

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Cimarron Place Health & Rehabilitation Center  
(CCN: 67-6087),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-502

Decision No. CR2259

Date: October 1, 2010

**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss Petitioner's request for a hearing in this case, because it has raised no issue that I have authority to hear and decide.

**I. Background**

Petitioner is a skilled nursing facility in the State of Texas. It participates in the Medicare program. It participates subject to sections 1819 and 1866 of the Social Security Act (Act) and implementing regulations at 42 C.F.R. Parts 483 and 488. Its hearing rights are governed by regulations at 42 C.F.R. Part 498.

Petitioner requested a hearing to challenge remedies that CMS determined to impose against it for alleged noncompliance with Medicare participation requirements. CMS then moved to dismiss Petitioner's hearing request, arguing that it had rescinded its remedy determination and that, therefore, Petitioner no longer had a right to a hearing. Petitioner did not reply to the motion.

CMS attached two exhibits to its motion, which it identified as CMS Ex. 1 and CMS Ex. 2. I receive these exhibits into the record.

## **II. Issue, Findings of Fact, and Conclusions of Law**

### **A. Issue**

The issue is whether Petitioner continues to have a right to a hearing after CMS rescinds its remedy determination.

### **B. Findings of Fact and Conclusions of Law**

I find that Petitioner no longer has a right to a hearing in this case. On March 3, 2010, CMS notified Petitioner that it was rescinding its remedy determinations. CMS Ex. 2 at 1. A skilled nursing facility has a right to challenge a finding that it failed to comply with Medicare participation requirements only if CMS has determined to impose remedies based on that finding. 42 C.F.R. § 498.3(b)(13). Here, CMS originally determined to impose remedies but then rescinded that determination. CMS's rescission of its remedies extinguished Petitioner's right to a hearing.

I must dismiss a hearing request where a party no longer has a right to a hearing. 42 C.F.R. § 498.70(b). I dismiss Petitioner's hearing request inasmuch as it no longer has a right to a hearing.

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/s/  
Steven T. Kessel  
Administrative Law Judge