

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the
Social Security Administration,

Petitioner,

v.

Deanna M. Rivera,

Respondent.

Docket No. C-13-1232

ALJ Ruling No. 2014-11

Date: November 5, 2013

ORDER DISMISSING CASE

On August 15, 2013, Respondent Deanna Rivera filed a request for an administrative law judge (ALJ) hearing to challenge an April 4, 2013 notice from the Inspector General of the Social Security Administration (SSA) that he was imposing a \$51,678 civil money penalty (CMP) against her. On September 19, 2013, I held a prehearing conference by telephone during which the SSA stated its intent to file a motion to dismiss Respondent's hearing request. I provided the SSA that opportunity and Respondent Rivera an opportunity to file a response.

On October 1, 2013, the SSA moved to dismiss Respondent Rivera's request for hearing. SSA argued that Respondent's hearing request was untimely filed and did not raise an issue that is subject to ALJ review. SSA Mot. to Dismiss at 6-9. SSA presented evidence demonstrating that one of its special agents personally served Respondent Rivera with the CMP notice letter on April 12, 2013. SSA Ex. 3. By regulation, Respondent had to file her request for hearing within 60 days from receipt of the CMP notice letter, *i.e.*, no later than June 11, 2013. *See* 20 C.F.R. § 498.202(c)(2). In her August 15, 2013 hearing

request, Respondent Rivera wrote that she did not timely file it because she was “in and out of hospitals since 11/12.” In a response filed October 21, 2013, Respondent Rivera provided a list of her medical ailments and treatments as well as various related medical documents.

The list of medical ailments and treatments as well as the medical documents that Respondent has provided do not address the period between when she received the notice of the SSA’s CMP (April 12, 2013) and the deadline for filing her hearing request (June 11, 2013). Rather, the documents provide information about treatment Respondent received during 2012 as well as physicians’ appointments in October 2013. But there is no evidence of any acute illnesses or incapacitation between April 12 and June 11, 2013, when Respondent received the CMP notice and had to file her hearing request. Her assertions of a chronic foot infection and diabetes — while supported by the documents she submitted — do not explain why she was unable to file a hearing request especially since while still presumably suffering from those ailments, she was able to respond to my previous order in this case. Moreover, there is a physician’s note permitting Respondent to return to work, albeit limited in scope, on March 25, 2013, shortly before SSA was able to serve its CMP notice. If Respondent was medically-cleared to work, there is no reason — at least none presented here — why she could not have filed her request for hearing in a timely manner.

I am required to dismiss an untimely hearing request unless the respondent shows good cause for the untimely filing. 20 C.F.R. § 498.202(f)(1). The regulations do not define good cause, but leave that determination to my discretion. *See, e.g., Taos Living Ctr.*, DAB No. 2203, at 12 (2009) (holding that the ALJ “has discretion to extend the period . . . to file if . . . the ALJ finds ‘good cause’ for the late filing”). In other types of cases, however, the SSA has defined good cause as circumstances beyond a party’s ability to control.¹ Although I am not bound to apply this definition, I find it reasonable to apply it here. The regulation has been subject to notice-and-comment rulemaking. It has been applied in a wide variety of cases. *See, e.g., Raj Ahluwalia, M.D.*, ALJ Ruling No. 2013-11, at 2-3 (2013) (and cases cited therein). Reliance on such a long-accepted standard could hardly be considered an abuse of discretion.

I find that Respondent has not demonstrated good cause to extend the deadline for filing her hearing request. Accordingly, this case is dismissed.

¹ The regulations list factors for the ALJ to consider: 1) the circumstances that kept the affected party from making the request on time; 2) whether any SSA action misled her; 3) whether the affected party understood the requirements for filing; and 4) whether the affected party had any physical, mental, educational, or linguistic limitation that prevented her from filing a timely request or from understanding or knowing about the need to file a timely request for review. 20 C.F.R. § 404.911.

Regulations governing these procedures afford no further appeal rights for the dismissal of a hearing request. *See* 20 C.F.R. § 498.221 (providing hearing rights only for an initial decision); *see also Guidelines -- Appellate Review of Decisions of Administrative Law Judges in Social Security Administration Cases to Which Procedures in 20 C.F.R. Part 498 Apply* at <http://www.hhs.gov/dab/divisions/appellate/guidelines/ssa.html>.

/s/

Carolyn Cozad Hughes
Administrative Law Judge