

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Social Security Administration,
Inspector General,

Petitioner,

v.

M. S. R.,*

Respondent.

Docket No. C-15-2549

Decision No. CR4356

Date: November 5, 2015

DECISION

This case is dismissed pursuant to 20 C.F.R. § 498.202(f)(1) because Respondent did not timely file her request for a hearing and has failed to demonstrate good cause for the late filing.

I. Background and Facts

Counsel to the Inspector General (IG) of the Social Security Administration (SSA) notified Respondent by letter dated December 18, 2014, that the IG proposed to impose a civil money penalty (CMP) of \$20,500.00 and an assessment in lieu of damages of \$36,732.20 (assessment) pursuant to section 1129 of the Social Security Act (the Act) (42 U.S.C. § 1320a-8). The notice advised Respondent that she could request a hearing before an administrative law judge (ALJ) within 60 days of receipt of the notice.

* Respondent is identified only by her initials due to the mental health information contained in this decision.

Respondent filed a request for hearing before an ALJ by letter postmarked April 15, 2015. Respondent states in her request for hearing that she was completing her house arrest; she was under the care of psychologists and psychiatrists; and was admitted to the hospital for major depression.

I convened a prehearing conference by telephone on June 23, 2015. The substance of the conference is captured by my Scheduling Order and Notice of Hearing dated July 6, 2015. The IG requested during the conference the opportunity to file a motion to dismiss the case because the request for hearing was not timely filed. Pursuant to 20 C.F.R. § 498.202(f)(1) I am required to dismiss a case when a request for hearing is not timely filed and good cause for the late filing is not shown. Therefore, untimely filing in the absence of good cause effectively deprives me of jurisdiction because dismissal is required and resolution of the motion to dismiss must be resolved before further development of the case.

The IG filed the motion to dismiss on July 31, 2015, with a supporting memorandum (IG Br.). The IG refers in his memorandum to SSA exhibits 1 through 4, but no exhibits were actually filed by SSA. The IG asserts that the December 18, 2014 notice was sent to Respondent by certified mail, return receipt requested. The IG further asserts that the return receipt shows that Respondent signed for the letter on December 30, 2014.

Respondent served on the IG her opposition to the IG motion to dismiss on about September 16, 2015, but failed to file a copy with my office. The IG provided me a copy on October 2, 2015. Respondent states that she did not timely file her request for hearing because she was under house arrest and suffering from depression. Respondent submitted some medical treatment records with her opposition.

II. Discussion

A. Applicable Law

Pursuant to title II of the Act, an individual who has worked in jobs covered by Social Security for the required period of time, who has a medical condition that meets the definition of disability under the Act, and who is unable to work for a year or more because of the disability, may be entitled to monthly cash disability benefits. 20 C.F.R. §§ 404.315-404.373. Pursuant to title XVI of the Act, certain eligible individuals are entitled to the payment of Supplemental Security Income (SSI) on a needs basis. To be eligible for SSI payments, a person must be: (1) 65 years of age or older; (2) blind; or (3) disabled. Disability under both programs is determined based on the existence of one or more impairments that prevent an individual from doing his or her past work or other work that exists in substantial numbers in the economy for at least one year or that will result in death. 20 C.F.R. §§ 416.202, 416.905, 416.906. Additionally, a person must have limited income and resources to be eligible for SSI. 20 C.F.R. §§ 416.202,

416.1100. All assets, other than a car and a primary residence, are considered resources when determining whether an individual has “limited” resources. 20 C.F.R. § 416.1210. The income and resources of a spouse or other individuals in a household are also subject to being considered. 20 C.F.R. §§ 416.1201-1204; 416.1802.

Section 1129(a)(1) of the Act authorizes the imposition of a CMP or an assessment against:

(a)(1) Any person . . . who –

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

(B) makes such statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading

A material fact is a fact that the Commissioner of SSA (the Commissioner) may consider in evaluating whether an applicant is entitled to benefits or payments under titles II, VIII, or XVI of the Act. Act § 1129(a)(2).

Individuals who violate section 1129 are subject to a CMP of not more than \$5000 for each such false or misleading statement or representation. Violators are also subject to an assessment in lieu of damages, of not more than twice the amount of the benefits or payments made as a result of the statements or representations. Act § 1129(a)(1).

The Commissioner has delegated enforcement authority to the SSA IG as authorized by section 1129(i) of the Act. In determining the amount of a CMP, the IG must consider: (1) the nature of the subject statements and representations and circumstances under

which they occurred; (2) the degree of culpability of the person committing the offense; (3) the person's history of prior offenses; (4) the person's financial condition; and (5) such other matters as justice requires. Act § 1129(c); 20 C.F.R. §498.106.

Section 1129(b)(2) specifies that the Commissioner shall not decide to impose a CMP or assessment against a person until that person is given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is allowed to participate. The Commissioner has provided by regulations at 20 C.F.R. pt. 498 that a person against whom a CMP is proposed by the IG may request a hearing before an ALJ of the Departmental Appeals Board of the Department of Health and Human Services. The ALJ has jurisdiction to determine whether the person should be found liable for a CMP. 20 C.F.R. § 498.215(a). The person requesting the hearing, that is Respondent, has the burden of going forward and the burden of persuasion with respect to any affirmative defenses and any mitigating circumstances. 20 C.F.R. § 498.215(b)(1). The IG has the burden of going forward as well as the burden of persuasion with respect to all other issues. The burdens of persuasion are to be judged by a preponderance of the evidence. 20 C.F.R. § 498.215(c).

B. Issues

Whether Respondent's case must be dismissed pursuant to 20 C.F.R. § 498.202(f)(1) because she did not timely file her request for hearing and has failed to show good cause for the failure.

C. Analysis

My conclusions of law are set forth in bold followed by my analysis.

- 1. Respondent failed to timely file her request for hearing.**
- 2. Respondent has failed to show good cause for her failure to timely file her request for hearing.**
- 3. Dismissal is required by 20 C.F.R. § 498.202(f)(1).**
- 4. The CMP and assessment proposed by the IG are final. 20 C.F.R. § 498.109(c).**

There is no dispute that the IG notified Respondent by letter dated December 18, 2014, that the IG was imposing a CMP and assessment. Respondent does not deny that she received the IG notice. Pursuant to 20 C.F.R. § 498.202(e), the notice is presumed to have been received five days after the date of the notice, unless there is a reasonable

showing to the contrary. The IG concedes that the notice was not received until December 30, 2014. IG Br. at 3. Respondent does not allege and has made no showing of receipt of the IG notice after December 30, 2014.

The Act and regulations provide Respondent the right to request a hearing before an ALJ. Under 20 C.F.R. § 498.202(c)(2) Respondent's request for hearing had to be filed no more than 60 days after the notice of the intent to impose the CMP and assessment was received, unless Respondent can show good cause for me to allow her more time to file. Documents submitted by mail are considered filed when they are mailed, which is usually treated as the postmark date. 20 C.F.R. § 498.211(a)(4). Respondent received the IG notice on December 30, 2014. Sixty days after December 30, 2014, was Saturday, February 28, 2015. Therefore, Respondent had until Monday, March 2, 2015, to have her request for hearing postmarked in order for it to be timely filed. 42 C.F.R. § 498.212(a). Because Respondent's request for hearing was not postmarked until April 15, 2015, it was untimely and dismissal is required, unless Respondent has shown good cause for her failure to timely file.

Respondent asserted in her request for hearing that she was under house arrest and under psychiatric treatment for depression, and at one point, in the hospital. In her opposition to the motion to dismiss, Respondent states she was under house arrest and suffering from depression and she submitted some treatment records for me to consider. I conclude that house arrest is not good cause for failure to timely file her request for hearing. Respondent does not state the period she was under house arrest. Further, she does not assert that while under house arrest she was without writing supplies or unable to obtain postage. Respondent does not assert that there was no pick-up and delivery to her house by the United States Postal Service or that she was unable to have someone mail a letter for her. The mere assertion that Respondent was under house arrest is an inadequate basis for me to find good cause for her failure to mail her request for hearing by March 2, 2015.

I also conclude that Respondent's psychiatric condition was not good cause for failure to timely request a hearing. The documents submitted by Respondent show that she was hospitalized from January 29, 2015 to February 4, 2015. Therefore she had nearly a month before her hospitalization and nearly a month after to file her request for hearing timely. Respondent also submitted letters from her psychologist and psychiatrist for my consideration. The correspondence indicates that Respondent suffers from major depression with psychotic features and anxiety and that she receives both psychotherapy and pharmacotherapy. Neither doctor opines that Respondent's symptoms were so severe between December 30, 2014 and March 2, 2015, that she was unable to understand the December 18, 2015 IG notice or to file a request for hearing with my office. I am unable to determine based on the medical documents submitted by Respondent that her symptoms were so severe that they constitute good cause for her failure to timely request a hearing.

I conclude that Respondent has failed to demonstrate good cause to excuse her late filing of her request for hearing or for me to grant an extension of the period for filing the request for hearing. Accordingly, I am required by 20 C.F.R. § 498.202(f)(1) to dismiss this case and the CMP and assessment proposed by the IG are final. 20 C.F.R. § 498.109(c).

III. Conclusion

For the foregoing reasons, Respondent's request for hearing is dismissed and the CMP and assessment proposed by the IG are final.

/s/
Keith W. Sickendick
Administrative Law Judge