

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Pamela Diane Eaddy, R.N.,)	Date: June 26, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-06-688
)	Decision No. CR1617
The Inspector General.)	
)	

DECISION

Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded Petitioner, Pamela Diane Eaddy, from participation in Medicare, Medicaid, and all federal health care programs until she obtains a valid California nursing license. Petitioner appeals. The I.G. argues that Petitioner's appeal should be dismissed as untimely filed. I agree. Moreover, even if she were entitled to review, Petitioner's California nursing license was revoked for reasons bearing on her professional competence and performance, so the I.G. appropriately excluded her from program participation.

Discussion

In a letter dated June 28, 2002, the I.G. advised Petitioner that she was excluded from participation in Medicare, Medicaid, and all federal health care programs because her license to provide health care in the State of California had been revoked, suspended or otherwise lost or was surrendered while a formal disciplinary proceeding was pending before a state licensing authority for reasons bearing on her professional competence, professional performance, or financial integrity. Attached to the letter was a one page statement of additional information, which includes notice of Petitioner's right to request a hearing before an administrative law judge (ALJ) and says that such request "must be made in writing within 60 days of your receiving" the exclusion letter. I.G. Ex. 1, at 2.

Petitioner filed her hearing request on September 18, 2006, *more than four years* after the filing deadline had passed. The I.G. has moved to dismiss the hearing request because it is untimely.

The I.G. has submitted five exhibits (I.G. Exs. 1-5). Petitioner attached to her submission a number of documents, some of which are marked as exhibits, but the markings are confusing and do not conform to Civil Remedies procedures. Petitioner's documents have therefore been re-marked as Petitioner's exhibits (P. Exs.) 1-9. I have admitted into evidence I.G. Exs. 1-5 and P. Exs. 1-9.

1. Because Petitioner did not timely file her hearing request, I have no alternative but to dismiss it pursuant to 42 C.F.R. § 1005.2(e)(1).¹

The regulations that govern these proceedings grant me virtually no discretion. An aggrieved party *must* request a hearing within sixty days after receiving the notice of exclusion. 42 C.F.R. §§ 1001.2007(b); 1005.2(c). Petitioner is presumed to have received the notice five days after the its date “unless there is a reasonable showing to the contrary.” 42 C.F.R. § 1005.2(c). During the prehearing conference call in this matter, Petitioner claimed that she moved to New York and did not receive the I.G. notice letter, which was mailed to her California address. *Order and Schedule for Filing Briefs and Documentary Evidence* (November 13, 2006).

In its brief, the I.G. raises the issue of timeliness, but Petitioner's written submissions are virtually silent on the issue. She offers little evidence to support her contention that she did not receive the notice letter, listing only a couple of California addresses (on page 8 of her Response Brief) and claiming to have moved from the Atherton Avenue address, where the I.G.'s notice letter was sent, in 2000. P. Exs. 8, 9. She does not mention a move to New York.

I have carefully reviewed all of her exhibits, and find one additional potentially relevant submission, an unsigned, unauthenticated document that appears to be on Time Warner Cable letterhead, with a New Jersey business address. It is dated April 6, 2007, and states that Petitioner had service with Time Warner from June 15, 2002 to June 30, 2004. P. Ex. 4.

¹ I make findings of fact/conclusion of law to support my decision. I set forth each finding, in bold and italics, as a separately numbered heading.

I find that this evidence falls short of establishing the “reasonable showing” necessary to overcome the presumption that Petitioner timely received the I.G. notice. And the regulations specify that the ALJ “will dismiss” where a petitioner’s hearing request is not timely filed. 42 C.F.R. § 1005.2(e)(1). I understand “*will dismiss*” to be inflexible – it affords me no discretion to waive a late filing or to grant an extension of time in which to file. See *Sharon Anderson, D.P.M.*, DAB CR793, at 3 (2001), *aff’d*, DAB No. 1795 (2001).

2. Because the state licensing authority suspended Petitioner’s nursing license for reasons bearing on her professional competence or performance, the I.G. may appropriately exclude her from participation in Medicare, Medicaid, and other federally funded health care programs.

Even if her claim were otherwise reviewable, Petitioner could not prevail. The statute authorizes the Secretary to exclude from participation in any federal health care program an individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial integrity.” Act §1128(b)(4)(A). See also 42 C.F.R. § 1001.501.

According to the I.G., Petitioner’s California nursing license was revoked effective October 28, 2001, based on charges that she tested positive for cocaine while working in the emergency department of a medical center and that she improperly withdrew 75 milliliters of Maperidine (Demerol) from the Emergency Department, for a patient who did not exist. The Board of Registered Nursing, Department of Consumer Affairs, determined that such conduct was “unprofessional.” I.G. Exs. 2, 3.

Petitioner does not deny the Board’s actions, but argues that her New York nursing license is in good standing. She also complains that the positive test results were in error, that she was not able to defend herself before the state board because of difficulties with her attorney(s), and that she was not able to appeal the license revocation. As the I.G. correctly observes, however, I am bound by the state board’s final determination. Where, as here, an exclusion is based on the existence of a determination made by another governmental agency, the basis for the underlying determination is not reviewable. 42 C.F.R. § 1001.2007(d); *Roy Cosby Stark*, DAB No. 1746 (2000). I am required to determine the reasons for the state board’s actions, but not whether its reasoning was valid. Here, the state board unquestionably revoked Petitioner’s nursing license because of her professional competence and performance. I must therefore sustain the exclusion.

