

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Integrated Nursing & Health Services, Inc.
Docket No. A-17-86
Decision No. 2816
September 8, 2017

**FINAL DECISION ON REVIEW OF ADMINISTRATIVE
LAW JUDGE ORDER OF DISMISSAL**

Integrated Nursing & Health Services, Inc. (Petitioner), a home health agency, has appealed a June 8, 2017 Order of Dismissal entered by the administrative law judge (ALJ) in Civil Remedies Docket No. C-17-708. Pursuant to 42 C.F.R. § 498.82(a), a party may request Board review of an ALJ's dismissal of a hearing request. We affirm the dismissal order for the reasons stated below.

Effective January 24, 2017, the Centers for Medicare & Medicaid Services (CMS) suspended Medicare payments to Petitioner. By letter dated January 31, 2017, CMS notified Petitioner of the suspension and of its right under 42 C.F.R. § 405.372(b)(2) to submit a written "rebuttal statement . . . explaining why the suspension should be removed." On February 7, 2017, Petitioner mailed a rebuttal statement and supporting evidence to CMS. By letter dated February 24, 2017, CMS informed Petitioner that it had reviewed the rebuttal material and decided not to terminate the payment suspension. CMS also advised Petitioner that its decision not to terminate the suspension was "not appealable," citing 42 C.F.R. § 405.375(c).*

Petitioner then filed documents concerning the payment suspension with the Departmental Appeal Board's Civil Remedies Division (CRD). On June 8, 2017, the ALJ dismissed the case for "lack of jurisdiction," holding that Petitioner had "no right to appeal" CMS's January 31, 2017 decision to impose the suspension or CMS's February 24, 2017 (post-rebuttal) decision not to terminate the suspension.

* Section 405.375(c) states that "[a] determination made under paragraph (a) of this section is not an initial determination and is not appealable." 42 C.F.R. § 405.375(c). Paragraph (a) of section 405.375 states that "[i]f the provider or supplier submits a statement, under § 405.374, as to why a suspension of payment, offset, or recoupment should not be put into effect, or, under § 405.372(b)(2), why a suspension should be terminated, CMS, the intermediary, or carrier must within 15 days, from the date the statement is received, consider the statement (including any pertinent evidence submitted), together with any other material bearing upon the case, and determine whether the facts justify the suspension, offset, or recoupment or, if already initiated, justify the termination of the suspension, offset, or recoupment." *Id.* § 405.375(c).

Petitioner then filed this appeal of the dismissal order. Its appeal letter expresses no disagreement with the ALJ’s factual findings or legal conclusions. Petitioner merely asks the Board to rule “expeditiously if [the] ALJ does indeed lack jurisdiction in this matter in order that we may proceed to district court.” Because Petitioner does not challenge the ALJ’s conclusion that it has no right to Departmental Appeals Board review of CMS’s payment suspension decisions – a conclusion that appears to be correct – we summarily affirm the ALJ’s June 8, 2017 Order of Dismissal. *See Amber Mullins, N.P.*, DAB No. 2729, at 5 (2016) (“Failure to articulate at least some disagreement with the bases for the ALJ decision permits the Board to summarily affirm the ALJ’s findings of fact and conclusions of law.”); *Vijendra Dave, M.D.*, DAB No. 2672, at 10 (2016) (explaining that Medicare providers and suppliers have a right to appeal the types of “initial determinations” specified in 42 C.F.R. § 498.3(b) – determinations which do not include Medicare payment suspensions under 42 C.F.R. § 405.372)).

/s/

Leslie A. Sussan

/s/

Constance B. Tobias

/s/

Susan S. Yim
Presiding Board Member