

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

James Jung, DPM
(NPI: 1649224999),

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-1219

Decision No. CR2708

Date: February 14, 2013

DECISION

Palmetto GBA (Palmetto), an administrative contractor acting on behalf of the Centers for Medicare and Medicaid Services (CMS), determined that Petitioner's effective date of enrollment in the Medicare program is March 26, 2012, with a 30-day retrospective billing period commencing February 25, 2012. Petitioner appealed. For the reasons stated below, I affirm Palmetto's determination.

I. Background and Procedural History

On February 8, 2012, Palmetto acknowledged receipt of Petitioner's first Medicare supplier enrollment application (Form CMS-855) for reassignment of benefits. P. Ex. 1, at 1. However, on March 14, 2012, Palmetto rejected this application because there was no date next to the signature. *See* Attachment to Request for Hearing (RFH).

On March 26, 2012, Palmetto received a second Medicare supplier enrollment application from Petitioner. P. Ex. 4, at 1. This application is the subject of this appeal. On July 13, 2012, Palmetto approved Petitioner's enrollment application and set February 25, 2012, as the "effective date." P. Ex. 3, at 1.

Petitioner filed a timely request for reconsideration of Palmetto's July 13, 2012 determination. In a September 20, 2012 reconsidered determination, Palmetto explained that Petitioner's application was received on March 26, 2012, and that 30 days prior to receipt was February 25, 2012, therefore "the correct effective date of [February 25, 2012] was given."¹ P. Ex. 4.

On August 22, 2012, Petitioner timely filed a RFH by an administrative law judge (ALJ). In response to my September 11, 2012 Acknowledgment and Pre-hearing Order (Order), CMS filed a brief (CMS Br.) and four exhibits (CMS Exs. 1-4). Petitioner filed a response brief and eight proposed exhibits (P. Exs. 1-8); however, P. Ex. 2 was simply a cover sheet indicating that P. Ex. 2 did not exist. In the absence of an objection, I admit CMS Exs. 1 through 4 and Petitioner's Exs. 1, and 3 through 8 into the record.

The Order stated that the parties must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested to cross-examine a witness. Order ¶¶ 5(c)(iv), 8; *Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses). Neither party provided a list of proposed witnesses or written direct testimony. Consequently, I will not hold an in-person hearing in this matter. *See Kate E. Paylo, D.O.*, DAB CR2232, at 9 (2010). The record is closed and I decide this matter based on the written record. Order ¶ 12.

II. Discussion

A. Issue

Whether CMS had a legitimate basis for finding that March 26, 2012, is the effective date of Petitioner's Medicare enrollment and that Petitioner could retrospectively bill for services rendered to Medicare beneficiaries on or after February 25, 2012.

¹ In both of its determinations in this case, Palmetto erroneously characterized the beginning of the retrospective billing period to be the "effective date." *See Jorge M. Ballesteros*, DAB CR2067, at 2 (2010) ("CMS apparently sets enrollment effective dates 30 days prior to the date of application"). Therefore, I interpret the determinations to mean that the "effective date" is the beginning of the retrospective billing period and not the enrollment effective date. *Rizwan Sadiq, M.D.*, DAB CR2401, at 5-6 (2011).

B. Findings of Fact, Conclusions of Law, and Analysis²

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers.³ 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary’s regulations, a provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program.” 42 C.F.R. § 424.510(a).

1. Palmetto received Petitioner’s completed Medicare enrollment application on March 26, 2012.

CMS asserts that on March 26, 2012, Palmetto received Petitioner’s signed and dated enrollment application. CMS Ex. 1; P. Ex. 3. Petitioner does not dispute this date of receipt. Therefore, I conclude that Palmetto received Petitioner’s signed and dated application on March 26, 2012.

2. Palmetto properly concluded that Petitioner’s enrollment as a supplier in the Medicare program was effective on March 26, 2012, with a retrospective billing period commencing on February 25, 2012.

By letter dated July 13, 2012, Palmetto notified Petitioner that his Medicare supplier enrollment application, which had been received on March 26, 2012, was approved. P. Ex. 3, at 1. Palmetto set February 25, 2012, as Petitioner’s effective billing date. CMS Ex. 2, at 1. On reconsideration, Palmetto upheld the February 25, 2012 effective billing date, noting that this date was 30 days prior to the receipt of the application. P. Ex. 4.

The relevant regulation concerning the effective date of Medicare enrollment states:

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations ***is the later of the date of filing*** of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled

² My findings of fact and conclusions of law are set forth in italics and bold font.

³ Petitioner is considered a “supplier” for purposes of the Act and the regulations. See 42 U.S.C. §§ 1395x(d), 1395x(u); see also 42 C.F.R. § 498.2. A “supplier” furnishes services under Medicare and the term applies to physicians or other practitioners that are not included within the definition of the phrase “provider of services.” 42 U.S.C. § 1395x(d)).

physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d) (emphasis added). The “date of filing” is the date that the Medicare contractor “receives” a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *see also Caroline Lott Douglas, PA*, DAB CR2406, at 5-7 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401, at 5 (2011). Because Palmetto received a complete, approvable application from Petitioner on March 26, 2012, Palmetto properly considered this date the effective date for billing privileges.

Further, under the regulations set forth below, CMS may permit limited retrospective billing if a practitioner meets all program requirements.

Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician practitioner organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—

(1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or

(2) 90 days [in certain emergencies not applicable to this case.]

42 C.F.R. § 424.521(a).

In the present matter, the earliest effective date for retrospective billing privileges that Petitioner could be granted was 30 days prior to March 26, 2012. Thirty days prior to March 26, 2012, is February 25, 2012. Thus, Palmetto correctly determined February 25, 2012, as Petitioner’s retrospective billing date.

3. Petitioner’s previously filed enrollment application does not provide a basis for altering Petitioner’s effective date of enrollment because CMS rejected it.

Petitioner argues that he was denied reimbursement for services provided between December 12, 2011, and February 25, 2012. RFH; P. Br. at 1-2. Petitioner states that he submitted an earlier application that was acknowledged by Palmetto’s February 8, 2012 letter and indicates that he should be allowed an earlier effective date based on that previous application. P. Br. at 1-2.

However, on March 14, 2012, Palmetto rejected this application. *See* Attachment to RFH. CMS's decision to reject an application is not subject to appeal. 42 C.F.R. § 424.525(d). Therefore, the previously filed application does not affect the effective date for a subsequently filed application. My jurisdiction in this matter is based on Palmetto's unfavorable September 20, 2012 reconsidered determination. 42 C.F.R. § 498.5(l); *see also Better Health Ambulance*, DAB No. 2475, at 4 (2012); *Denise Hardy*, DAB No. 2464, at 4-5 (2012); *Hiva Vakil*, DAB No. 2460, at 4-5 (2012). The sole substantive issue before me is whether Palmetto and CMS properly determined Petitioner's effective date of enrollment based on Petitioner's March 26, 2012 application. The fact that Petitioner previously filed an application that CMS rejected is not relevant to my decision in this case.

4. Equitable estoppel cannot be applied against CMS.

In his brief, Petitioner argues that he is entitled to an earlier effective date because he spoke with a CMS representative while his application was pending and felt assured that all claims would be paid after the application was processed. Accordingly, Petitioner continued to provide services in good faith presuming that the services would be reimbursed by Medicare. P. Br. at 1-2. Essentially, Petitioner requests that CMS be equitably estopped.

Because Petitioner did not allege any affirmative misconduct by Palmetto or CMS personnel, Petitioner's arguments amount to a claim of equitable estoppel for which I am unable to grant any relief. It is well-established that: (1) estoppel cannot be the basis to require payment of funds from the federal fisc; (2) estoppel cannot lie against the government, if at all, absent a showing of affirmative misconduct, such as fraud; and (3) I am not authorized to order payment contrary to law based on equitable grounds. It is well settled that those who deal with the government are expected to know the law and may not rely on the conduct of government agents contrary to law. *See, e.g., Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51 (1984); *Oklahoma Heart Hosp.*, DAB No. 2183, at 16 (2008); *Wade Pediatrics*, DAB No. 2153, at 22 n.9 (2008), *aff'd*, 567 F.3d 1202 (10th Cir. 2009); *U.S. Ultrasound*, DAB No. 2303, at 8 (2010). Therefore, Petitioner's equitable estoppel argument must be rejected.

III. Conclusion

For the reasons explained above, I affirm CMS's determination that Petitioner's effective date of enrollment is March 26, 2012, with a retrospective billing period commencing February 25, 2012.

/s/

Scott Anderson
Administrative Law Judge