

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Maitland Health Care Center,)	Date: August 24, 2007
(CCN: 10-5430))	
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-338
)	Decision No. CR1642
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Maitland Health Care Center. I do so because the request is untimely and because Petitioner failed to establish good cause for its untimely request.

Petitioner is a skilled nursing facility which participates in the Medicare program. Its participation in Medicare is governed by sections 1819 and 1866 of the Social Security Act and by implementing regulations at 42 C.F.R. Parts 483 and 488. The Part 483 regulations establish the specific requirements for a nursing home to participate in Medicare. The Part 488 regulations establish remedies for a facility's noncompliance with the Part 483 regulations.

There are additional regulations, at 42 C.F.R. Part 498, which give a facility that is the subject of a remedy determination by CMS made pursuant to the Part 483 and 488 regulations the right to challenge that determination in an administrative hearing. And, as I discuss in more detail below, the Part 498 regulations establish a deadline for a dissatisfied facility to request a hearing and provide for dismissal of an untimely hearing request.

The undisputed facts are that on January 8, 2007 the Centers for Medicare & Medicaid Services (CMS) sent a letter to the attention of Petitioner's then-administrator, advising Petitioner that CMS had determined to impose remedies against it for noncompliance with Medicare participation requirements. These remedies included civil money penalties. The January 8 letter specifically instructed Petitioner that it had 60 days to file a hearing request if it was dissatisfied with CMS's determination.

Petitioner did not file a hearing request within 60 days. It eventually filed a request on March 29, 2007, well past its deadline for filing a request, and only after it had received a second letter from CMS, dated March 22, 2007, in which CMS demanded payment by Petitioner of the civil money penalties that CMS previously had determined to impose.

Petitioner offers the same explanation for its untimely hearing request in both the request itself and in its response to CMS's motion to dismiss. According to Petitioner, the then-administrator who received CMS's January 8 letter left her position on January 16, 2007 without forwarding the letter to Petitioner's management or otherwise telling management about the letter. Consequently, Petitioner's management was unaware of CMS's remedy determination until it received the March 22 letter and, for that reason, failed to request a hearing timely.

The regulations governing the timing of hearing requests in cases involving CMS state explicitly that a request must be filed within 60 days of the date a party receives CMS's notice of intent to impose remedies. 42 C.F.R. § 498.40(a)(2). A request is presumed to have been received five days after the date of its mailing. *Id.*; 42 C.F.R. § 498.22(b)(3). If a request is untimely filed an administrative law judge must dismiss it unless a facility establishes good cause for its failure to file the request timely. 42 C.F.R. §§ 498.40(c)(2); 498.70(c).

The regulations do not define the term "good cause." It is settled, however, that good cause for not filing a hearing request timely consists only of an event or events that are beyond a party's ability to control but for which that party would have been able to file its request timely. *Hospicio San Martin*, DAB No. 1554 (1996).

Petitioner has not established good cause here because it has not proven that it failed to file its request only as a consequence of an event or events that were beyond its ability to control. The undisputed facts are that a member of Petitioner's management received CMS's January 8 notice letter. That put Petitioner on notice that CMS had determined to impose remedies and started the clock running for Petitioner to file its request. That the then-administrator either failed inadvertently to, or decided not to, direct the letter up Petitioner's chain of command may be unfortunate but it does not derogate from the fact

