

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Castlehaven Care Center,)	Date: October 27, 1998
)	
Petitioner,)	
)	
- v. -)	Docket No. C-98-045
)	Decision No. CR554
Health Care Financing)	
Administration.)	

DECISION

I decide that Castlehaven Care Center did not timely file a request or amended request for hearing. Consequently, Petitioner has no right to a hearing and Petitioner's hearing request is DISMISSED, pursuant to 42 C.F.R. § 498.70(c).

I. Background

On October 9, 1997, Petitioner requested a hearing to contest the noncompliance determination made by the Health Care Financing Administration (HCFA) in its notice letter dated August 12, 1997. HCFA's notice letter referred to the findings of noncompliance made during three surveys (March 7, 1997, April 16, 1997, and May 2, 1997) which resulted in its determination to impose a civil money penalty of \$100 per day against Petitioner for the period from March 7 through June 4, 1997.

Petitioners document entitled "Request for Hearing," dated October 9, 1997, was comprised exclusively of the following:

The specific issues and findings of fact and conclusions of law that the Respondent facility disagrees with are as follows:

1. That the facility was not in substantial compliance on May 2, 1997; and

2. That the facility was not in substantial compliance on March 7, 1997; and
3. That the facility was not in substantial compliance on April 16, 1997; and
4. That the facility was not in substantial compliance on May 2, 1997 (sic).

On November 12, 1997, I issued an order setting forth certain procedures and deadlines for the parties to follow. Rule 2 of the November 12, 1997 order required, inter alia, the filing of either a motion to stay proceedings for settlement purposes, a notice of issues for which dismissal would be requested, a notice of issues for summary judgment, or a report of readiness to present evidence for adjudication of the case. Rule 2 also imposed a filing deadline of 60 days from the date of the order.

On December 1, 1997, HCFA filed a motion to dismiss the request of October 9, 1997, on the basis that Petitioner had failed to comply with the requirements of 42 C.F.R. § 498.40(b). HCFA asserted in its motion that Petitioner's request letter failed to "[i]dentify the specific issues, and the findings of fact and conclusions of law with which [it] disagrees," and failed to "[s]pecify the basis for contending that the findings and conclusions are incorrect." HCFA Motion, 1 (citing 42 C.F.R. § 498.40(b)).

HCFA's motion to dismiss was filed within the 60-day period specified by my November 12, 1997 order. Petitioner did not submit anything in compliance with my November 12, 1997 order. However, after receiving HCFA's motion to dismiss, Petitioner conferred with HCFA through counsel and wrote to request procedural guidance from this office. Petitioner Letter of January 22, 1998.

In accordance with my directives, a letter was sent to both parties addressing the means by which Petitioner may proceed in response to the motion to dismiss. Ms. Selzer's letter of February 20, 1998.

The letter noted that my order of November 12, 1997 in this case allowed each party to submit within the initial 60-day period the motion or report of issues it deems

appropriate if no agreement could be attained between the parties concerning the content of the filing. The letter also advised that--

- o thus, Petitioner may--
Move in writing for leave to amend the request for hearing to conform to section 42 C.F.R. § 498.42(b), requesting also an extension of time to file that request and showing also good cause for that extension pursuant to 42 C.F.R. § 498.42(c)(1) and (2);

- o Move for leave to file a response to HCFA's motion to dismiss; or

- o File a joint request as to the course of future proceedings.

Ms. Selzer's letter of February 20, 1998, 1.

Petitioner did not ask to brief the issue of whether its request of October 9, 1997 satisfied the requirements of 42 C.F.R. § 498.40(b). However, notwithstanding the instructions set forth in the above-cited letter to counsel, Petitioner did not file any motion specifically requesting an enlargement of time within which to submit another hearing request. Instead, Petitioner filed on March 24, 1998 its "Motion to Amend Request for Hearing" with an "Amended Request for Hearing."¹

Petitioner did not submit any arguments indicating its disagreement with HCFA's interpretations in its motion to dismiss. In its Motion to Amend Request for Hearing, Petitioner acknowledged that its "initial Request for hearing . . . did not adequately identify the specific issues and the findings or fact and conclusions of law with which the petitioner disagreed, nor did it specify

¹ The "Amended Request for Hearing" sets forth only those citations made during the surveys of March 7, 1997 and May 2, 1997. However, HCFA had relied upon an additional, intervening survey (the one conducted on April 16, 1997) in imposing the civil money penalty for the period from March 7, 1997 through June 4, 1997. HCFA's Notice Letter of August 12, 1997.

I do not address the consequences of foregoing discrepancy, since Petitioner has not shown good cause for its delay in filing its "Amended Request for Hearing."

the basis for petitioner's disagreement." P.'s Mot. to Amend, at 1.

HCFA noted in its response to Petitioner's submissions that, unless an enlargement of time is granted by the administrative law judge, Petitioner had only 60 days after its receipt of HCFA's notice letter to file a hearing request meeting the requirements of the regulations. HCFA Resp. to P.'s Mot., at 2 (citing 42 C.F.R. § 498.40). Since no request for extension of the time for filing a hearing request was ever requested by Petitioner, Petitioner's motion to amend with the proposed amendments cannot be considered timely. HCFA Resp. to P.'s Mot., at 2. HCFA argued also that, even if Petitioner's Motion to Amend could be construed as a request for the enlargement of time within which to file a request for hearing, Petitioner has set forth no good cause for me to grant it. *Id.* Since the sole reason Petitioner provided for having filed its October 9, 1997 request was that counsel had "only a brief opportunity to investigate the underlying claims but was required to file a Request for Hearing in order to preserve the right to review," HCFA argues that insufficient basis exists for granting Petitioner's motion. *Id.* (quoting P.'s Mot. to Amend, at 1).

Petitioner has not requested an opportunity to file a reply.

II. Applicable law

The regulations promulgated by the Secretary of Health and Human Services specify that a request for administrative hearing must be made as follows:

(a) Manner and timing of request.

(1) an affected party entitled to a hearing under § 498.5 may file a request for hearing . . .

(2) The affected party or its legal representative . . . must file the request in writing within 60 days from the receipt of the notice of the initial, reconsidered, or revised determination unless that period is extended in accordance with paragraph (c) of this section. . . .

(b) Content of request for hearing. The request for hearing must --

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for contending that the findings and conclusions are incorrect.

(c) Extensions of time for filing a request for hearing. If the request was not filed within 60 days --

(1) The affected party or its legal representative . . . may file with the ALJ a written request for extension of time stating the reasons why the request was not filed timely.

(2) For good cause shown, the ALJ may extend the time for filing the request for hearing.

42 C.F.R. § 498.40.

III. Findings and discussion

I make the following findings of fact and conclusions of law.

1. *Petitioner's "Request for Hearing" dated October 9, 1997 does not meet the specific requirements of 42 C.F.R. § 498.40(b).*

2. *Petitioner has failed to file a request for extension of time to submit its amended hearing request.*

3. *Petitioner has failed to establish the requisite good cause necessary for granting of a motion for extension of time for filing the request for hearing.*

4. *Petitioner's motion to amend its initial hearing request is untimely.*

5. *Petitioner has failed to file any hearing request or amended hearing request timely.*

HCFA moved to dismiss this case for cause because Petitioner's "Request for Hearing" fails to meet the specific requirements of 42 C.F.R. § 498.40(b). There are three bases under which some or all issues of a case may be dismissed for cause: because the doctrine of res judicata is applicable due to an affected party's failure to timely request a hearing with respect to that determination or decision (42 C.F.R. § 489.70(a));

because the party requesting a hearing does not have a right to hearing (42 C.F.R. § 498.70(b)); or because the affected party failed to file a request for hearing within the 60-day period and the time for filing has not been extended (42 C.F.R. § 498.70(c)). Thus, an administrative law judge must look at the contents of the document which requested a hearing in order to determine whether the right to hearing has accrued with respect to all, some, or none of the issues stated in the document. Consequently, the mere filing of a document titled "Request for Hearing" within the 60-day filing period does not mean that the document satisfies the applicable regulatory requirements. See Birchwood Manor Nursing Center, DAB No. 1669 (1998); Regency Manor Health Care Center, et al., DAB No. 1672 (1998).

The regulation at 42 C.F.R. § 498.40 contemplates that an affected party which has received an initial determination from HCFA would use the 60 days after the receipt of the appealable determination to research the laws, regulation, and relevant facts to decide which, if any, issues of material facts or law exist and why, and, then to summarize the issues and basis for disagreement in a "request for hearing" as defined in that regulation. If an affected party is unable to accomplish the foregoing within 60 days despite the exercise of due diligence or for reasons beyond its control, it may request an extension of the filing time based on a showing of good cause. Birchwood Manor, at 20 - 21.

In the instant case, the Petitioner's October 9, 1997 "Request for Hearing," even by Petitioner's own admission, does not meet the specific requirements of 42 C.F.R. § 498.40(b). Moreover, in my letter I specifically informed Petitioner that any motion for leave to amend the request for hearing to conform to 42 C.F.R. § 498.40(b) must also include a request for an extension of time to file the request for hearing and must show good cause for that extension, pursuant to the requirements of the applicable regulation. 42 C.F.R. § 498.40(c)(1) and (2).

I agree with HCFA that Petitioner has failed to establish the requisite good cause in its motion to amend the hearing request. Even if Petitioner had been implicitly seeking an extension of the 60-day filing period provided by 42 C.F.R. § 498.40(a) in order to amend its request, Petitioner had the obligation to show good cause in support of its motion. 42 C.F.R. § 498.40(c). However, Petitioner's motion does not allege that its asserted "brief opportunity to investigate the underlying claims" occurred for reasons beyond its control. Such a

possibility cannot be reasonably inferred from the fact that Petitioner had the benefit of at least 60 days in which to review and draft a request for hearing. Additionally, if Petitioner had needed more than those 60 days to conduct an adequate evaluation of its claim, Petitioner should have been aware of that need before responding to HCFA's motion to dismiss. The provisions of 42 C.F.R. § 498.40(c) clearly provided Petitioner with the opportunity to request an extension of the filing period with a showing of good cause on or before the expiration of those 60 days. Thus, it was not appropriate, necessary, or reasonable for Petitioner to believe that it needed to file a legally insufficient hearing request on October 9, 1997 for the asserted purpose of "preserv[ing] the right to review."

For the foregoing reasons, I deny Petitioner's Motion to Amend Request for Hearing, and I grant HCFA's Motion to Dismiss Petitioner's Request for Hearing. This case is hereby dismissed pursuant to 42 C.F.R. § 498.70(c).

/s/

Mimi Hwang Leahy

Administrative Law Judge