

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

v.

Dionta Hall,

Respondent.

Docket No. C-14-282

ALJ Ruling No. 2014-27

Date: March 19, 2014

ORDER OF DISMISSAL

The Inspector General (I.G.) of the Social Security Administration determined that Respondent, Dionta Hall, violated 42 U.S.C. § 1320a-8, and proposed to impose a civil monetary penalty on Respondent. Respondent filed a request for hearing (RFH) before an administrative law judge. Because Respondent failed to timely respond to the I.G.'s January 7, 2014 discovery request and February 21, 2014 Motion for Dismissal, I dismiss Respondent's RFH for abandonment.

I. Background

By letter dated August 29, 2013, the I.G. stated that he proposed to impose a total civil monetary penalty of \$10,000 on Respondent pursuant to 42 U.S.C. § 1320a-8. Respondent timely filed a RFH with the Departmental Appeals Board, Civil Remedies Division. In a November 25, 2013 letter, the Director of the Civil Remedies Division informed the parties that I had scheduled a telephonic prehearing conference for December 18, 2013. Respondent appeared pro se at the December 18, 2013 prehearing conference, but indicated that Respondent had hired an attorney. However, neither the Civil Remedies Division nor the I.G.'s counsel had received notification that an attorney was entering an appearance to represent Respondent in this matter. Therefore, I informed

Respondent that any counsel representing her must file a Notice of Entry of Appearance with the Civil Remedies Division and provide a copy to counsel for the I.G. During the course of the prehearing conference, the telephone connection with Respondent was lost. My office attempted to reestablish the conference call with Respondent several times, but could not reach Respondent again. Thus, in an Order Scheduling Submission of Briefs and Documents dated December 18, 2013 (December 18 Order), I provided Respondent and the I.G. with all the information regarding the submission of briefs and deadlines that I could not finish explaining to Respondent during the prehearing conference.

In the December 18 Order, I provided Respondent with information concerning the proceedings in this case, and established a schedule for discovery and the submission of briefs, proposed exhibits, and witness lists. In regard to discovery, the parties had until January 7, 2014, to request any documents from the other party and until February 6, 2014, to respond to the request or file a motion for a protective order. December 18 Order ¶ 7.

The I.G. asserts that on January 7, 2014, the I.G. served on Respondent a Request for the Production of Documents; however, as of February 21, 2014, Respondent had not responded to the request, contacted counsel for the I.G. to request clarification or explain when Respondent could provide the requested documents, or filed a motion for a protective order. On February 21, 2014, the I.G. filed a Motion for Dismissal and sought dismissal of Respondent's RFH due to abandonment. *See* 20 C.F.R. § 498.202(f)(2). In the alternative, the I.G. requested that I impose "any and all other relief that the Court deems appropriate." *See id.* § 498.214. The Civil Remedies Division has not received any response from Respondent to the I.G.'s Motion for Dismissal.

II. Issue

Whether Respondent's RFH should be dismissed for abandonment.

III. Discussion

Unlike most of the Social Security Administration's proceedings, which are informal and nonadversarial, proceedings under 42 U.S.C. § 1320a-8 are adversarial. *Compare* 20 C.F.R. §§ 404.900(b), 405.1(c), 408.1000(b), 416.1400(b) *with* 20 C.F.R. §§ 498.203, 498.205, 498.208, 498.215. Discovery is often permitted in adversarial proceedings and the parties to cases arising under 42 U.S.C. § 1320a-8 may "[c]onduct discovery of documents" by making "a request to another party for production of documents which are relevant and material to the issues before the [administrative law judge]." *Id.* §§ 498.203(a)(3), 498.207(a). Further, a party receiving a discovery request may seek a protective order from the administrative law judge. *Id.* § 498.207(d). The administrative

law judge may impose sanctions on a party who refuses to provide or permit discovery. 42 U.S.C. § 1320a-8(b)(4)(A); 20 C.F.R. § 498.214.

In the present case, I established February 6, 2014, as the date by which the parties were to have completed discovery. December 18 Order ¶ 7. However, it is uncontested that Respondent did not respond to the I.G.’s discovery request and Respondent has not filed any documents in this case since submitting a RFH.

A ruling on the I.G.’s February 21, 2014 Motion for Dismissal is now ripe. 20 C.F.R. § 498.213(c), (d). Respondent has failed to comply with a discovery request made pursuant to the regulations and my December 18 Order. By itself, this is probably insufficient to dismiss an RFH. *See* 42 U.S.C. § 1320a-8(b)(4)(A); 20 C.F.R. § 498.214(b)(1). However, Respondent has also failed to respond to the I.G.’s Motion for Dismissal. An administrative law judge “shall dismiss a hearing request where . . . [t]he respondent withdraws or abandons respondent’s request for a hearing.” 20 C.F.R. § 498.202(f)(2). Because it appears that Respondent has decided to abandon the RFH, I must dismiss Respondent’s RFH. *See Autimece Rhone*, ALJ Ruling 2013-20 (HHS CRD August 27, 2013).

IV. Conclusion

The I.G.’s Motion for Dismissal is granted and Respondent’s RFH is dismissed.

It is so ordered.

/s/

Scott Anderson
Administrative Law Judge