

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

_____	)	
In the Case of:	)	
	)	
Heidi Jo Anderson,	)	
	)	Date: March 25, 2008
Petitioner,	)	
	)	
- v. -	)	Docket No. C-08-246
	)	Decision No. CR1764
The Inspector General.	)	
_____	)	

**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss the hearing request of Petitioner Heidi Jo Anderson because she did not file it timely.

**I. Background**

On August 31, 2007 the Inspector General (I.G.) notified Petitioner that she was being excluded from participating in Medicare and other federally funded health care programs for a minimum period of five years. On January 14, 2008 Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

I held a pre-hearing conference by telephone at which the I.G. advised me that he was moving to dismiss Petitioner's hearing request on the ground that she had failed to file it timely. The I.G. then filed a motion to dismiss. Petitioner did not reply to the motion.

**II. Issue, findings of fact and conclusions of law**

**A. Issue**

The issue in this case is whether Petitioner failed to file a timely hearing request.

## **B. Findings of fact and conclusions of law**

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

### ***1. Petitioner failed to file a timely hearing request.***

Regulations governing cases involving the I.G. require a party requesting a hearing to file his or her request within 60 days from the date that he or she receives the I.G.'s notice of intent to impose remedies. 42 C.F.R. § 1005.2(c). Receipt of the notice is presumed to be within five days of the notice's mailing date. *Id.*

The I.G. mailed his notice of exclusion to Petitioner on August 31, 2007. She is presumed to have received that notice no later than five days from the date of mailing. Petitioner offered no evidence to show that she received the notice beyond the presumptive delivery date. In order to comply with the regulations Petitioner would have had to file her hearing request no later than November 5, 2007.

Petitioner did not file her hearing request until January 14, 2008, more than 120 days from the date when she is presumed to have received the I.G.'s notice. Consequently, her hearing request is untimely.

### ***2. I must dismiss Petitioner's hearing request because she did not file it timely.***

Regulations state that an administrative law judge will dismiss a hearing request when it is not filed timely. 42 C.F.R. § 1005.2(e)(1). The regulations do not vest me with discretion to allow a hearing in an instance where a party fails to file timely his or her hearing request. I must dismiss Petitioner's hearing request inasmuch as she did not file it timely.

\_\_\_\_\_  
/s/

Steven T. Kessel  
Administrative Law Judge