

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

City of Sugar Land,  
(NPI: 1447674825),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-2839

ALJ Ruling No. 2016-3

Date: November 9, 2015

**RULING**

Petitioner, City of Sugar Land, applied for enrollment in the Medicare program as a supplier of ambulance services. The Centers for Medicare & Medicaid Services (CMS) denied its application because, at the time Petitioner applied, CMS had imposed a moratorium on the enrollment of new ambulance suppliers and providers in Petitioner's geographic area. Petitioner appeals the denial and CMS moves to dismiss.

For the reasons set forth below, I find that CMS's moratorium precludes Petitioner's enrollment based on the application it filed. I have no authority to grant any exceptions nor to review any of the other issues Petitioner raises in its appeal. I therefore grant CMS's motion and dismiss this appeal. 42 C.F.R. § 498.70(b).

**Background**

On February 2, 2015, Petitioner, City of Sugar Land, applied to enroll in the Medicare program as a supplier of ambulance services. CMS Exhibit (Ex.) 1.<sup>1</sup> In a letter dated

---

<sup>1</sup> Although not obvious on the face of the document, the parties do not dispute that Petitioner filed its application on February 2, 2015. The application itself is stamped "0065033.3349." I understand that Medicare contractors stamp receipts using a "Julian-

March 27, 2015, the Medicare contractor, Novitas Solutions, denied the application, explaining that CMS had imposed a temporary moratorium on enrollments for that provider or supplier type within Petitioner's geographic location. CMS Ex. 2. Petitioner sought reconsideration.

In a reconsidered determination, dated June 2, 2015, the contractor's health insurance specialist affirmed the denial. She pointed out that the moratorium regulation (42 C.F.R. § 424.530(a)(10)) provides no exceptions for enrolling new ambulance suppliers in moratorium areas and that administrative review of those denials is limited to the question of whether the moratorium applies to the provider or supplier type or the geographic location. CMS Ex. 3.

Petitioner timely appealed and the matter is now before me. Along with its prehearing submissions, CMS has filed a motion to dismiss, which Petitioner opposes. With its prehearing brief (CMS Br.) and motion, CMS submits three exhibits (CMS Exs. 1-3). With its response (P. Br.), Petitioner submits seven exhibits (P. Exs. 1-7).

## Discussion

***Petitioner's appeal must be dismissed because it has not raised an issue that I have the authority to review.***<sup>2</sup>

CMS, acting on behalf of the Secretary of Health and Human Services, may impose a temporary moratorium on the Medicare enrollment of new providers and suppliers if "necessary to prevent or combat fraud, waste, or abuse . . ." Social Security Act (Act) § 1866(j)(7)(A). CMS must deny a supplier's enrollment in the Medicare program if (among other reasons) its application is for a practice location in a geographic area where CMS has imposed a temporary moratorium. 42 C.F.R. §§ 424.530(a)(10); 424.570(c).

The regulations limit my authority to review appeals based on CMS's imposing a moratorium on new enrollments. My review is limited to "whether the temporary moratorium applies to the provider or supplier appealing the denial." CMS's basis for imposing the temporary moratorium is not reviewable. 42 C.F.R. § 498.5(l)(4).

Here, on July 31, 2013, CMS imposed a moratorium "on the enrollment of new ambulance suppliers and providers in Harris County and surrounding counties to prevent

---

format date stamp," which numbers the days of the year consecutively, i.e., "33" would mean the 33<sup>rd</sup> day of the calendar year, or February 2. *Kimberly Bergeron, NP*, DAB CR3438 at 3 n.5. (2014); *Judith A. Kramer, M.D.*, DAB CR2183 at 6 (2010). Neither party has explained exactly how "0065033.3349" translates into February 2, 2015.

<sup>2</sup> I make this one finding of fact/conclusion of law.

and combat fraud, waste, and abuse.” The moratorium became effective July 30, 2013. 78 Fed. Reg. 46,339-40 (July 31, 2013); *see* P. Ex. 1. Among the “surrounding counties” subject to the moratorium is Fort Bend County, Texas. The City of Sugar Land is located in Fort Bend County. 78 Fed. Reg. 46,345. CMS has extended the moratorium three times since it was originally imposed: on February 4, 2014, August 1, 2014, and February 2, 2015. 79 Fed. Reg. 6475 (Feb. 4, 2014); 79 Fed. Reg. 44,702 (Aug. 1, 2014); 80 Fed. Reg. 5551 (Feb. 2, 2015).

Petitioner concedes that the moratorium was in effect when it submitted its Medicare enrollment application, and the City of Sugar Land is in the moratorium’s targeted geographic location. Those are the only issues I can review, and they are not in dispute.

I am not persuaded by Petitioner’s argument that it has raised issues that I may review. Petitioner’s hearing request mentioned just one (unreviewable) issue: whether it is entitled to an exception to the moratorium (“Despite the moratorium, we feel an exception to issue and allow for a 911 emergency ambulance company should be granted. . . .”).

Petitioner disputes that “it is a provider of new ambulance services,” and thus subject to the moratorium. P. Br. at 11. According to Petitioner, its ambulance services were previously provided by Fort Bend County, but the arrangement resulted in poor ambulance coverage, so the city decided that its own fire department should provide the services. Because the services are essentially the same as those previously provided by the county, they are not new. But the question is not whether the services themselves are new. After all, many, if not most, newly-enrolled providers and suppliers will provide the same services previously provided by others. The question is whether the *supplier* of the services is new and, on that issue, there is no dispute. Sugar Land was not previously enrolled as a supplier of ambulance services and Fort Bend County did not transfer its provider number to Petitioner. It could not do so because it continued to provide those services to county residents outside Sugar Land. So Sugar Land applied as a new supplier and is subject to the moratorium. CMS Ex. 1 at 2, 6.

Otherwise, Petitioner attacks the underlying bases for applying the moratorium, pointing out the extremely low risk of fraud posed by a governmental unit such as itself. And it raises equitable and Constitutional arguments, which I have no authority to resolve.

## **Conclusion**

Petitioner is entitled to review of one issue: whether the moratorium precluding Medicare enrollment applies to its enrollment application. I am not authorized to grant exceptions or to review CMS’s underlying reasons for imposing the moratorium. Because Petitioner has not raised an issue that I have the authority to review, I dismiss

