

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Thomas Boyd, D.O.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1281

Decision No. CR3971

Date: June 18, 2015

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, Wisconsin Physicians Service Insurance Corporation (WPS), determined that the effective date for reassignment of benefits from Thomas Boyd, D.O. (Petitioner) to Great River Physicians and Clinics, Inc. (GRPC) was August 11, 2014. Petitioner requested a hearing to obtain an effective date of April 1, 2014, which was the date that Petitioner began providing services in association with GRPC. Because Petitioner and GRPC were already enrolled in the Medicare program on April 1, 2014, the effective date of reassignment is the date on which Petitioner began providing services with GRPC. Therefore, I reverse CMS's determination and order that Petitioner's effective date for the reassignment of benefits to GRPC be April 1, 2014.

**I. Background and Procedural History**

On September 3, 2014, Petitioner and a representative of GRPC completed and signed a CMS-855R form (Medicare Enrollment Application - Reassignment of Medicare Benefits). CMS Ex. 1. The purpose of the CMS-855R was to obtain reassignment of

Medicare benefits from Petitioner to GRPC. CMS Ex. 1 at 5-6. WPS received the CMS-855R on September 10, 2014. CMS Ex. 4 at 2. In a September 27, 2014 initial determination, WPS stated that Petitioner's "initial Medicare enrollment application is approved" and indicated the "Effective date" was August 11, 2014. CMS Ex. 2 at 1.

In a November 10, 2014 letter, Petitioner requested that WPS reconsider its determination and establish April 1, 2014, as the effective date for reassignment. Petitioner stated that he had been a long-time enrolled supplier with Medicare and employee with Great River Health Systems, Inc. (Great River), primarily working from Great River's Burlington Area Family Practice Center (Burlington Center). Petitioner explained that Great River established a new electronic billing system and, as part of this new system, Great River designated GRPC as the entity within Great River to bill for services provided by physicians from the Burlington Center. The substitution of GRPC's taxpayer identification for Medicare billing purposes occurred on April 1, 2014, with all of the physicians practicing from the Burlington Center, except Petitioner, filing reassignment applications. Great River thought that Petitioner did not need to submit a new CMS-855R to reassign benefits to GRPC because Petitioner occasionally provided services that were billed from another location under GRPC's taxpayer identification. After CMS rejected claims that GRPC filed related to the services Petitioner provided at the Burlington Center, Petitioner and GRPC filed the CMS-855R that is the subject of this case. CMS Ex. 3.

In a December 17, 2014 reconsidered determination, a WPS hearing officer upheld the August 11, 2014 effective date for Petitioner's reassignment of benefits to GRPC. In doing so, the hearing officer applied the regulatory provisions related to the effective date for Medicare enrollment and billing privileges (including retrospective billing privileges) at 42 C.F.R. §§ 424.520(d) and 424.521(a). The hearing officer explained that Great River incorrectly believed that Petitioner did not need to submit a new application for reassignment, but that a new reassignment application was necessary because reassignment to GRPC meant that Petitioner needed to change the taxpayer identification number from the previous Great River Health System entity to which Petitioner reassigned his benefits to GRPC. The reconsidered determination notified Petitioner that he could request a hearing before an Administrative Law Judge (ALJ). CMS Ex. 4.

Petitioner requested a hearing to dispute the reconsidered determination. In response to my Acknowledgment and Pre-hearing Order (Order), CMS filed a brief (CMS Br.) and four exhibits (CMS Exs. 1-4) as its pre-hearing exchange. As his pre-hearing exchange, Petitioner filed a brief (P. Br.) and the written direct testimony for one witness, which Petitioner attached to his witness list.

## II. Decision on the Written Record

Petitioner did not object to CMS's proposed exhibits. *See* Order ¶ 7. Therefore, I admit CMS Exs. 1-4 into the record.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; CRDP §§ 16(b), 19(b). CMS did not offer any witnesses that Petitioner could request to cross-examine. Petitioner offered an affidavit from Amy O'Brien, a vice president of Great River (O'Brien Affidavit). CMS neither objected to Ms. O'Brien's testimony nor requested to cross-examine her; therefore, I admit her testimony into the record. Accordingly, I issue this decision based on the written record. Order ¶¶ 9, 11; CRDP § 19(d).

## III. Issue

Whether CMS had a legitimate basis for establishing August 11, 2014, as the effective date of Petitioner's reassignment of Medicare benefits to GRPC.

## IV. Findings of Fact, Conclusions of Law, and Analysis<sup>1</sup>

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.<sup>2</sup> 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier seeking billing privileges under the Medicare program 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). CMS then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retrospective billing under 42 C.F.R. § 424.521.

For Medicare Part B claims, a beneficiary may assign his or her benefits to an enrolled physician or non-physician supplier providing services to that beneficiary. 42 U.S.C. § 1395u(b)(3)(B)(ii). In certain circumstances, a supplier who has received an assignment of benefits may reassign those benefits to an employer, or to an individual or entity with which the supplier has a contractual arrangement. 42 U.S.C. § 1395u(b)(6); 42 C.F.R. § 424.80(b)(1)-(2). Although not addressed by the Act or regulations, CMS

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<sup>1</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

<sup>2</sup> Petitioner is considered a "supplier" for purposes of the Act and the regulations. *See* 42 U.S.C. § 1395x(d),(u); 42 C.F.R. § 498.2; *see also* 42 C.F.R. § 400.202.

instructs its employees that reassignments of benefits may only occur between enrolled suppliers and that “[t]he effective date of reassignment is the date on which the individual began or will begin rendering services with the reassignee.” Medicare Program Integrity Manual (MPIM) § 15.5.20.

***1. Petitioner and GRPC were enrolled in the Medicare program on April 1, 2014, the date on which Petitioner began providing services with GRPC.***

The record in this case is sparse. However, Amy O’Brien, the vice president at Great River responsible for provider enrollment in the Medicare program, gave uncontroverted testimony concerning the enrollment of Petitioner and GRPC. Further, Petitioner and an authorized representative from GRPC signed a certification that the statements made on the CMS-855R are “true, accurate and complete.” CMS Ex. 1 at 7. CMS has not disputed those statements, which were made subject to civil and criminal liability.

Ms. O’Brien testified that Petitioner “enrolled in Medicare as a participating provider on or before 1990 and has remained in good standing with billing privileges since,” and that Petitioner has been employed by Great River since 1999, primarily practicing at the Burlington Center. O’Brien Affidavit ¶ 2. Petitioner continues to primarily work from the Burlington Center. O’Brien Affidavit ¶ 5.

Great River owns and operates GRPC, and GRPC “enrolled in Medicare as a participating provider on or before 1987 and it has remained in good standing with billing privileges since.” O’Brien Affidavit ¶ 4.

In Petitioner’s hearing request, Ms. O’Brien stated the following as background to the present case:

As [Great River] transitioned to a new electronic health record on April 1, 2014 in order to comply with a multitude of new CMS requirements, we had a small oversight occur. We failed to complete a new form for one of our 14 Family Practice physicians. This oversight was not done in negligence, as we knew that we needed to complete enrollment forms to move these physicians from one Tax ID# to our common Tax ID# that we would be using in our new system as we combined all of our practices into one billing system. [Petitioner] was already providing services under our Tax ID number at one of our RHC’s in the system, so our credentialing specialist did not think that she needed to do an

enrollment form for [Petitioner]. What she did not know was that the RHC has it's (sic) own PTAN and that billing [Petitioner] under our tax ID required that we fill out a form including the additional PTAN as well.

Request for Hearing at 1 (emphasis in original). Petitioner and a GRPC representative completed and signed a CMS-855R on September 3, 2014, in which they indicated that the effective date for the reassignment to GRPC was April 1, 2014. CMS Ex. 1 at 5-6. Petitioner and Great River filed with WPS the completed CMS-855R form on September 10, 2014. O'Brien Affidavit ¶ 3; CMS Exs. 1, 3.

***2. The effective date for Petitioner's reassignment of Medicare benefits to GRPC is April 1, 2014, the date on which Petitioner commenced providing services with GRPC.***

Petitioner, an enrolled supplier, filed a CMS-855R to reassign Medicare benefits to GRPC, an entity also enrolled in the Medicare program. Although not addressed by the Act or regulations, CMS instructs its employees that reassignments of benefits may only occur between enrolled suppliers and that "[t]he effective date of reassignment is the date on which the individual began or will begin rendering services with the reassignee." MPIM § 15.5.20. In the present case, Petitioner began rendering services with GRPC on April 1, 2014. CMS Ex. 1 at 5-6; CMS Ex. 3; Request for Hearing at 1. All of the other physicians located at the Burlington Center "transitioned successfully" because they filed their CMS-855R forms earlier than Petitioner. *See* Request for Hearing at 1-2. Under CMS's manual provisions, Petitioner should also have received a reassignment effective date of April 1, 2014, even though he filed his CMS-855R later than his colleagues.

From the outset of this matter, CMS has conflated enrollment as a supplier in the Medicare program with the reassignment of benefits. The initial determination indicates that Petitioner's application for initial enrollment in the Medicare program was approved. CMS Ex. 2. But, there is absolutely no evidence in the record that Petitioner filed an initial enrollment application (Form CMS-855I) with the CMS-855R or that he needed to do so. Despite this, the reconsidered determination cites and quotes the initial enrollment effective date provisions (including retrospective billing privileges) in 42 C.F.R. §§ 424.520(d) and 424.521(a) to uphold the original effective date determination (i.e., an effective date as of the date the CMS-855R was filed with a 30-day retrospective billing period). CMS Ex. 4 at 1-2. In its brief in this case, CMS argues that the enrollment regulations apply to the determination of the effective date of reassignment. CMS Br. at 4-5. However, CMS did not explain why the regulations governing enrollment should be applied to a case where the reassignor and reassignee of Medicare benefits are both already enrolled in the Medicare program and there is otherwise no other requirement to submit a new enrollment application.

The present case is nearly the same as another one decided by an ALJ, and I am persuaded that the reasoning in that case is correct. The ALJ stated:

In this case, WPS erred by treating Petitioner's application for the reassignment to RenalCare and the notice of change of enrollment information as a new enrollment by Petitioner, even though he was already enrolled and there was no basis on which to terminate his prior enrollment and no requirement that he voluntarily do so. Therefore, the effective date of enrollment and the authorized period for retroactive billing are not at issue in this case. Rather, the issue to be resolved is the correct effective date of the reassignment.

*Parthasarathy Srinivasan, M.D.*, DAB CR2875, at 7 (2013). After an exhaustive discussion of the legal authorities related to reassignments, the ALJ concluded that the effective date provision in MPIM § 15.5.20 (i.e., the date on which the supplier began providing services with the reassignee) applied because there was no need for an initial enrollment by the supplier. *Id.* at 7-16; *see also Middlesex Rheumatology and Crispin Abarientos, M.D.*, DAB CR3660 (2015) (applying effective date provisions from the enrollment regulations because the reassignee was not previously enrolled in the Medicare program and the earliest effective date for the reassignment was the effective date of enrollment for the reassignee).

In the present case, there was no need for either the reassignor or the reassignee to enroll in the Medicare program because they were already enrolled and there was no other change that required a new enrollment application. Therefore, the correct effective date of reassignment in this case is April 1, 2014, the date on which Petitioner commenced providing services with GRPC.

## **V. Conclusion**

For the reasons explained above, I reverse CMS's determination and order that Petitioner's effective date of reassignment of Medicare benefits to GRPC be April 1, 2014.

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/s/  
Scott Anderson  
Administrative Law Judge