

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Srinivasa R. Venkatesh, M.D.,¹

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-13-275

Decision No. CR2845

Date: June 27, 2013

DECISION

Srinivasa R. Venkatesh, M.D. (Petitioner), a member of Cyfair Pulmonary Associates, appeals an unfavorable reconsidered determination related to the effective date of his Medicare billing privileges. TrailBlazer Health Enterprises, LLC (TrailBlazer), 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 September 4, 2012, with a retrospective billing period commencing August 6, 2012. For the reasons stated below, I affirm TrailBlazer's determination.

¹ This case was originally captioned with Cyfair Pulmonary Associates as the Petitioner. However, based on the record in this matter, and the fact that the Request for Hearing and Petitioner's brief were filed by Srinivasa R. Venkatesh, M.D., I have concluded that Dr. Venkatesh is actually the "affected party" in relation to the initial determination. *See* 42 C.F.R. §§ 498.2 (definition of "affected party"), 498.40(a) ("affected party" may request a hearing before an administrative law judge), 498.42 ("The parties to the hearing are the affected party and CMS").

I. Background and Procedural History

Dr. Venkatesh, a physician, enrolled as a supplier in the Medicare program in 1982. *See* Petitioner’s Request for Hearing (RFH). In March of 2012, CMS requested that several members of Cyfair Pulmonary Associates revalidate certain information with Medicare pursuant to 42 C.F.R. § 424.515. *See* CMS Exhibit (Ex.) 2, at 1; CMS Brief (Br.) at 1. Cyfair Pulmonary Associates began the revalidation process for three physicians, including Dr. Venkatesh, but requested an extension for revalidation for each of three physicians. CMS Ex. 4. Two of the physicians’ revalidation information was accepted, however, CMS did not receive revalidation information for Dr. Venkatesh. *See* CMS Ex. 4. Petitioner’s extension for revalidation of enrollment for Dr. Venkatesh expired on May 22, 2012, and his enrollment in the Medicare program was deactivated on that date for failing to submit the required revalidation documentation. CMS Ex. 2, at 1; CMS Br. at 1-2; RFH.

Several months later, Petitioner discovered that his Medicare claims were not being paid. CMS Ex. 4. On September 4, 2012, TrailBlazer received revalidation documentation in the form of an enrollment application and a reassignment application (CMS Forms 855I and 855R) to reassign benefits from Dr. Venkatesh to Cyfair Pulmonary Associates via the internet-based Provider Enrollment Chain and Ownership System (PECOS). CMS Ex. 2, at 1; CMS Ex. 6; CMS Br. at 8. TrailBlazer notified Petitioner on September 10, 2012 that Dr. Venkatesh’s Medicare enrollment application was approved effective September 4, 2012, based on the date of receipt of the application. CMS Ex. 5, at 1.

Petitioner filed a timely request for reconsideration of TrailBlazer’s September 10, 2012 initial determination seeking Medicare billing privileges retroactive to May 22, 2012 (*i.e.*, the date Dr. Venkatesh’s Medicare billing privileges were deactivated). CMS Ex. 4. In a November 6, 2012 reconsidered determination, TrailBlazer explained that Dr. Venkatesh’s application was received on September 4, 2012, and the effective date “will be changed to August 6, 2012 and a revised PTAN confirmation letter will be mailed to the supplier,” which Trailblazer did in a letter dated November 6, 2013.² CMS Exs. 1; 2, at 2.

On January 4, 2013, Petitioner timely filed his RFH. In response to my January 9, 2013 Acknowledgment and Pre-hearing Order (Order), CMS filed a brief (CMS Br.) and six

² In both of its determinations in this case, TrailBlazer 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).

exhibits (CMS Exs. 1-6). Petitioner filed a letter in response to the CMS brief (P. Br.). In the absence of an objection, I admit CMS Exs. 1 through 6 into the record. Because neither party provided a list of proposed witnesses or written direct testimony, I will not hold an in-person hearing in this matter. The record is closed and I decide this matter based on the written record. Order ¶ 11.

II. Discussion

A. Issue

Whether CMS had a legitimate basis for finding that September 4, 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 August 6, 2012.

B. Findings of Fact, Conclusions of Law, and Analysis³

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.⁴ 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier who 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. TrailBlazer received Dr. Venkatesh's completed Medicare enrollment application on September 4, 2012.

CMS asserts that on September 4, 2012, TrailBlazer received Petitioner's signed and dated enrollment application via PECOS. CMS Exs. 2, at 1; 6, at 5; CMS Br. at 2. Petitioner does not dispute this date of receipt. Therefore, I find that TrailBlazer received Petitioner's signed and dated application on September 4, 2012.⁵

³ My findings of fact and conclusions of law are set forth in italics and bold font.

⁴ Petitioner is considered a "supplier" for purposes of the Act and the regulations. *See* 42 U.S.C. § 1395x(d), (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).

⁵ In his request for reconsideration, Petitioner initially argued that his revalidation documentation was submitted in March of 2012. CMS Ex. 4. Petitioner does not reassert this in his RFH or brief and the record does not reflect any evidence that Petitioner filed an enrollment application in March of 2012.

2. TrailBlazer properly concluded that Dr. Venkatesh’s enrollment as a supplier in the Medicare program was effective on September 4, 2012, with a retrospective billing period commencing on August 6, 2012.

By letter dated September 10, 2012, TrailBlazer notified Petitioner that Dr. Venkatesh’s Medicare supplier enrollment application, which had been received on September 4, 2012, was approved. CMS Ex. 5, at 1. TrailBlazer set September 4, 2012, as Dr. Venkatesh’s effective billing date. CMS Ex. 5, at 1. On reconsideration, TrailBlazer amended Dr. Venkatesh’s “effective date” to August 6, 2012, noting that this date was 30 days prior to the receipt of the application. CMS Ex. 2.

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 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. Because TrailBlazer received a complete, approvable application on September 4, 2012, TrailBlazer properly considered this date as 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 could be granted was 30 days prior to September 4, 2012. Thirty days prior to September 4, 2012, is August 5, 2012.⁶ Thus, TrailBlazer made a legally proper discretionary decision to permit retrospective billing to August 6, 2012.

3. I am not authorized to grant Petitioner's requests for equitable relief.

In the current appeal, Petitioner raises a number of reasons why I should grant him a greater period of retrospective billing than that afforded in the reconsidered determination. Petitioner claimed that an office manager “was in communication with both Medicare and PECOS . . . May through August 2012” and “[u]nbeknownst to [Petitioner, his] Medicare number remained inactive.” RFH. Further, Petitioner asserted that: his office manager did not “follow up on renewing [Petitioner’s] provider number”; Petitioner has “been providing care for the elderly in Houston area for the last 30 years without any problem as a participating provider”; and Petitioner provided services for several months in good faith and for the benefit of Medicare beneficiaries while Petitioner’s Medicare enrollment was deactivated. P. Br. Finally, Petitioner requests that I reinstate him “as a participating physician of Medicare from May 22, 2012, on a selective individual basis” and Petitioner “promise[s] that this issue will never happen again, as [Petitioner] will be diligent in making sure that . . . provider numbers will stay up to date.” P. Br. Petitioner’s arguments are not legal in nature and amount to an appeal to equity.

I do not have the authority to grant equitable relief. *See US Ultrasound*, DAB No. 2302, at 8 (2010). I cannot grant an exemption to Petitioner under the regulations set forth at 42 C.F.R. §§ 424.520(d) and 424.521(a), which are binding on me. *See 1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) (“[a]n ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground . . .”).

⁶ August 5, 2012 was a Sunday. TrailBlazer apparently determined to grant Medicare billing privileges commencing on August 6, 2012, 29 days prior to the receipt of Dr. Venkatesh’s application.

III. Conclusion

For the reasons explained above, I affirm CMS's determination that Petitioner's effective date of enrollment is September 4, 2012, with a retrospective billing period commencing August 6, 2012.

/s/
Scott Anderson
Administrative Law Judge