

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Psychiatric Behavioral Services/Edward McCullough NP,
(PTAN: G8585B/G8597Y),
(NPI: 1932451507/1962754531),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-333

Decision Number: CR3511

Date: December 12, 2014

DECISION

Petitioner Psychiatric Behavioral Services/Edward McCullough NP, a Medicare supplier,¹ filed a hearing request to challenge the effective date of Petitioner's Medicare enrollment and billing privileges. I find that First Coast Service Options, Inc. (FCSO) received an enrollment application from Petitioner on June 12, 2013 that FCSO was able to process to approval, and I affirm the Centers for Medicare & Medicaid's (CMS's) determination that the effective date of Petitioner's Medicare enrollment is June 12, 2013, with a retrospective billing date of May 12, 2013.

I. Background

The following facts are undisputed unless otherwise noted. To enroll in the Medicare program and obtain billing privileges for service reimbursement, Petitioner submitted an application (a form CMS-855I) to FCSO, a CMS administrative contractor. On

¹ A "supplier" is a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." 42 C.F.R. § 400.202.

November 27, 2012, FCSO informed Petitioner that FCSO received the enrollment application; however, FCSO's review of Petitioner's "CMS-855I identified missing, incomplete, or inaccurate information needed to complete the process of [Petitioner's] application." CMS Exhibit (Ex.) 6. FCSO listed several sections of Petitioner's application where additional information was necessary including the sections identifying personal information, medical specialties, practice location information, and the certification statement. CMS Ex. 6. FCSO directed Petitioner to provide the requested information within 30 days. CMS Ex. 6. FCSO also informed Petitioner that FCSO would reject Petitioner's application if Petitioner did not furnish complete information within 30 days, and if FCSO rejected the application, Petitioner would need to resubmit a new application, which might affect Petitioner's effective date of enrollment in the Medicare program. CMS Ex. 6.

On February 1, 2013, FCSO notified Petitioner that FCSO was closing and rejecting Petitioner's enrollment application due to Petitioner's failure to furnish complete information in a timely manner. CMS Ex. 4. On June 12, 2013, FCSO received another enrollment application from Petitioner. CMS Ex. 1. By letter dated July 15, 2013, FCSO approved that enrollment application with an "effective date" of May 12, 2013.² CMS Ex. 2.

Petitioner requested a reconsideration determination by letter dated July 18, 2013. Petitioner argued for an effective enrollment date of February 1, 2013, based on the enrollment application Petitioner submitted in November of 2012. On August 8, 2013, FCSO issued a reconsideration determination, upholding the effective enrollment date of June 12, 2013, and explaining that Petitioner's application received in November of 2012 was rejected on February 1, 2013, for failure to respond to FCSO's November 27, 2012 request for further information. CMS Ex. 3, at 3-5. FCSO further explained it did not, therefore, base Petitioner's effective date on the November 2012 application. CMS Ex. 3, at 4. The reconsideration determination notified Petitioner of the 60-day deadline to file an appeal with an Administrative Law Judge (ALJ). CMS Ex. 3, at 5.

² FCSO states in its July 15, 2013 letter that May 12, 2013 is the effective date of Petitioner's enrollment and billing privileges. However, the effective date of a supplier's enrollment and billing privileges is generally the date that the Medicare contractor received an enrollment application that it could subsequently approve. *See* 42 C.F.R. § 424.520(d). CMS and its contractors are authorized to permit suppliers to "retrospectively bill" for their services for up to 30 days prior to their effective date, which FCSO did here when it cited the effective date as May 12, 2013 (the retrospective billing date) not June 12, 2013 (the enrollment effective date). 42 C.F.R. § 424.521(a)(1). For clarity in this case, I hereafter refer to the effective date of enrollment as the date established by regulation, June 12, 2013, and not the date on which Petitioner's retrospective billing privileges began, May 12, 2013.

Petitioner and CMS disagree about the date Petitioner received the reconsideration determination. Petitioner's representative contends that Petitioner received the August 8, 2013 reconsideration determination for the first time by fax transmission on September 27, 2013. Petitioner's Request for Hearing (RFH). CMS believes that Petitioner received the reconsideration determination shortly after it issued and contends that on August 13, 2013, Petitioner's representative called FCSO and stated that Petitioner did not agree with the outcome of the reconsideration determination. CMS Ex. 3, at 7.

On September 5, 2013, Petitioner decided to file a second request for reconsideration for reasons that are not clear to me. CMS Ex. 5. By letter dated September 27, 2013, FCSO dismissed Petitioner's second request for reconsideration explaining FCSO previously issued a reconsideration determination. CMS Ex. 5, at 3.

Petitioner requested a hearing before an ALJ on November 23, 2013. Petitioner stated that Petitioner intended to "appeal the decision made August 8, 2013 and received via fax to us on September 27, 2013. The date faxed to us is shown on the top of the pages showing we did not receive the letter until September 27, 2013 and we have submitted the appeal in the proper time frame based on the date the letter was received by us." RFH at 1. Petitioner also argues that the June 12, 2013 effective date is erroneous and that Petitioner is entitled to an earlier effective date for Medicare enrollment and billing privileges.

The case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-Hearing Order on December 6, 2013 (Pre-Hearing Order). My Pre-Hearing Order advised the parties that their prehearing exchanges must include all arguments, proposed exhibits, proposed witnesses, and written direct testimony for each proposed witness. Pre-Hearing Order ¶¶ 4, 8. My Pre-Hearing Order also stated that an in-person hearing will only be necessary if the opposing party affirmatively requests an opportunity to cross-examine a witness. Pre-Hearing Order ¶¶ 9, 10; *see, e.g., Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (determining 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).

Pursuant to my Pre-Hearing Order, CMS filed a Motion for Dismissal and, in the Alternative, Motion for Summary Judgment (CMS Br.) and six exhibits (CMS Exs. 1 – 6). Petitioner filed a Motion for Summary Judgment (P. Br.) and three exhibits (P. Exs. 1 – 3). In its Motion for Dismissal, CMS argues that Petitioner's request for a hearing is untimely and this matter should be dismissed. CMS Br. at 4-5. However, Petitioner contends that the request for hearing is timely because Petitioner received the August 8, 2013 reconsideration determination by fax on September 27, 2013 along with the letter from FCSO dismissing Petitioner's second request for reconsideration. RFH; P. Br. The

September 27, 2013 dismissal letter contains multiple errors³ which may be indicative of prior miscommunication. Thus, I deny CMS's Motion for Dismissal and find good cause to accept Petitioner's request for ALJ review. Neither CMS nor Petitioner listed any witnesses or filed any written direct testimony. I find, therefore, that an in-person hearing in this case is unnecessary, and I issue this decision on the merits of the case based on the written record. *See* Pre-Hearing Order ¶¶ 10, 11.

II. Discussion

A. Issue

Whether FCSO, acting on behalf of CMS, properly established June 12, 2013, as Petitioner's effective date for enrollment in Medicare, with Petitioner's retrospective billing privileges starting on May 12, 2013.

B. Findings of Fact and Conclusions of Law

1. FCSO rejected Petitioner's November 2012 application because Petitioner did not provide requested information within 30 days.

A CMS contractor may reject and close an enrollment application if a supplier "fails to furnish complete information on the provider/supplier enrollment application within 30 calendar days from the date of the contractor request for the missing information." 42 C.F.R. § 424.525(a)(1); *see also* 42 C.F.R. § 424.502 (definition of *Reject/Rejected*). A supplier does not have the right to appeal a rejected application. 42 C.F.R. § 424.525(d). Rather, the supplier must resubmit a new enrollment application. 42 C.F.R. § 424.525(c). CMS may extend the 30-day period before rejecting an application if CMS determines that the supplier is actively working with CMS to resolve any outstanding issues. 42 C.F.R. § 424.525(b). However, that determination is a discretionary matter, and it is also not subject to appeal. *See* 42 C.F.R. § 424.525(d)

Petitioner requests an effective date based on the first enrollment application Petitioner filed and believes that application should have been processed and approved. However, on November 27, 2012, FCSO notified Petitioner that FCSO would reject Petitioner's enrollment application if Petitioner did not submit certain documentation within 30 days.

³ CMS admits that the dismissal letter contains a typographical error in reference to August 9, 2013 date of the reconsideration determination, when it should refer to the reconsideration determination dated August 8, 2013. CMS Br. at 3. The letter appears to contain an additional error because it references the name of a Medicare supplier other than Petitioner. CMS Ex. 5, at 3.

CMS Ex. 6. FCSO then, in fact, did issue a notice rejecting and closing this application on February 1, 2013, stating Petitioner failed to provide the necessary supporting documentation. CMS Ex. 4.

After review of all of the documents submitted, it appears that Petitioner believes FCSO erred in refusing to process Petitioner's application submitted in November of 2012 and thus "the original application date should apply." P. Br. at 2. Petitioner states that Petitioner's representative could not complete Petitioner's Medicare application in November 2012, because Petitioner did not yet know the locations Petitioner would be working. P. Ex. 2, at 2. Petitioner contends that around this time, Petitioner told a FCSO representative that Petitioner did not know the requested practice locations. P. Ex. 2, at 2. Petitioner argues that the FCSO representative told Petitioner to "fax section 4C in with the CCN assigned to the application and that was all that was necessary." P. Ex. 2, at 2. Petitioner argues that the first application "had been processed and approved as [Petitioner's representatives] were in continual contact submitting each item as requested." RFH at 1. Petitioner states that Petitioner learned the November 2012 application was rejected when "[a]fter two months of calling customer service [Petitioner] was informed [FCSO] actually noted that an entire new application was necessary and that [Petitioner's] faxed sections 4C were never looked at" P. Ex. 2, at 2.

However, Petitioner has not provided any sworn testimony or documentation, either in Petitioner's RFH or Petitioner's Motion for Summary Judgment, showing that Petitioner submitted to FCSO all of the specific documentation FCSO requested in the November 27, 2012 letter or that FCSO later amended its request. Instead, Petitioner states that Petitioner sent all requested information to FCSO and generally describes some phone calls to FCSO contacts that occurred on April 4, 2013 and thereafter. *See* RFH. FCSO rejected and closed the November 2012 enrollment application on February 1, 2013. CMS Ex. 4. Once FCSO rejected the November 2012 application for a failure to submit required information within 30 days, Petitioner needed to resubmit a new application, and I have no jurisdiction to consider Petitioner's original application with regard to the effective date determination.

2. Based upon the receipt of Petitioner's subsequent application that FCSO was able to process to approval, Petitioner's effective date of enrollment in Medicare is June 12, 2013, with retrospective billing privileges starting on May 12, 2013.

The effective date of Medicare enrollment 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, at 69,769 (Nov. 19, 2008). Physicians may retrospectively bill for their services when they have “met all program requirements” and “services were provided at the enrolled practice location for up to . . . 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries.” 42 C.F.R. § 424.521(a)(1).

Here, FCSO received two enrollment applications from Petitioner, one submitted before Petitioner began furnishing services, and one submitted after Petitioner began working at a new practice location. RFH. However, as previously discussed, FCSO rejected Petitioner’s first enrollment application.

It is undisputed that Petitioner electronically submitted a second enrollment application on June 12, 2013, and FCSO subsequently processed that submission to approval. CMS Exs. 1-2. Therefore, the effective date of Petitioner’s enrollment must be June 12, 2013, the date FCSO received the enrollment application it subsequently could process to approval. FCSO properly established an effective enrollment date of June 12, 2013, and permitted Petitioner to bill retrospectively for services 30 days prior this effective date.

/s/
Joseph Grow
Administrative Law Judge