

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

KeriAnn C. Carlson,  
(OI File No. H-17-41903-9),

Petitioner,

v.

The Inspector General

Docket No. C-18-627

ALJ Ruling No. 2018-7

Date: July 5, 2018

**DISMISSAL**

The Inspector General (IG) has excluded Petitioner, KeriAnn C. Carlson, from participation in Medicare, Medicaid, and all federal health care programs because she surrendered her nursing license while a formal disciplinary proceeding was pending for reasons bearing on her professional competence, professional performance, or financial integrity. Petitioner challenges the exclusion, but, contrary to the explicit instructions set forth in the IG's notice letter, she filed her appeal 69 days after receiving it. The IG moves to dismiss her appeal as untimely filed.

I agree, and, for the reasons discussed below, I dismiss Petitioner's appeal.

**Background**

In a letter dated December 29, 2017, the IG advised Petitioner that, because her license to provide healthcare as a registered nurse was "revoked, suspended, or otherwise lost, or was surrendered while a formal disciplinary proceeding was pending before the [state licensing entity] for reasons bearing on [her] professional competence, professional performance, or financial integrity," she was excluded from participation in Medicare, Medicaid, and all federal health care programs. 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 receiving the notice. IG Exhibit (Ex.) 1.

Petitioner filed her hearing request electronically through the Departmental Appeals Board's electronic filing system on March 8, 2018.

The IG moves to dismiss Petitioner's hearing request because it is untimely.

## Discussion

***Petitioner's hearing request must be dismissed pursuant to 42 C.F.R. § 1005.2(e)(1) because it was not timely filed.<sup>1</sup>***

The regulations governing these appeals provide that 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); *Maiorano v. Thompson*, Civil Action No. 04-2279, at 6 (D.N.J. 2008).

The IG sent copies of the December 29, 2017 notice letter to Petitioner at two addresses, including 2147 East Borg Drive, Sandy, Utah. IG Ex. 1. Based on the regulatory presumption, we assume that Petitioner received the notice no later than January 3, 2018, so her hearing request was due on or before March 5, 2018 (the 60<sup>th</sup> day, March 4, having fallen on a weekend). 42 C.F.R. § 1005.12(a). But Petitioner did not file her hearing request until March 8, 2018.

Petitioner now denies ever receiving the IG's notice. P. Ex. 1.

By itself, Petitioner's assertion of non-receipt is insufficient to overcome the regulatory presumption. To rebut that presumption, Petitioner must make a "reasonable showing" that she did not receive the notice. *Kenneth Schrage*, DAB No. 2366 at 4-5 (2011); *Gary Grossman*, DAB No. 2267 at 5-6 (2009). Petitioner concedes that 2147 East Borg Drive is her correct address. P. Ex. 1. She must have received the notice at some point prior to the date she filed her appeal because she filed a copy of it along with her hearing request. She has not explained how or when she obtained it, and the most reasonable explanation is that she received the notice that the IG mailed to her.

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

Moreover, Petitioner's denial contradicts statements she made during our April 4, 2018 prehearing conference. At that time, she admitted receiving the notice letter "sometime in January 2018" at the East Borg Drive Address. I incorporated her admission into my summary of the prehearing conference and gave her the opportunity to object. Order Summarizing Prehearing Conference (April 4, 2018). She did not.

Because Petitioner has not made a "reasonable showing" of non-delivery, I have no discretion and must dismiss her hearing request pursuant to 42 C.F.R. § 1005.2(e)(1). Petitioner's hearing request is therefore dismissed.

\_\_\_\_\_/s/\_\_\_\_\_  
Carolyn Cozad Hughes  
Administrative Law Judge