

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Medical Nutrition Network, LLC,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-87

Decision No. CR2303

Date: January 3, 2011

**DECISION DISMISSING APPEAL FOR CAUSE**

For the reasons set forth below, I find that Petitioner, Medical Nutrition Network, LLC, failed to file a timely request for a hearing or establish good cause to extend the time for such filing. 42 C.F.R. § 498.40(c). Petitioner therefore does not have a right to an Administrative Law Judge (ALJ) hearing to review the Medicare contractor's February 18, 2010 reconsideration decision. I therefore dismiss this case pursuant to 42 C.F.R. § 498.70(c).

**I. Background**

Petitioner was granted participation as a provider in the Medicare program effective June 24, 2009. Petitioner sought to change its effective date from June 24, 2009 to January 1, 2008, and requested reconsideration by the Medicare contractor. Petitioner's November 3, 2010 hearing request stated, "[o]n December 14, 2009, we wrote a letter of appeal . . . [o]n February 18, 2010, our request to change the effective date was declined by Palmetto and we were told to send out letter of appeal to CMS enrollment Appeal." In response to Petitioner's hearing request, this case was assigned to me for hearing and decision. I took Petitioner's hearing request to mean that it had requested reconsideration on December 14, 2009 from Palmetto GBA, and an unfavorable reconsideration decision was issued on

February 18, 2010. On December 1, 2010, I issued an Acknowledgment and Order to Show Cause to Petitioner. The Acknowledgment and Order to Show Cause stated:

While I have docketed this case as received, my review of your hearing request raises questions about the timeliness of your request. Applicable Federal regulations require that a request for review by an Administrative Law judge be filed within 60 days from the receipt of the notice of the reconsideration determination. I may find good cause, however, for the untimeliness after considering a written request for an extension of the 60 day requirement. *See* 42 C.F.R. § 498.40.

Petitioner states in its hearing request that on February 18, 2010, the Government contractor declined to change the effective date of its Medicare billing privileges. However, Petitioner did not include a copy of the reconsideration decision being appealed or explain why it had not filed its request for hearing within the required time period. Therefore, unless Petitioner shows cause within 10 days of receipt of this order as to why I should determine that you did not seek a hearing on a timely basis, I will dismiss your hearing request under 42 C.F.R. § 498.70(c).

Pursuant to 42 C.F.R. § 498.40(a)(2), Petitioner “must file the request [for hearing] in writing within 60 days from receipt of the notice of initial, reconsidered, or revised determination.”

Pursuant to 42 C.F.R. § 498.40(c), if the request for hearing was not filed within 60 days, the affected party must show good cause as to why I should extend the time for filing a request for hearing. Accordingly, by Acknowledgment and Order to Show Cause dated December 1, 2010, I directed Petitioner to show cause why this case should not be dismissed as untimely.

To date, Petitioner has not responded to the December 1, 2010 Acknowledgment and Order to Show Cause.

## **II. Issue**

The issue in this case is whether, pursuant to 42 C.F.R. § 498.40(c), Petitioner has shown good cause for me to extend the time for filing his request for hearing beyond 60 days and thus not dismiss the case as untimely under 42 C.F.R. § 498.70(c).

## **III. Findings of Fact, Conclusions of Law, and Supporting Discussion**

My findings of fact and conclusions of law are set out as separate headings followed by supporting discussion.

**A. Petitioner’s hearing request is untimely.**

The number of days between the date of the presumed reconsideration decision (February 18, 2010) and the date of mailing the request for hearing (November 4, 2010)<sup>1</sup> is 257 days. The hearing request is required to be filed within 60 days of receipt of the reconsideration decision under the authorities cited above. Section 498.22(b)(3) provides that the “date of receipt will be presumed to be 5 days after the date on the notice unless there is a showing that it was, in fact, received earlier or later.” Petitioner has not alleged a later date of receipt of the reconsideration decision or an earlier date of mailing of its hearing request. In fact, Petitioner has failed to respond in any fashion to my Acknowledgement and Order to Show Cause.

It follows that Petitioner’s hearing request was filed 197 days late. Petitioner does not deny that the request was untimely, and I find it undeniable on this record.

**B. Petitioner has not demonstrated good cause to extend the time for filing.  
42 C.F.R. § 498.40(c)(2).**

“For good cause shown, the ALJ may extend the time for filing the request for hearing.” 42 C.F.R. 498.40(c)(2). A definition of “good cause” does not exist in the applicable regulations, and the “[Departmental Appeals] Board [(Board)] has never attempted to provide an authoritative or complete definition of the term ‘good cause’ in section 498.40(c)(2).” *Hillcrest Healthcare, L.L.C.*, DAB No. 1879, at 5 (2003).

While the Board has never precisely defined the term “good cause,” it is clear that, since Petitioner has failed to respond and offers no explanation whatsoever, there is no basis upon which I can make a good cause determination.

**IV. Conclusion**

Petitioner did not timely file a request for hearing, and I do not find good cause to justify extending the time for filing. I therefore dismiss this case for cause. 42 C.F.R. § 498.70(c).

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/s/  
Joseph Grow  
Administrative Law Judge

<sup>1</sup> The envelope in which Petitioner’s hearing request arrived was postmarked November 4, 2010.