

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

SARAH KURKO,)	
)	
Petitioner,)	
)	
v.)	Docket No. 24040-13 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

The Court’s order of December 30, 2014, ordered that this “collection due process” case be remanded to the Office of Appeals of the Internal Revenue Service (“IRS”) for a supplemental hearing. Both parties have filed status reports asserting that the supplemental hearing took place, and respondent has reported that IRS Appeals has issued a supplemental notice of determination once again sustaining the collection determination. It is therefore

ORDERED that the parties shall promptly communicate with each other in order to exhaust all possibilities of settling this case, and that no later than April 10, 2015, they shall file either (a) a stipulated decision document, (b) a stipulation of settled issues, or, if there is no settlement, (c) a joint status report (or, if that is not practical, then separate status reports) explaining the status of the case and recommending a schedule for further proceedings in this case. We note that the deadline for a motion for summary judgment is 60 days before the beginning of a trial session, see Rule 121(a), which in view of the schedule ordered below would be April 10, 2015. However, if either or both of the parties intends to move for summary judgment, then the Court would nonetheless approve a schedule in which such motions could be filed as late as May 4, 2015, and responses could be filed as late as May 25, 2015. It is further

ORDERED that, if the case does not settle, then in the next memoranda or briefs to be filed, the parties shall explain their positions on two issues:

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(a) What level of deference should be accorded to the “physician” requirement of section 4(1) of Rev. Proc. 99-21, 1991-1 C.B. 960? Section 6511(h) provides that the taxpayer must furnish “proof ... in such form and manner as the Secretary may require”. Did the Revenue Procedure go beyond mere form and manner to set up a substantive standard? Does that matter? Does it matter whether the Revenue Procedure was promulgated without notice-and-comment pursuant to Section 4 of the Administrative Procedures Act, 5 U.S.C. §553?

(b) For purposes of assessing the validity of the “physician” requirement, what was the agency’s rationale for (a) requiring that the statement be by a “physician” as opposed to another sort of medical professional, and (b) importing the definition of “physician” from a Medicare provision (42 U.S.C. § 1395x(r) (“a doctor of medicine ... legally authorized to practice medicine and surgery”))? In regards to Medicare (its native context), the definition has the apparent purpose of restricting Medicare payments to certain persons. It is not immediately obvious why, in setting standards for proving a mental disability, an agency would require a statement by someone who is qualified to receive Medicare payments and is “authorized to practice medicine and surgery”.

In case a further trial or evidentiary hearing proves necessary, it is

ORDERED that this case is calendared for trial at the session of the Court in Boston, Massachusetts, scheduled to commence at 10:00 a.m., on June 8, 2015, in Room 5, 12th Floor of the John W. McCormack Post Office & Courthouse, 5 Post Office Square, Boston, Massachusetts 02109. It is further

ORDERED that the Clerk of the Court is directed to attach to this Order a copy of the Court’s Standing Pretrial Order issued for the session beginning June 8, 2015, in Boston, Massachusetts.

This Order constitutes official notice of its contents to the parties, and further notice will not be provided.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
March 20, 2015