

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12-2273

JEWISH HOME OF EASTERN PENNSYLVANIA,
Petitioner

v.

CENTERS FOR MEDICARE & MEDICAID SERVICES;
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Respondents

On Petition for Review of a Decision of the
Departmental Appeals Board of the
United States Department of Health and Human Services
(HHS-1: A-12-19)

Submitted Under Third Circuit LAR 34.1(a)
April 26, 2013

BEFORE: JORDAN, GREENBERG, and NYGAARD, *Circuit Judges*

(Filed: April 29, 2013)

OPINION OF THE COURT

NYGAARD, *Circuit Judge*.

Jewish Home of Eastern Pennsylvania petitions for a review of the final decision by the Secretary of Health and Human Services imposing a civil money penalty for numerous violations of Medicare participation requirements. Jewish Home failed to raise its argument on preclusion before the Secretary and therefore we will not consider it on appeal. 42 U.S.C. § 1320a-7a(e). Moreover, we denied a prior petition for review by Jewish Home on its claim of selective enforcement because it failed to show that it was treated differently from similarly situated nursing homes. *See Jewish Home of Eastern Pa. v. Centers for Medicare and Medicaid Services*, 693 F.3d 359, 363 (3d Cir. 2012). We apply the same rationale in denying this petition, concluding that the “fact finding hearing” to which Jewish Home erroneously claims entitlement would be futile.

For these reasons, we will deny the petition for review as wholly without merit.