

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sandra Scarce,
(O.I. File No. 12-4-2364-9)

Petitioner,

v.

The Inspector General.

Docket No. C-13-704

ALJ Ruling No. 2013-15

Date: July 15, 2013

DISMISSAL

Until the state board revoked her license, Petitioner, Sandra Scarce, was a nurse practicing in Arizona. Pursuant to section 1128(b)(4) of the Social Security Act (Act), the Inspector General (I.G.) has excluded her from participating in Medicare, Medicaid, and all federal health care programs. Petitioner appeals, challenging the “breadth” of the exclusion.

The I.G. has moved to dismiss, arguing that Petitioner fails to raise an issue that may properly be addressed in a hearing. I agree and, for the reasons discussed below, grant the I.G.’s Motion to Dismiss.

Discussion

In a letter dated February 28, 2013, the I.G. advised Petitioner Scarce that she was excluded from participating in Medicare, Medicaid, and all federal health care programs because the Arizona State Board of Nursing revoked her nursing license for reasons bearing on her professional competence, professional performance, or financial integrity. The letter explained that section 1128(b)(4) of the Act authorizes the exclusion. I.G. Ex. 1 at 1.

Petitioner concedes that the Arizona nursing board revoked her license for reasons bearing on her professional competence, professional performance, or financial integrity, and that she is therefore subject to exclusion under section 1128(b)(4). She complains about the “breadth” of the exclusion and asks for an exemption so that she can perform other, non-nursing work from which she would be precluded if unable to participate in federal healthcare programs. P. Response; Order at 2 (May 20, 2013).¹

Section 1128(b)(4) of the Act authorizes the Secretary of Health and Human Services to exclude from program participation any individual whose license to provide health care “has been revoked or suspended by any State licensing authority” for reasons bearing on the individual’s “professional competence, professional performance, or financial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.” *See also* 42 C.F.R. § 1001.501. The period of exclusion “shall not be less than the period during which [her] . . . license . . . is revoked. . . .” Act § 1128(c)(3)(E); 42 C.F.R. § 1001.501(b)(1).

An excluded individual may challenge the basis for the exclusion and the length of the exclusion. 42 C.F.R. § 1001.2007(a)(1). I am required to dismiss a request for hearing where that request fails to raise any issue that may properly be addressed in a hearing. 42 C.F.R. § 1005.2(e)(4). Because Petitioner’s hearing request does not raise an issue that I am empowered to resolve, I grant the I.G.’s motion and dismiss Petitioner’s appeal.

Regulations governing these procedures afford no further appeal rights. 42 C.F.R. § 1005.20; 42 C.F.R. § 1005.21(a), (d); *Departmental Appeals Board, Guidelines -- In Cases to which Procedures in 42 C.F.R. Part 1005 Apply*; *see also* 57 Fed. Reg. 3,298, 3,327 (Jan. 29, 1992) (stating that administrative appeals of administrative law judge decisions have been limited by regulation). There is no administrative appeal from a dismissal of a hearing request. 55 Fed. Reg. 12,205, 12,213 (Apr. 2, 1990) (“If [a] party fails to file a timely request for a hearing, or thereafter withdraws or abandons his or her request for a hearing, the [administrative law judge] is required to dismiss the hearing request. In such a case, the CMP or exclusion would *become final with no further appeal permitted.*”) (emphasis added); *see also* 57 Fed. Reg. 3,298, 3,325 (Jan. 29, 1992) (adding as a ground for dismissal in 42 C.F.R. § 1005.2(e) a party’s failure to raise any issue that may properly be addressed in a hearing).

/s/
Carolyn Cozad Hughes
Administrative Law Judge

¹ The I.G. filed a motion to dismiss (I.G. Motion) with one exhibit (I.G. Ex. 1). In addition to her appeal, undated but submitted on April 26, 2013, Petitioner responded to the I.G.’s motion (P. Response).