Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Syed Hamzavi, M.D.
(NPI: 1295780989),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-572

Decision No. CR5004

Date: January 5, 2018

DECISION

On November 1, 2016, Wisconsin Physicians Service (WPS or "the contractor") notified Syed Hamzavi, M.D. (Petitioner), that it had deactivated his Medicare enrollment and billing privileges, effective October 31, 2016, because he failed to timely revalidate his Medicare enrollment information. After receiving Petitioner's enrollment and reassignment applications for purposes of revalidation and reactivation on November 18, 2016, WPS reactivated Petitioner's Medicare enrollment and billing privileges, effective November 18, 2016. For the reasons discussed below, I conclude that the effective date of Petitioner's reactivated billing privileges remains November 18, 2016.

I. Background

On June 14, 2016, WPS mailed a letter to Petitioner informing him that he was required to revalidate his Medicare enrollment record every five years and that he must revalidate his enrollment no later than August 31, 2016. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 2 at 1. WPS warned Petitioner that a failure to timely revalidate "will result in a hold on [his] payments, and possible deactivation of [his] Medicare

enrollment," which could "cause a gap in [his] reimbursement." WPS mailed the letter to Syed Hamzavi, University Pediatricians, at "4201 ST ANTOINE UHC-6F SUITE 226" in Detroit, Michigan.[1] CMS Ex. 2 at 1.

After Petitioner did not respond to the June 14, 2016 letter, WPS sent another letter to the same address, dated September 5, 2016, because he had "not revalidated by the requested due date of August 31, 2016." CMS Ex. 3 at 1. WPS reiterated that Petitioner was required to revalidate his enrollment record every five years and "will not be paid for services rendered during the period of deactivation," which "will cause a gap in . . . reimbursement." CMS Ex. 3 at 1.

On November 1, 2016, after it did not receive a response to its previous correspondence, WPS informed Petitioner it had deactivated his Medicare enrollment and billing privileges because he did not comply with the revalidation request. CMS Ex. 4 at 1.

On November 8, 2016, Petitioner submitted a Form CMS-855I and Form CMS-855R through the Provider Enrollment, Chain, and Ownership System (PECOS). CMS Ex. 5 at 1. Petitioner submitted a signed "Certification Statement for Individual Practitioners" to complete his Form CMS-855I revalidation application, and also submitted a signed "Authorization Statement for Reassignment of Medicare Benefits" to complete his Form CMS-855R, which were mailed and postmarked on November 14, 2016. CMS Exs. 12, 13. WPS received the signed forms on November 18, 2016. CMS Exs. 5 at 4; 12; 13 at 1-2; 14.

WPS approved Petitioner's revalidation enrollment application on December 8, 2016, at which time it informed Petitioner of the following: "Please note the effective date [of November 18, 2016] reflects a gap in coverage from October 31, 2016 to November 17, 2016 for failure to respond to the revalidation requested development." CMS Ex. 8 at 1-2 (emphasis omitted).[2]

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[1] WPS mailed the revalidation notice to the address previously provided by Petitioner in a May 2011 enrollment application, in which he reported a single practice location, University Pediatricians, and listed the address for that practice, 4201 St. Antoine, UHC-6F, Suite 226, in Detroit Michigan, as the address for both correspondence and to reach his designated contact person. CMS Ex. 1 at 4, 13, 20, 24.

[2] WPS's December 8, 2016 letter to Petitioner erroneously lists a "September 01, 2004" effective date of billing privileges. CMS Ex. 8 at 1. However, the letter clarifies that "the effective date above reflects a gap in coverage from October 31, 2016 to November 17, 2016," and thereby provides notice of a November 18, 2016 effective date of billing privileges. CMS Ex. 8 at 2 (emphasis omitted). Petitioner acknowledged the November 18, 2016 effective date in his request for reconsideration, explaining that his billing

(Footnote continued on next page)

On December 19, 2016, Petitioner submitted a request for reconsideration in which he argued that the effective date of his reactivated billing privileges should be November 8, 2016, and also alleged that he did not receive any correspondence pertaining to the revalidation request and subsequent deactivation of his reenrollment. CMS Ex. 9. Petitioner contended that this was his first coverage gap since he first enrolled in Medicare in 2004, and explained that "[t]he delay in responding [to] the revalidation request was not intentional and we corrected it as soon as we became aware of the situation." CMS Ex. 9 at 1. Petitioner also explained that he had "implemented internal steps to ensure this does not happen in the future . . . ." CMS Ex. 9 at 1.

WPS issued a reconsidered determination on February 7, 2017, in which it denied Petitioner's request for an earlier effective date of reactivated billing privileges. CMS Ex. 10. WPS explained that the "gap in coverage was processed correctly" because Petitioner "failed to respond to the revalidation request." CMS Ex. 10 at 2.

Petitioner submitted a request for hearing that was received at the Civil Remedies Division on April 4, 2017. CMS filed a pre-hearing brief and motion for summary judgment, along with 11 exhibits (CMS Exs. 1 - 11). Petitioner filed a combined response brief, response to CMS's motion for summary judgment, and cross-motion for summary judgment (P. Br.) and 14 exhibits (P. Exs. 1 - 14). CMS filed a response to Petitioner's motion for summary judgment, along with three additional supporting exhibits (CMS Exs. 12 - 14). Petitioner thereafter filed a motion to reply to CMS's response and a reply brief (P. Reply). In the absence of any objections, I admit all exhibits in to the record, and I grant Petitioner's motion to submit P. Reply.

Neither party offered the written testimony of any witnesses. A hearing for the purpose of cross-examining witnesses is therefore unnecessary. *See* Acknowledgment and Pre-Hearing Order §§ 8, 9, and 10. I consider the record in this case to be closed, and the matter is ready for a decision on the merits.[3]

(Footnote continued)

manager, S. Salloum, contacted WPS to "inquire[] as to why the new effective date was November 18, 2016." CMS Ex. 9 at 1; *see also* P. Br. at 2 (describing Ms. Salloum as "the billing manager").

[3] Both parties have argued that summary judgment is appropriate. It is unnecessary in this instance to address the issue of summary judgment, as neither party has requested an in-person hearing.

II. Issue

Whether CMS had a legitimate basis for establishing November 18, 2016, as the effective date of Petitioner's reactivated billing privileges.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(15), 498.5(*l*)(2).

IV. Findings of Fact, Conclusions of Law, and Analysis[4]

1. ***On June 14, 2016, WPS mailed a letter to Petitioner directing him to revalidate his Medicare enrollment record by August 31, 2016, and that the failure to respond could result in deactivation of his billing privileges, nonpayment for services rendered during a period of deactivation, and a gap in reimbursement.***

2. ***On September 5, 2016, WPS mailed another letter to Petitioner notifying him that he had not revalidated his enrollment prior to the August 31, 2016 deadline, and that the failure to respond could result in deactivation of his billing privileges, nonpayment for services rendered during a period of deactivation, and a gap in reimbursement.***

3. ***After Petitioner did not revalidate his Medicare enrollment record in response to the revalidation request, WPS notified Petitioner on November 1, 2016, that it had deactivated his Medicare enrollment and billing privileges, effective October 31, 2016.***

4. ***WPS received Petitioner's signed enrollment application, along with a reassignment of Medicare benefits application, for the purposes of revalidating and reactivating Medicare enrollment, on November 18, 2016.***

5. ***An effective date earlier than November 18, 2016, the date WPS received the signed enrollment applications, is not warranted for the reactivation of Petitioner's Medicare enrollment and billing privileges.***

[4] My findings of fact and conclusions of law are set forth in italics and bold font.

As a physician, Petitioner is a "supplier" for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of supplier), 410.20(b)(1); *see also* 42 C.F.R. § 498.2. A "supplier" furnishes services under Medicare and the term applies to physicians or other practitioners that are not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d). A supplier must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. 42 C.F.R. §§ 424.510 - 424.516; *see also* 42 U.S.C. § 1395cc(j)(1)(A) (authorizing the Secretary of the U.S. Department of Health and Human Services to establish regulations addressing the enrollment of providers and suppliers in the Medicare program). A supplier that seeks billing privileges under Medicare "must submit enrollment information on the applicable enrollment application." 42 C.F.R. § 424.510(a)(1). "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)(1); *see also* 42 C.F.R. § 424.510(d) (listing enrollment requirements). Thereafter, "[t]o maintain Medicare billing privileges, a . . . supplier . . . must resubmit and recertify the accuracy of its enrollment information every 5 years." 42 C.F.R. § 424.515.

CMS is authorized to deactivate an enrolled supplier's Medicare billing privileges if the enrollee does not provide complete and accurate information within 90 days of a request for such information. 42 C.F.R. § 424.540(a)(3). If CMS deactivates a supplier's Medicare billing privileges, "[n]o payment may be made for otherwise Medicare covered items or services furnished to a Medicare beneficiary." 42 C.F.R. § 424.555(b). Further, and quite significantly, the Departmental Appeals Board (DAB) has unambiguously stated that "[i]t is certainly true that [the petitioner] may not receive payment for claims for services during any period when his billing privileges were deactivated." *Willie Goffney, Jr., M.D.*, DAB No. 2763 at 6. The regulation authorizing deactivation explains that "[d]eactivation of Medicare billing privileges is considered an action to protect the provider or supplier from misuse of its billing number and to protect the Medicare Trust Funds from unnecessary overpayments." 42 C.F.R. § 424.540(c).

The reactivation of an enrolled provider or supplier's billing privileges is governed by 42 C.F.R. § 424.540(b), and the process for reactivation is contingent on the reason for deactivation. If CMS deactivates a supplier's billing privileges due to the supplier's failure to respond to a request for updated enrollment information, such as in this case, the supplier may apply for CMS to reactivate its Medicare billing privileges by completing and submitting the appropriate enrollment application(s) or recertifying its enrollment information, if deemed appropriate. 42 C.F.R. § 424.540(a)(3), (b)(1).

On June 14, 2016, WPS mailed to Petitioner a letter notifying him that he was required to revalidate his Medicare enrollment record by August 31, 2016, and warning him that the

failure to revalidate could lead to deactivation of his Medicare enrollment and billing privileges, with a resulting gap in reimbursement. CMS Ex. 2 at 1. On September 5, 2016, WPS mailed to Petitioner a second letter informing him that it had not received a response to the revalidation request, and again cautioned that his billing privileges could be deactivated and that he would not receive reimbursement for services rendered while deactivated. CMS Ex. 3 at 1. On November 1, 2016, WPS sent another letter in which it notified Petitioner it had deactivated his billing privileges because he failed to revalidate his Medicare enrollment record. CMS Ex. 4 at 1.

Nearly five months after WPS first requested that Petitioner revalidate his enrollment record, Petitioner submitted enrollment and reassignment applications via PECOS on November 8, 2016. CMS Ex. 5 at 1. However, Petitioner did not mail the accompanying signature forms for those applications for another six days, and WPS did not receive those forms until November 18, 2016. CMS Exs. 12, 13. After further development of the applications (CMS Exs. 6, 7), WPS approved Petitioner's applications on December 8, 2016, and reactivated his billing privileges, effective November 18, 2016. CMS Ex. 8; *see* note 2, above.

The pertinent regulation with respect to the effective date of reactivation is 42 C.F.R. § 424.520(d). *Arkady B. Stern, M.D.*, DAB No. 2329 at 4 (2010). Section 424.520(d) states that "[t]he effective date for billing privileges for physicians . . . is the later of – (1) [t]he date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) [t]he date that the supplier first began furnishing services at a new practice location." The DAB has explained that the "date of filing" is the date "that an application, however sent to a contractor, is actually received." *Alexander C. Gatzimos, MD, JD, LLC*, DAB No. 2730 at 5 (2016) (emphasis omitted). Of particular importance to this case, "the date of filing for Internet-based PECOS will be the date the Medicare . . . contractor receives all of the following: (1) A signed certification statement; (2) an electronic version of the enrollment application; and (3) a signature page that the Medicare . . . contractor processes to approval." *Id.* at 9 n.2 (internal quotation marks omitted) (quoting 73 Fed. Reg. 69,726, 69,767 (November 19, 2008)); *see also* 42 C.F.R. § 424.510(d)(3) (including as an enrollment requirement the following: "The certification statement found on the enrollment application must be signed by an individual who has the authority to bind the provider or supplier, both legally and financially, to the requirements set forth in this chapter."). Petitioner's date of filing was November 18, 2016, the date WPS received Petitioner's signed certification and authorization statements for his enrollment and reassignment applications. Based on the November 18, 2016 receipt date of the signed applications, WPS correctly assigned a November 18, 2016 effective date for reactivated billing privileges. *See Goffney*, DAB No. 2763 at 6 ("It is certainly true that [the petitioner] may not receive payment for claims for services during any period when his billing privileges were deactivated."); 42 C.F.R. § 424.520(d).

Although the November 18, 2016 effective date is appropriate, as explained above, Petitioner focuses much attention on the *deactivation* of his billing privileges, arguing that WPS did not properly notify him of his need to revalidate his Medicare enrollment. Petitioner contends that he updated his mailing address with NPPES, the National Plan & Provider Enumeration System, on January 15, 2014, and that WPS should have updated its records with that mailing address and mailed notice of his need to revalidate to that address.[5] P. Br. at 9-11 (citing, *inter alia*, P. Ex. 2). However, the DAB has explained that a deactivation action is not reviewable, and "[t]he only action in the reconsidered determination which is appealable is . . . the initial determination of the effective date of the enrollment application reinstating [the petitioner]."[6] *Goffney*, DAB No. 2763 at 3-5.

Even though I need not address Petitioner's arguments that the deactivation action was erroneous, I nonetheless observe that Petitioner's arguments are otherwise not persuasive. Petitioner has not claimed, nor demonstrated through the submission of evidence, that he updated his *Medicare enrollment record* with a mailing address other than the address he provided on his enrollment application in May 2011. Petitioner was required to report a change to the information supplied in his enrollment application directly to CMS or WPS "within 90 calendar days of when the change occurred." 42 C.F.R. § 424.540(a)(2). Changes to enrollment information are effectuated through the submission of a completed enrollment application, and *not* by updating information with NPPES. 42 C.F.R. § 424.510(a)(1) ("Providers and suppliers must submit enrollment information on the applicable enrollment application."). Petitioner's most recent enrollment application prior to the revalidation request, submitted in May 2011, listed the same address for both correspondence and for his designated contact person, 4201 St. Antoine, UHC-6F, Suite

[5] The National Plan & Provider Enumeration System maintains the National Provider Identifier (NPI) system, which assigns a single, unique NPI to health care providers. 42 C.F.R. § 162.408. A provider need not be enrolled in Medicare to have an NPI. *See* 42 C.F.R. §§ 162.408, 162.410, 162.412, 162.414. The NPI system is not a Medicare enrollment database, and an update of information in the NPI system is not an update of Medicare enrollment information.

[6] The DAB explained: "Moreover, neither [42 C.F.R. §] 424.545(b) nor any other regulation provides appeal rights from the contractor's deactivation determination or any rebuttal determination." *Goffney*, DAB No. 2763 at 5; *see also Arkady B. Stern, M.D.*, DAB No. 2417 at 3 n.4 (2011) (Petitioner argues on appeal that deactivation was improper, but the DAB "does not have the authority to review" deactivation under circumstances of this case, (citing 42 C.F.R. §§ 424.545(b) and 498.3(b)); *Andrew J. Elliott, M.D.*, DAB No. 2334 at 4 n.4 (2010) (DAB "does not have authority to review" a deactivation).

226, Detroit, MI 48201-2153 (CMS Ex. 1 at 4, 20),[7] which is the address to which WPS mailed the revalidation-related correspondence in June, September, and November of 2016. CMS Exs. 2, 3, 4. If Petitioner did not receive the revalidation correspondence, it was due to his own failure to update his Medicare enrollment information, and not any failure of WPS.

Petitioner also argues that WPS was obligated to mail a revalidation request to another address on file, citing the Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, Ch. 15, § 15.29.2. P. Br. at 11-12; *see* CMS Ex. 11 at 24. However, Petitioner did not list *any* other addresses in his May 2011 application, and the only address listed is the aforementioned address; in fact, Petitioner did not opt to list a separate billing agency or special payments address in the application. CMS Ex. 1. Thus, although the MPIM provision at issue directs the contractor to mail two revalidation notices to the correspondence address, special payments address, and/or practice location, I observe that Petitioner reported a single address on his May 2011 enrollment application.[8] MPIM, § 15.29.2; *see* CMS Ex. 11 at 24. Petitioner has not shown that WPS did not adhere to the procedures for requesting revalidation of enrollment.

Petitioner argues that the effective date of his reactivated billing privileges should be November 8, 2016, the date he alleges he filed the applications for purposes of revalidation and reactivation of his enrollment. P. Br. at 12-16; P. Reply at 2-4. Although Petitioner electronically submitted the applications on November 8, 2016, it was not complete because Petitioner did not send in the accompanying signature pages until November 14, 2016, and they were not received until November 18, 2016. CMS Exs. 5 at 4, 7; 12; 13; 14. As a result, Petitioner's complete applications were not received until November 18, 2016. *See Gatzimos*, DAB No. 2730 at 9 n.2 (quoting 73 Fed. Reg. at 69,767).

To the extent that any of Petitioner's arguments can be construed as a request for equitable relief in the form of an earlier effective date of reactivated billing privileges, I

[7] Petitioner faults WPS and CMS for relying on the addresses listed in the May 2011 enrollment application, and points out purported discrepancies involving the processing of that application. P. Br. at 9-11. However, Petitioner has not submitted any evidence demonstrating that he updated his *Medicare enrollment record* prior to November 2016.

[8] I further note that the MPIM is sub-regulatory internal policy guidance for Medicare administrative contractors, and it does not create any substantive rights to compliance. *See, e.g.*, *Viora Home Health, Inc.*, DAB No. 2690 at 8 (2016). Even if I were to find that WPS did not fully adhere to the MPIM, which I do not, I could not grant Petitioner any relief based on such noncompliance. Further, I reiterate that I lack the authority to review the deactivation of billing privileges.

am unable to grant equitable relief. *US Ultrasound*, DAB No. 2302 at 8 (2010) ("Neither the ALJ nor the [DAB] is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements.").[9] Petitioner also argues that I "should designate an effective date of November 8, 2016, in the interest of due process." P. Br. at 8. I cannot grant Petitioner relief on this basis because I do not have the authority to "[f]ind invalid or refuse to follow Federal statutes or regulations or secretarial delegations of authority." *See, e.g.*, *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, even a constitutional one.").

In the absence of any basis to grant an earlier date for the reactivation of billing privileges, the November 18, 2016 effective date for the reactivation of Petitioner's billing privileges must stand.

V. Conclusion

I uphold the November 18, 2016 effective date of the reactivation of Petitioner's Medicare billing privileges.

/s/
Leslie C. Rogall
Administrative Law Judge

[9] The DAB has suggested that equitable estoppel may be available in a case involving "'affirmative misconduct,' such as fraud, by the federal government." *US Ultrasound*, DAB No. 2302 at 8. Petitioner vaguely claims such "misconduct" occurred here (P. Br. at 8), but he provides no evidence of any governmental misconduct.