Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Bryant H. Hudson, III, M.D. (O.I File No. H-11-40322-9),

Petitioner

v.

The Inspector General.

Docket No. C-11-606

Decision No. CR2472

Date: December 9, 2011

DECISION

The hearing request of Petitioner, Bryant H. Hudson, III, M.D., is dismissed pursuant to 42 C.F.R. § 1005.2(e)(3) for abandonment.

I. Background

The Inspector General (I.G.) notified Petitioner by letter dated June 30, 2011, that he was being excluded from participation in Medicare, Medicaid, and all federal health care programs for five-years. The I.G. excluded Petitioner, pursuant to section 1128(a)(2) of the Social Security Act (Act), based upon his conviction in the Circuit Court of Montgomery County, Alabama of a criminal offense related to neglect or abuse of patients in connection with the delivery of a health care item or service.

Petitioner timely requested a hearing by letter dated July 12, 2011. The case was assigned to me for hearing and decision on July 21, 2011. I convened a prehearing conference by telephone on August 3, 2011, the substance of which is memorialized in my August 4, 2011 Prehearing Conference Order and Schedule for Filing Briefs and Documentary Evidence (Prehearing Order).

In accordance with my Prehearing Order, the I.G. filed its motion for summary judgment and proposed exhibits on September 19, 2011. My Prehearing Order directed that

Petitioner file his response to the I.G.'s motion with supporting memorandum and exhibits not later than November 4, 2011. My office did not receive Petitioner's response, and, on November 10, 2011, my office contacted Petitioner's counsel of record, Robert J. Russell, Jr., Esquire. Mr. Russell stated that he no longer represents Petitioner and that he would not file a notice of withdrawal.

On November 14, 2011, I sua sponte granted Petitioner an extension of time and ordered Petitioner to file his response to the I.G. motion for summary judgment no later than November 28, 2011. I warned Petitioner that, if no response was received, I may treat his request for hearing as abandoned and dismiss his request pursuant to 42 C.F.R. § 1005.2(e)(3). To date, my office has not received a response from Petitioner.

II. Discussion

The sole issue in this case is whether Petitioner's request for hearing must be dismissed. An Administrative Law Judge (ALJ) is required to dismiss a request for hearing when a petitioner has abandoned his or her hearing request. 42 C.F.R. § 1005.2(e)(3).

Petitioner has not responded to the I.G. motion for summary judgment. Petitioner has also failed to meet the filing deadlines that I established in my August 4, 2011 Prehearing Order and as amended by my November 14, 2011 Order. I find that Petitioner has abandoned his request for a hearing. Accordingly, I dismiss this matter, pursuant to 42 C.F.R. § 1005.2(e)(3).

III. Conclusion

For the foregoing reasons, Petitioner's request for hearing is dismissed.

Keith W. Sickendick

Administrative Law Judge