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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

A & K MEDICAL SUPPLIES,
Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official
capacity as Secretary,
Defendant.

Case No: CV 10-9453 CAS (AJWx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

FINDINGS OF FACT

1
2 1. A & K Medical Supplies (“A&K”) provides durable medical equipment
3 (“DME”) to Medicare beneficiaries. (A.R. at 48.)

4 2. A&K submitted to Medicare carrier, Noridian Administrative Services
5 (“Noridian”), claims for DME that were provided to 34 Medicare beneficiaries
6 between October 24, 2005 and October 7, 2006. *Id.*

7 3. Noridian initially paid these claims in full but later determined that there
8 was an overpayment. *Id.*

9 4. In response to A&K’s request for reconsideration, Noridian issued
10 redetermination decisions adverse to A&K on all 34 claims. (A.R. at 167-409.)

11 5. A&K submitted a request for reconsideration to River Trust Solutions, a
12 DME Qualified Independent Contractor (“QIC”). (A.R. at 114-19.)

13 6. The QIC affirmed Noridian’s decisions. *Id.*

14 7. On October 20, 2009, A&K submitted a request for hearing before an
15 Administrative Law Judge (“ALJ”), contesting the QIC’s decision. (A.R. at 112.)

16 8. After conducting a hearing, the ALJ issued a decision on April 9, 2010,
17 finding that Medicare would not cover the services rendered, that the overpayment
18 was properly issued, and that A&K was liable for the overpayment. (A.R. at 47-60.)

19 9. On June 25, 2010, the Medicare Appeals Council (“MAC”) received
20 from A&K a request for review of the ALJ’s decision. (A.R. at 23.)

21 10. On October 7, 2010, the MAC dismissed this request as untimely,
22 pursuant to 42 C.F.R. § 405.1102, and found there was not good cause to extend the
23 time for filing. (A.R. at 18-20.)

24 11. On October 19, 2010, the MAC received a letter from A&K requesting
25 that it vacate its dismissal on the basis that A&K had good cause for the untimely
26 filing. (A.R. at 10.)

27 12. The MAC responded that it had denied A&K’s request for review
28 because A&K had failed to offer any explanation for the delay. (A.R. at 8.)

1 adequate to support a conclusion.” *Mayes*, 276 F.3d at 459.

2 8. “A finding supported by substantial evidence must be affirmed by a
3 reviewing court even if it is possible to draw two inconsistent conclusions from the
4 evidence.” *Id.*

5 9. Under the Administrative Procedure Act, the reviewing court must affirm
6 the agency’s determination unless it is “arbitrary, capricious, an abuse of discretion, or
7 otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A).

8 10. “A decision is arbitrary and capricious if the agency has relied on factors
9 which Congress has not intended it to consider, entirely failed to consider an
10 important aspect of the problem, offered an explanation for its decision that runs
11 counter to the evidence before the agency, or is so implausible that it could not be
12 ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle*
13 *Mfr.’s Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

14 11. Here, the applicable regulations require that a request for review must be
15 filed within 60 days from the date notice of the ALJ’s decision was received. 42
16 C.F.R. § 405.1102(a).

17 12. The date of receipt of the ALJ’s decision or dismissal is presumed to be
18 five calendar days after the date of the notice of decision or dismissal, unless there is
19 evidence to the contrary. *Id.*

20 13. Moreover, the regulations provide that the MAC will dismiss a request
21 for review when the provider fails to file a timely request for review and the MAC has
22 not extended the time for filing. 42 C.F.R. § 405.1114.

23 14. The time for filing will be extended if good cause is shown. 42 C.F.R. §
24 405.1102(b).

25 15. The MAC’s dismissal of A&K’s request for review and decision not to
26 extend the time for filing was reasonable, consistent with the applicable regulations,
27 and not arbitrary or capricious.

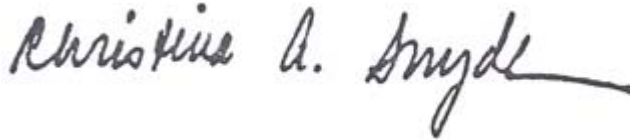
28 16. Accordingly, the Court affirms the MAC’s decision and dismisses this

1 action.

2 17. Any finding of fact deemed to be a conclusion of law is hereby
3 incorporated into the Conclusions of Law.

4 18. Any conclusion of law deemed to be a finding of fact is hereby
5 incorporated into the Findings of Fact.

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8 Dated: May 17, 2012



10 CHRISTINA A. SNYDER
11 UNITED STATES DISTRICT JUDGE
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