

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Leonardo Torres Rodriguez, M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-572

Decision No. CR2446

Date: October 11, 2011

DECISION

The Centers for Medicare and Medicaid Services (CMS) is entitled to summary judgment, as I conclude that the undisputed evidence establishes that CMS properly revoked Petitioner's enrollment in the Medicare program for failure to timely submit required information necessary for Petitioner's continued participation in the Medicare program.

I. Background

Petitioner is a physician in the Commonwealth of Puerto Rico. On July 28, 2011, First Coast Service Options, Inc. (First Coast), a Medicare contractor acting on behalf of CMS, revoked Petitioner's participation in Medicare. Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision.

CMS filed a Motion for Summary Judgment. With its motion, CMS filed 19 proposed exhibits that it designated as CMS Exhibit (Ex.) 1 – CMS Ex. 19. Petitioner opposed the motion. With his opposition, Petitioner filed 28 proposed exhibits that he designated as P. Ex. 1 – P. Ex. 28. I receive all of the parties' proposed exhibits into the record. Neither party requested that I convene an in-person hearing.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue in this case is whether CMS was authorized to revoke Petitioner's Medicare enrollment and billing privileges on July 28, 2010 for failure to comply with the revalidation requirements of 42 C.F.R. § 424.515.

B. Findings of Fact and Conclusions of Law

The undisputed facts of this case are as follows. On December 2, 2009, First Coast sent Petitioner a letter informing him that, in accordance with 42 C.F.R. § 424.515(d)(1), Petitioner was required to provide certain documentation to revalidate his Medicare billing privileges. CMS Ex. 1. The letter informed Petitioner that the requirement for resubmission, recertification, and reverification of enrollment information included submission of all applicable enrollment applications and supporting documentation within 60 days of the date of the request. *Id.* The letter stated in bold that “[y]our continued billing privileges are dependent upon receiving the requested information within 60 calendar days. If you fail to provide the requested information, your billing privileges will be revoked.” *Id.* at 2. Petitioner did not respond to this letter and did not provide the requested information. Petitioner claims he did not receive the letter; however, he does not claim that the letter was sent to an incorrect address.

On June 28, 2010, First Coast sent a letter on behalf of CMS informing Petitioner that his Medicare billing number and billing privileges would be revoked as of July 28, 2010 because CMS did not receive the requested information. CMS Ex. 2 at 1. The contractor also advised Petitioner that, as a consequence of the revocation of his billing privileges, he would be ineligible to reapply for enrollment in the Medicare program for a period of one year. *Id.*

The letter stated that Petitioner could take certain steps to correct the deficiencies and reapply to establish Medicare eligibility by submitting a corrective action plan (CAP) within 30 calendar days after the postmark date of the letter. *Id.* In addition, if Petitioner disagreed with the determination, he could request reconsideration of the revocation decision. *Id.* at 2.

On July 6, 2010, Petitioner submitted a request for reconsideration via facsimile. CMS Ex. 3. Petitioner checked the box for “Request for Reconsideration” and did not check the box for “CAP” on the form submitted. *Id.* The request did not contain any documentation other than an unsupported statement that Petitioner had not received the December 2, 2009 letter. *Id.* Petitioner submitted another request on August 26, 2010 containing copies of forms CMS 855I, CMS 588, and various supporting documentation,

including copies of Petitioner's medical degrees, resume, and license to practice medicine. CMS Ex. 5 at 27-41. However, many of the pages of the form CMS 855I were incomplete or missing. *Id.* at 18.

Although Petitioner requested reconsideration rather than a CAP, First Coast apparently treated the request for reconsideration as a CAP and made several attempts to obtain the missing information from the Petitioner. CMS Ex. 7. On January 4, 2011, First Coast attempted to call Petitioner and request the missing information; however, there was no answer at Petitioner's place of business, and Petitioner apparently did not have a voicemail system. CMS Ex. 7 at 3. Also, First Coast sent Petitioner a fax advising that some information was missing, and certain documentation needed to be supplied by January 7, 2011. CMS Ex. 8. On January 6, 2011, First Coast again attempted to contact Petitioner but was unable to leave a message. CMS Ex. 7 at 2.

On January 18, 2011, First Coast received a fax from Petitioner stating that Petitioner's office had been closed and requesting that fax be resent. CMS Ex. 9. First Coast then resent the fax and advised Petitioner that the requested information was needed by January 20, 2011. CMS Ex. 10. Petitioner submitted several documents via fax on January 20, 2011 and January 21, 2011. These transmittals contained various documents, including partially completed sections of form CMS 855I, a copy of a page of form CMS 588 without financial institution information listed, and a dark form in the shape of a driver's license. CMS Ex. 11 and CMS Ex. 12. Another transmittal on January 24, 2011 contained a partially-readable copy of Petitioner's degree from La Universidad de Madrid and a document that appears to be a degree or diploma. CMS Ex. 13. Petitioner then submitted additional information, including an amended section 3 of form CMS 855I and a slightly clearer copy of a driver's license. CMS Ex. 14 at 5, 9.

On January 25, 2011, First Coast sent Petitioner two letters advising that Petitioner's request for Corrective Action Plan was denied because Petitioner had not supplied a complete form CMS 855I, and certain supporting documentation was missing. CMS Ex. 15 and CMS Ex. 16. The letters stated that, although Petitioner could submit a request for reconsideration of the decision, no further action would be taken to process the application. *Id.* Petitioner then submitted additional faxes and a request for reconsideration in late January and early February of 2011. CMS Ex. 17 and CMS Ex. 18. The additional information contained in these faxes was not considered because it was submitted after the January 25, 2011 decision. On June 8, 2011, First Coast denied the request for reconsideration, noting the multiple attempts the contractor had made to obtain the required information from Petitioner and that complete information had not been timely provided. CMS Ex. 19.

The issue that I must decide is whether Petitioner's reenrollment application satisfied regulatory requirements, not whether CMS unfairly denied Petitioner's CAP. Petitioner may not now attack First Coast's review of his CAP. However, even assuming that the

CAP is reviewable, the evidence in this case shows that First Coast went to extraordinary lengths -- more than is required by law -- to assist Petitioner. *See* CMS Exs. 7, 8, and 14. Notwithstanding, Petitioner never timely submitted to First Coast all of the necessary information, and the "CAP" that Petitioner filed is incomplete in several respects. CMS Ex. 11, CMS Ex. 12. For example, Petitioner continued to leave the financial institution information and the contact person information on the form CMS-588 incomplete. CMS Ex. 11 at 4.

Petitioner plainly did not comply with the relevant regulatory requirements because Petitioner did not complete a reenrollment application within 60 calendar days in response to First Coast's notification sent on December 2, 2009. Petitioner's assertion that he never received this notification is unsupported. Thus, Petitioner clearly failed to timely submit the information requested by CMS, and, from that point on, CMS had non-reviewable discretion to accept or reject any documentation submitted by Petitioner.

Furthermore, the burden rests entirely on Petitioner to provide complete information to the Medicare contractor concerning his enrollment status. 42 C.F.R. § 515(a)(2). Thus, Petitioner's assertions that First Coast was nonresponsive or noncooperative are to no avail. Petitioner points to no source of authority for me to grant him an exemption from regulatory compliance. Moreover, I have no authority to declare statutes or regulations invalid or *ultra vires*. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009) ("An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground."). Thus, I have no authority to overturn CMS's decision to revoke Petitioner Medicare billing privileges for failure to comply with revalidation requirements based upon equitable considerations. Nor do I have authority to consider a challenge to the way in which this Department implements regulations.

CMS clearly had the right to revoke Petitioner's Medicare participation based upon the fact that Petitioner failed to comply with CMS's original request for revalidation of enrollment information. The fact that Petitioner failed to provide requisite information via a corrective action plan is an additional ground for sustaining CMS's determination.

 /s/
 Steven T. Kessel
 Administrative Law Judge