

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

The Inspector General of the Social Security Administration,

v.

Kayla Lyn Clark.

Docket No. C-13-1201

ALJ Ruling No. 2014-24

Date: February 11, 2014

DISMISSAL

On August 7, 2013, Respondent Kayla Lyn Clark, through her attorney, filed a request for an administrative law judge (ALJ) hearing to challenge a May 8, 2013 determination by the Inspector General of the Social Security Administration (SSA IG) to impose a \$10,000 civil money penalty (CMP) against her.

SSA moves to dismiss Respondent Clark's request for hearing. SSA argues that Respondent's hearing request is untimely filed and does not raise an issue that is subject to ALJ review. For the reasons discussed below, I grant SSA's motion.

Discussion

In a letter dated May 8, 2013, the IG advised Respondent Clark that he proposed imposing against her a CMP of \$10,000. The parties agree that: 1) Respondent Clark received the notice letter on May 13, 2013; 2) the notice letter informed her of her right to appeal within 60 days of the date she received the notice; and 3) by regulation, she should have filed her hearing request no later than July 12, 2013. IG Br. at 6; Resp. Br. at 3; *See* 20 C.F.R. § 498.202(c)(2).

In her August 7, 2013 hearing request, Respondent wrote that she did not timely file because her attorney, “by inadvertence and oversight” failed to determine correctly the appeal deadline.

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 Center*, 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.

On June 17, 2013, Respondent Clark delivered the notice letter to her attorney, who is employed by Kansas Legal Services. Counsel missed the filing deadline, and the IG issued a Notice of Default, which Respondent received on August 2, 2013. Counsel then filed Respondent’s hearing request, citing staffing problems related to budget reductions as the reason he failed to file timely. That the State of Kansas has declined to fund adequately its legal services organizations is unfortunate. However, virtually every legal services organization in the country could make the same claim, as could many private law offices. Inadvertence and oversight are not circumstances beyond the party’s ability to control, and do not constitute good cause. *See, e.g., NBM Healthcare Inc.*, DAB No. 2477 (2012) (finding that counsel’s claims that they “did not have time” to focus on ALJ notice do not constitute good cause); *Dr. Elaine Schottstaedt, M.D.*, DAB No. 2337 (2010) (finding that carelessness is never good cause for extending the time to file a hearing request).

I therefore find that Respondent has not demonstrated good cause for extending 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.

