

The Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the case of:)	
)	
Danielle Daubner,)	Date: January 22, 2010
)	
Petitioner,)	
)	
- v. -)	Docket No. C-10-83
)	Decision No. CR2061
The Inspector General.)	
)	

DECISION

Petitioner, Danielle Daubner, asks review of the Inspector General’s (I.G.’s) determination to exclude her from participation in the Medicare, Medicaid, and all federal health care programs under section 1128(a)(3) of the Social Security Act. The I.G. has moved for dismissal, arguing that the appeal is untimely. I agree and dismiss Petitioner’s appeal.

Petitioner’s hearing request must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(1) because it was not timely filed.¹

Petitioner pled guilty to drug charges, and, in a letter dated March 31, 2008, the I.G. advised Petitioner that, based on her conviction “of a criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care item or service,” she was excluded from participation in Medicare, Medicaid, and all federal health care programs for a period of five years. I.G. Exs. 1, 3, 4. With the notice letter, the I.G. sent Petitioner an explanation of her appeal rights: she was entitled to a hearing before an administrative law judge if she filed a written request for review within sixty days after receipt of the notice. CMS Ex. 1, at 3. Petitioner filed her hearing request almost eighteen months later, on October 19, 2009 (although she inexplicably dated her letter October 20, 2009).

¹ I make this one finding of fact/conclusion of law.

The I.G. filed a motion to dismiss, accompanied by nine exhibits (I.G. Exs. 1-9). Although represented by counsel, Petitioner did not respond to the I.G.'s motion. Aside from her hearing request, her only submission is a short letter dated November 26, 2009 (before the I.G. filed his motion) in which she acknowledges that her appeal is late, but characterizes the notice letter as "vague," criticizes the I.G.'s underlying policy, and asks for assistance. She does not deny that she timely received the notice.

The regulations governing these proceedings grant me virtually no discretion. An aggrieved party *must* request a hearing within sixty days after receiving notice of the exclusion. 42 C.F.R. § 1001.2007(b). The date of receipt is presumed to be five days after the date of the notice unless there is a reasonable showing to the contrary. 42 C.F.R. § 1005.2(c). The regulations include no good-cause exceptions for untimely filing, providing that the ALJ *will* dismiss a hearing request that is not filed in a timely manner. 42 C.F.R. § 1005.2(e)(1); *John Maiorano, R. Ph., v. Thompson*, Civil Action No. 04-2279, at 6 (D. N.J. 2008).

I therefore dismiss Petitioner's request for a hearing pursuant to 42 C.F.R. § 1005.2(e)(1).

/s/

Carolyn Cozad Hughes
Administrative Law Judge