Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Kimberlee Mixon,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-968

Decision No. CR2334

Date: March 4, 2011

DECISION DISMISSING APPEAL FOR CAUSE

For the reasons set forth below, I dismiss this case pursuant to 42 C.F.R. § 498.70. I find that Petitioner, Kimberlee Mixon, failed to file a timely reconsideration request or establish good cause to extend the time for such filing. Therefore, the Medicare contractor properly denied Petitioner's request for reconsideration. Without the previous administrative review, Petitioner does not have a right to an Administrative Law Judge (ALJ) hearing to review the merits of Petitioner's appeal of the Centers for Medicare and Medicaid Services' (CMS's) determination to revoke Petitioner's Medicare billing privileges.

I. Background

On November 7, 2008, the Oklahoma Board of Medical Licensure and Supervision ordered that Petitioner's physician assistant license number PA1288 be revoked following Petitioner's third DUI offense, a felony. CMS Ex. 2. The Oklahoma Board of Medical Licensure and Supervision is authorized to enforce the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as necessary to protect the public health safety and welfare. *Id*. at 4. The Oklahoma Board of Medical Licensure and

Supervision concluded that Petitioner was "guilty of unprofessional conduct in that she . . . [i]s unable to practice medicine with reasonable skill and safety to patients by reason of . . . drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition . . . ." *Id.* Petitioner did not report the revocation of her medical license to CMS or the Medicare Administrative Contractor, Trailblazer Health Enterprises, LLC ("Trailblazer") following the Final Order of Revocation dated November 7, 2008.

Trailblazer notified Petitioner, by letter dated May 7, 2009, that her Medicare billing privileges were revoked retroactive to November 6, 2008. CMS Ex. 1, at 6-7. The letter advised Petitioner that her billing privileges were revoked based upon records obtained from the Oklahoma Board of Medical Licensure and Supervision that revealed a sanction had been imposed against Petitioner showing her noncompliance with the enrollment requirements set forth at 42 C.F.R. § 424.535(a)(3). *Id*. at 6.

On July 15, 2010, Petitioner requested reconsideration of the initial determination decision dated May 7, 2009. CMS Ex. 1, at 2-3. Petitioner alleged that she never received this initial determination because it was addressed to her former employer, McAlester Regional Hospital. *Id*. Petitioner therefore claimed she was not properly notified that she was barred from reenrolling in the Medicare program and also claimed that the revocation and reenrollment bar should be rescinded. *Id*. Petitioner's request for reconsideration did not address her failure to inform CMS or Trailblazer of a change in her current address of record. On July 30, 2010, Trailblazer notified Petitioner that it received her request for reconsideration past the time limit and therefore did not issue a decision. *Id.* at 1.

By letter dated September 7, 2010, Petitioner filed an appeal and request for hearing before an ALJ regarding CMS's determination to revoke Petitioner's Medicare billing privileges. This case was initially assigned to Board Member Leslie A. Sussan pursuant to 42 C.F.R. § 498.44, which permits a Board Member to hear appeals under 42 C.F.R. part 498. An Acknowledgment and Pre-hearing Order was sent to the parties on September 20, 2010.

On October 25, 2010, this case was reassigned to me for hearing and decision. On October 20, 2010, CMS filed for summary judgment. With its brief (CMS Br.), CMS submitted six exhibits (CMS Exs. 1-6). On November 17, 2010, Petitioner filed an exchange of evidence and argument and counter-motion for summary judgment (P. Br.). With its brief, Petitioner submitted three exhibits (P. Exs. 1-3). In the absence of objection, I admit CMS Exs. 1-6 and P. Exs. 1-3 to the record.

II. Applicable Law and Regulations

The regulations at 42 C.F.R. Part 424, subpart P, set out the requirements for enrollment and reporting of changes to enrollment information. "Providers and suppliers must meet and maintain these enrollment requirements to bill either the Medicare program or its beneficiaries for Medicare covered services or supplies." 42 C.F.R. § 424.500.

CMS may revoke the Medicare billing privileges of an enrolled provider or supplier for any of the reasons listed in 42 C.F.R. § 424.535. Medicare billing privileges of an enrolled provider or supplier may be revoked for noncompliance with the enrollment requirements. 42 C.F.R. § 424.535(a). In addition, CMS may revoke the Medicare billing privileges of an enrolled provider or supplier for failure to report to Medicare within ninety days any changes to the information furnished on the enrollment application. 42 C.F.R. § 424.520(b)(2008).[1]

Also, Subsection 424.535(a)(9) authorizes CMS to revoke billing privileges where a provider or supplier failed to comply with the reporting requirements including the requirement that "[p]hysicians [and] nonphysician practitioners . . . must report . . . to their Medicare contractor. . . [a]ny adverse legal action." 42 C.F.R. § 424.516(d)(1)(ii). A "[f]inal adverse action" is defined to include "[s]uspension or revocation of a license to provide health care by any State licensing authority." 42 C.F.R. § 424.502.

A provider or supplier dissatisfied with an initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration. 42 C.F.R. § 498.5(k)(1). Any provider or supplier dissatisfied with a reconsidered determination under 42 C.F.R. § 498.5(k)(1) is entitled to a hearing before an ALJ. 42 C.F.R. § 498.5(k)(2). In accordance with 42 C.F.R. § 498.22(b)(3), Petitioner must file the request for reconsideration "within 60 days from receipt of the notice of initial determination . . ." and, pursuant to 42 C.F.R. § 498.22(d), if a Petitioner is unable to file the request within the 60 days specified, it may file a written request with CMS stating the reasons why the request was not filed timely and CMS will extend the time for filing a request for reconsideration if Petitioner shows good cause for missing the deadline.

[1] 42 C.F.R. § 424.520(b) was in effect on November 6, 2008 and is the applicable regulation requiring Petitioner to report a change of information within ninety days. Effective January 1, 2009 42 C.F.R. § 424.516(d)(1) requires reporting of a change in ownership, an adverse legal actions, or a change in address within thirty days and "all other changes in enrollment must be reported within 90 days." 42 CFR § 424.516(d).

III. Findings of Fact, Conclusions of Law, and Supporting Discussion

My findings of fact and conclusions of law are set out as separate headings followed by supporting discussion.

A. Petitioner is not entitled to a hearing before an ALJ

Petitioner does not have a right to an ALJ hearing to review this matter. A Medicare hearing officer did not issue a reconsideration decision regarding CMS's initial determination to revoke Petitioner's Medicare billing privileges. Thus, I lack jurisdiction to consider whether CMS properly revoked Petitioner's Medicare billing privileges or whether Petitioner was in compliance with the applicable Medicare enrollment requirements. 42 C.F.R. § 498.5(k)(2).

B. Petitioner's request for reconsideration is untimely and Petitioner has not demonstrated good cause to extend the time for filing

I conclude that the denial of Petitioner's request for reconsideration was correct. The number of days between the date of the initial determination regarding the revocation of Petitioner's Medicare billing privileges (May 7, 2009) and the date of the request for reconsideration (July 15, 2010) is 434 days. The reconsideration request was required to be filed within 60 days under the authorities cited above. Thus, CMS correctly denied Petitioner's request for reconsideration as it was untimely.

If a Petitioner shows good cause for missing the deadline, CMS will extend the time for filing a request for reconsideration. 42 C.F.R. § 498.22(d)(2). Petitioner essentially claims that CMS failed to provide her with notice that her Medicare billing privileges were revoked because CMS mailed the May 7, 2009 letter to her former employer, McAlester Regional Hospital. P. Br. at 4. However, Petitioner ignores relevant regulations which provide that a provider or supplier must report to CMS any changes to the information furnished on an enrollment application and furnish supporting documentation within ninety calendar days of the change. 42 C.F.R. § 424.520(b) (2008).[2] Thus, Petitioner had a duty to report any changes to her enrollment application previously filed with CMS, including the revocation of her physician assistant license and changes to Petitioner's address, but she did not do so.

The relevant requirements are imposed by statute and duly promulgated regulations, of which participating suppliers are presumed to have notice and a Medicare supplier has a

[2] As previously noted, effective January 1, 2009, the regulation changed and required providers to report certain events, such as changes in ownership, adverse legal actions, and changes in practice location, to a Medicare contractor within 30 days. 42 C.F.R. § 424.516(d)(1).

duty to understand and comply with all the applicable regulations and familiarize itself with the legal requirements of the Medicare program. *See, e.g., Waterfront Terrace, Inc.*, DAB No. 2320, at 7 (2010) (holding provider of Medicare services should be expected to possess at least a rudimentary understanding of program rules and terminology), citing *Heckler v. Cmty. Health Servs. of Crawford County*, 467 U.S. 51, 63, 64 (1984) (noting participant in the Medicare program had "duty to familiarize itself with the legal requirements" for cost reimbursement); *Thomas M. Horras and Christine Richards*, DAB No. 2015, at 34 (2006) (finding officer and principal of provider had responsibility to be aware of and adhere to applicable law and regulations), *aff'd Horras v. Leavitt*, 495 F.3d 894 (8th Cir. 2007).

Thus, it is clear to me that the fact that CMS sent the notice letter to Petitioner's last address of record, but that it did not subsequently attempt to locate the Petitioner, is not an adequate basis for a good cause determination. Petitioner has failed to establish that good cause exists to extend the time for filing based on her own failure to report her change in address.

IV. Conclusion

Petitioner does not have a right to an ALJ hearing to review her revocation of Medicare billing privileges as she did not timely file a request for reconsideration, and I do not find good cause to justify extending the time for filing. I therefore dismiss this case for cause. 42 C.F.R. § 498.70.

/s/
Joseph Grow
Administrative Law Judge