

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

Charles Brian Griffin  
Docket No. A-16-98  
Decision No. 2733  
September 19, 2016

**DETERMINATION TO DECLINE REVIEW OF  
ADMINISTRATIVE LAW JUDGE DECISION**

After reviewing the record to evaluate the issues presented by Petitioner Charles Brian Griffin's exceptions to the decision of the administrative law judge (ALJ) in *Charles Brian Griffin*, Decision No. CR4602 (May 5, 2016), we have determined that we need not render a separate decision. We therefore decline review of and summarily affirm the ALJ's decision.<sup>1</sup> Thus, that 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).

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<sup>1</sup> Petitioner reasserts here an argument he made below that the record supports the existence of a mitigating factor under 42 C.F.R. § 1001.102(c)(2) (an alleged court determination of reduced culpability based on his gambling addiction) that requires reduction of his exclusion period. Petitioner's argument before the Board relies on alleged statements from a transcript of his criminal trial sentencing hearing, but the transcript was not in the record considered by the ALJ, and Petitioner did not request or make the required showing in this Board proceeding to have the transcript (assuming it exists) admitted and considered as additional evidence. *See* 42 C.F.R. § 1005.21(f) (providing that if a party demonstrates that evidence not presented to the ALJ is relevant and material and that there were reasonable grounds for not presenting it to the ALJ, the Board may remand the case to the ALJ for consideration of the evidence). Accordingly, the Board may not consider whether the alleged statements constitute additional evidence requiring remand.

Notice of judicial appeal right

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/  
Sheila Ann Hegy

\_\_\_\_\_/s/  
Constance B. Tobias

\_\_\_\_\_/s/  
Susan S. Yim  
Presiding Board Member