

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Ajith Kadakol, M.D., and  
Premier Vascular Care, P.C.,<sup>1</sup>

Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-774

Decision No. CR2967

Date: October 23, 2013

**DECISION**

Petitioners, Ajith Kadakol, M.D. (Dr. Kadakol) and his solo medical practice, Premier Vascular Care, P.C. (Premier Vascular), requested a hearing to challenge the effective date of Premier Vascular's enrollment in the Medicare program. Wisconsin Physician Services Insurance Corporation (WPS), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS) established an "effective billing date" of June 19, 2012, based on its receipt of Petitioners' enrollment application. CMS now moves for summary disposition. In response, Petitioners have expressed their continued desire for a

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<sup>1</sup> This case had been previously docketed only under the name of Ajith Kadakol, M.D. However, the underlying decisions involve the effective date for Dr. Kadakol's solo practice, Premier Vascular Care, P.C., not just Dr. Kadakol, who was already enrolled in Medicare and associated with another practice location. Premier Vascular Care is a supplier affected by the initial and reconsidered determinations and should be a named party in this case. In addition, the effective date for Premier Vascular Care will affect Dr. Kadakol's ability to bill Medicare under Premier Vascular Care's billing privileges, so he remains a named party in the case.

hearing, which, in light of Petitioners' appearance *pro se* in this matter, I will construe as an opposition to a resolution of this case through summary disposition.

For the reasons set forth below, I find Petitioners have not raised any genuine dispute of material fact and that CMS is entitled to judgment as a matter of law. Therefore, I grant summary judgment in favor of CMS.

## **I. Case Background and Procedural History**

On July 16, 2012, Certified Professional Billing Solutions, LLC, a medical billing company, submitted to WPS an enrollment application (form CMS-855I ) and supporting documents on behalf of Petitioners. WPS reports it received Petitioners' enrollment application on July 19, 2012. WPS accepted and processed Petitioners' enrollment application and, on November 7, 2012, sent a notice letter to Petitioners advising them that their application had been approved and their "Effective Billing Date" was June 19, 2012, "30 days prior to the filing date" of their enrollment application.<sup>2</sup> CMS Exhibit (Ex.) 1, at 49.

On January 14, 2013, Petitioners' billing company submitted to WPS a request for reconsideration. CMS Ex. 2. The request for reconsideration incorporated a letter dated August 9, 2012, that the billing company previously sent to WPS. CMS Ex. 2, at 2. The August 9 letter stated that Petitioners sent an application "on or about March 1, 2012. After calling numerous times and being told that it takes over 90 days to be processed we finally found out that the application had not been received and we resubmitted the contract on June 1, 2012." CMS Ex. 2, at 2. The letter requested an effective date of March 1, 2012. CMS Ex. 2, at 2.

Before a reconsidered determination had been issued, Dr. Kadakol exchanged emails with the WPS hearing officer reviewing his case and explained his prior work with a group practice, S.S. Hans M.D., P.C., as well as with the Henry Ford Health System. CMS Ex. 4, at 2. He stated that the enrollment application related to his work with the Henry Ford Health System and a separate enrollment application for Premier Vascular were both submitted in September 2011. CMS Ex. 4, at 2. He requested that his billing privileges for Premier Vascular be effective March 1, 2012, which was the day he began

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<sup>2</sup> WPS used the term "Effective Billing Date" to refer to the date when Petitioners may retrospectively bill for Medicare services. By regulation, the "effective date" would ordinarily be the date WPS received Petitioners' enrollment application that it eventually approved. *See* 42 C.F.R. § 424.520(d). CMS may, however, permit Petitioners to retrospectively bill for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). To be consistent with the regulation, this decision uses "effective date" in later sections to refer to the effective date of enrollment that is established by regulation, not the date when Petitioners' retrospective billing period begins.

providing services at the Premier Vascular location. CMS Ex. 4, at 2. The WPS hearing officer responded to Dr. Kadakol by email, stating that she had a copy of the enrollment application related to Dr. Kadakol's work at the Henry Ford Health System but did not have the application for Premier Vascular allegedly submitted on or around the same time. CMS Ex. 4, at 1. She noted that the Henry Ford Health application had FedEx tracking information and requested that Dr. Kadakol send her information about how he sent the Premier Vascular application.<sup>3</sup> CMS Ex. 4, at 1. The hearing officer stated that WPS phone records confirmed telephone calls about the Henry Ford Health enrollment application, but no such records existed for the Premier Vascular enrollment application. CMS Ex. 4, at 1. On March 23, 2013, WPS issued its reconsidered determination, which stated that the "effective billing date will remain June 19, 2012." CMS Ex. 5, at 2.

On April 24, 2013, Petitioners filed their request for hearing (RFH). Following my Acknowledgment and Prehearing Order dated May 15, 2013 (Prehearing Order), Petitioners filed a notice of appointment of representative that appointed Karen Touchette as Petitioners' authorized representative for the hearing. CMS subsequently filed a motion for summary disposition (CMS Mot.) and eight supporting documentary exhibits (CMS Exs. 1-8). Petitioners did not file a response to the motion for summary disposition, a prehearing brief, or any proposed exhibits by the deadline established in the Prehearing Order. *See* Prehearing Order at 3 ¶ 4.b. On August 7, 2013, I issued an Order to Show Cause requiring Petitioners to submit their prehearing briefing within 10 days, or, in the alternative, to request the case be decided on the written record. I warned Petitioners that I would dismiss the hearing request if they did not comply with the terms of the Order to Show Cause. By facsimile dated August 17, 2013, Dr. Kadakol stated that he "desire[d] a hearing" but he "do[es] not have any additional evidence to submit." Petitioners' Response (P. Resp.) at 1. Dr. Kadakol stated that his "biller" was handling his files and "has no[t] done a satisfactory job." P. Resp. at 1. He also requested an opportunity "to present the facts of my case before you make a decision." P. Resp. at 1.

Based upon Dr. Kadakol's statement that he has no evidence to submit, I find that there is no need for an in-person hearing. In addition, Dr. Kadakol did not file a written brief as directed in the Order to Show Cause, nor did he request an extension of time to file a brief. The August 7 Order to Show Cause was clear in its requirement that Petitioners had to submit a brief within 10 days, which was already 24 days past the original filing deadline. Dr. Kadakol implied that he did not have enough time to draft his written arguments ("I received this letter only two days prior to today"), but that point is without merit considering Petitioners have had since June 19, 2013 (when CMS submitted its prehearing exchange) to draft a response to CMS's motion for summary disposition.

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<sup>3</sup> There is nothing in the record that shows that Petitioner responded to the WPS hearing officer's request for the shipping information of the September 2011 Premier Vascular enrollment application.

Dr. Kadakol appears to shift blame to the individual that he appointed to represent Petitioners in this matter, but that does not establish good cause to extend any filing deadlines or permit Petitioners a second opportunity in which to comply with my Order to Show Cause. It may be unfortunate that Petitioners appointed who they did to represent them, and Petitioners may regret that decision now, but that error in judgment does not justify prolonging this case any more than it has been, especially when Petitioners have unequivocally asserted that they have no additional evidence to submit. P. Resp. at 1. Indeed, Petitioners are not immune from the errors of their appointed representative. Nevertheless, Petitioners' response made it clear that they did not intend to abandon their hearing request, so, rather than dismiss this case for failure to comply with my Order to Show Cause, I will incorporate Petitioners' arguments at the reconsideration level in my consideration of this case.

Accordingly, this decision is issued on the written record. In the absence of objections from Petitioners, I admit CMS Exs. 1-8 into the record.

## **II. Analysis**

### **A. Issues**

This case presents the following issues:

1. Whether summary judgment is appropriate; and
2. Whether CMS and its contractor properly determined the effective date for Petitioners' Medicare billing privileges.

### **B. Findings of Fact & Conclusions of Law**

#### **1. *Summary judgment is appropriate.***

Summary judgment is appropriate if “the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.” *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300, at 3 (2010) (citations omitted). The moving party must show that there are no genuine issues of material fact requiring an evidentiary hearing and that it is entitled to judgment as a matter of law. *Id.* If the moving party meets its initial burden, the non-moving party must “come forward with ‘specific facts showing that there is a genuine issue for trial . . . .’” *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). “To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact — a fact that, if proven, would affect the outcome of the case under governing law.” *Senior Rehab.*, DAB No. 2300, at 3. To determine whether there are genuine issues of

material fact for hearing, an ALJ must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. *Id.*

Here, CMS moved for summary disposition and provided documentary evidence that sufficiently establishes the material facts of the case. CMS Mot. at 1; CMS Exs. 1-8. Petitioners have not disputed the documentary evidence that CMS submitted, nor have they provided their own evidence that would establish a genuine dispute of material fact. *See* P. Resp. at 1 (“I do not have any additional evidence to submit.”). Petitioners request an in-person hearing so they can “present the facts of [the] case before . . . a decision.” P. Resp. at 1. However, as Petitioners concede, there are no additional facts to present at a hearing, and Petitioners have presented no evidence in response to CMS's motion for summary disposition. Thus, I find that Petitioner has not presented any evidence or raised any factual inferences that establish a genuine dispute of material fact that would preclude summary judgment.

The only issue to be resolved in this case is a matter of law, which, as discussed below, must be decided in CMS's favor. Accordingly, summary judgment is appropriate.

## ***2. WPS received Petitioners' enrollment application on July 19, 2012.***

The undisputed evidence that CMS submitted shows that WPS received Petitioners' enrollment application on July 19, 2012. CMS Ex. 1. A WPS worksheet lists the receipt date of Petitioners' enrollment application as “07/19/2012,” *see* CMS Ex. 1, at 1, and the cover letter to Petitioners' application and first page of the application are stamped “JUL 19 2012,” *see* CMS Ex. 1, at 5-6. Petitioners have not come forward with any evidence that suggests WPS received their enrollment application sometime other than July 19, 2012.

Petitioners claim that they submitted an enrollment application for Premier Vascular in either September 2011 (according to Dr. Kadakol) or on March 1, 2012 (according to the billing company). CMS Ex. 4, at 2; RFH at 2. Not only do the inconsistencies in the dates belie their claim about an earlier application, but Petitioners have provided no evidence to support their assertion.<sup>4</sup> Summary judgment cannot be defeated by bald allegations that have no record support whatsoever.

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<sup>4</sup> The billing company acknowledged that WPS never received the March 1, 2012 enrollment application. *See* RFH at 2. WPS, therefore, could not establish an effective date based on the March 1, 2012 application because doing so depends upon the actual receipt of an enrollment application that is approved. 42 C.F.R. § 424.520(d); 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008).

**3. CMS properly determined that the effective date of Petitioners' billing privileges in the Medicare program is July 19, 2012, with retrospective billing privileges beginning June 19, 2012.**

The regulation establishing the effective date of Medicare billing privileges for suppliers such as Petitioners states:

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d) (emphasis added). The “date of filing” is the date that the Medicare contractor “receives” a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,725, 69,769 (Nov. 9, 2008). In this case, WPS received Petitioners’ enrollment application on July 19, 2012, and later approved that application. CMS Ex. 1, at 1. Dr. Kadakol claims that he started providing services at the Premier Vascular location on March 1, 2012. CMS Ex. 4, at 2-3. Therefore, the applicable regulation requires that the effective date of Petitioners’ Medicare billing privileges must be the later of those two dates, July 19, 2012.

The regulations permit limited retroactive billing for suppliers such as Petitioners that have recently been enrolled in the Medicare program. *See* 42 C.F.R. § 424.521(a). Specifically, the applicable regulation states in relevant part:

Physicians . . . and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician . . . or a physician or a nonphysician organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—

- (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries . . .

*Id.* Accordingly, CMS could permit Petitioners to bill retrospectively to June 19, 2012, which is 30 days prior to their effective date of July 19, 2012.

### III. Conclusion

For all of the foregoing reasons, I find that there is no genuine dispute of material facts and that CMS is entitled to judgment as a matter of law. Therefore, I grant summary judgment in favor of CMS.

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/s/

Joseph Grow  
Administrative Law Judge