notice unless there is a showing that it was, in fact, received earlier or later.” 42 C.F.R. §§ 498.40(a)(2), 498.22(b)(3).

On motion of a party, or on his/her own motion, an administrative law judge may dismiss a hearing request that was not timely filed, if the time for filing was not extended. 42 C.F.R. § 498.70(c).

Here, Petitioner, Aaron C. Pruitt, D.C., applied for enrollment in the Medicare Part B program. The Medicare contractor, CGS Administrators, LLC, approved his application, effective April 8, 2012. Petitioner Pruitt sought reconsideration, challenging the effective date. In a reconsidered determination dated August 17, 2012, the contractor hearing officer denied his request. The contractor’s letter included notice of Petitioner’s appeal rights, advising: “You must file your appeal within 60 calendar days after the date of receipt of this decision” CMS Ex. 10 at 2. The letter then told him to submit his appeal to this office, and provided the address of the Civil Remedies Division of the Departmental Appeals Board, or, alternatively, to file his appeal electronically at the Departmental Appeals Board electronic filing system website. The letter also referred him to 42 C.F.R. Part 498 for an explanation of his appeal rights. CMS Ex. 10 at 3.

Assuming five days for delivery of the notice letter, Petitioner’s hearing request should have been filed no later than October 22, 2012 (October 21 was a Sunday). Petitioner filed his appeal by electronic filing on October 30, 2012, after that regulatory filing deadline had passed. Petitioner did not seek an extension of time for filing his appeal. He did not suggest good cause justified his late filing.

In an order dated April 12, 2013, I directed Petitioner to show cause why this matter should not be dismissed as untimely. I also directed CMS to explain its position on whether the appeal should be dismissed as untimely filed. Order to Show Cause (April 12, 2013).

CMS responded by noting that the appeal was not timely and should be dismissed, unless Petitioner can show that he received the notice letter later than August 31, 2012, or otherwise shows good cause for late filing (which he has not shown). Petitioner did not respond to the order.

Because Petitioner did not file his hearing request within 60 days of receiving the contractor's notice letter, and no good cause justifies my extending the time for filing, I dismiss Petitioner's hearing request. 42 C.F.R. § 498.70(c).²

/s/
Carolyn Cozad Hughes
Administrative Law Judge

² In any event, Petitioner would not likely have prevailed on the merits of this case. The Medicare contractor received his enrollment application on May 7, 2012, and, based on that application, granted him the earliest possible effective date. 42 C.F.R. §§ 424.520(d); 424.521(a)(1). Petitioner's earlier submissions were not acceptable applications.