

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Ollie Futrell
Docket No. A-13-116
Decision No. 2540
November 13, 2013

DETERMINATION TO DECLINE REVIEW

After reviewing the record to evaluate the issues presented by Ms. Futrell's exceptions to the administrative law judge (ALJ) decision identified above, we have determined that we need not render a separate decision.¹ We therefore decline review of and summarily affirm the ALJ's conclusions that the exclusion was authorized and that the length of the exclusion is reasonable under the statute and regulations and Board precedent. This determination should not be read as affirming the ALJ's analysis, in dicta, of what he views as "modified" Board precedent on the issue of the reasonableness of the length of an exclusion.

Thus, the ALJ decision becomes final and binding 60 days from the date of service of this determination to decline review. *See* 42 C.F.R. §1005.21(j). Judicial review is available in an appropriate United States district court if a civil action is filed within 60 days after service of this determination to decline review. *See* sections 1128(f)(1) and 205(g) of the Social Security Act and 42 C.F.R. § 1005.21(k)(1).

_____/s/
Judith A. Ballard

_____/s/
Sheila A. Hegy

_____/s/
Stephen M. Godek
Presiding Board Member

¹ Ms. Futrell submitted 11 new exhibits with her appeal, but she did not establish that the exhibits were relevant and material or allege that there were reasonable grounds for failing to produce them before the ALJ. Therefore, the exhibits are not admissible. *See* 42 C.F.R. § 1005.21(f).