

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Total Kidney Care, LLC,
(NPI: 1710371745, 1861685844),
(PTAN: IN546A, HO609Y),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-16-716

Decision No. CR4730

Date: November 8, 2016

DECISION

I sustain the determination of a Medicare contractor, as affirmed upon reconsideration and ratified by the Centers for Medicare & Medicaid Services (CMS), to assign Petitioner, Total Kidney Care, LLC, an effective Medicare participation date of March 7, 2016.¹

I. Background

Petitioner filed a hearing request in order to challenge its effective participation date determination. CMS moved for summary judgment. With its motion, CMS submitted 12 exhibits that it identified as CMS Ex. 1-CMS Ex. 12. Petitioner wrote a letter in opposition to the motion and filed no exhibits. I receive CMS's proposed exhibits into the record.

¹ Based on this effective participation date Petitioner may submit reimbursement claims to Medicare for items or services rendered as early as February 6, 2016. 42 C.F.R. § 424.521(a)(1).

It is unnecessary that I decide whether the criteria for summary judgment are met here. Neither side proposes the testimony of a witness. Consequently, there is no need for an in-person hearing. I decide the case based on the parties' written submissions.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue in this case is whether a Medicare contractor appropriately assigned Petitioner an effective participation date of March 7, 2016.

B. Findings of Fact and Conclusions of Law

The governing regulation in this case is 42 C.F.R. § 424.520(d). In relevant part, the regulation states that the earliest effective date of participation for a Medicare supplier such as Petitioner will be the date on which the supplier submits an enrollment application that is subsequently approved by a Medicare contractor.

Petitioner submitted a Medicare enrollment application on April 30, 2015. CMS Ex. 4. A Medicare contractor reviewed that application and found it to be incomplete or inaccurate. It informed Petitioner of its conclusion in letters dated July 6, 2015. CMS Ex. 3 at 3-8. The contractor advised Petitioner that, in order to process Petitioner's application, it needed either a pre-printed voided check from Petitioner or confirmation of account information on a bank letterhead. *Id.* It also advised Petitioner that Petitioner needed to file a form known as CMS-855R. The contractor informed Petitioner that it might reject Petitioner's application if Petitioner did not reply to the contractor's request with complete information within 30 days of the July 6 letters. *Id.*

Petitioner responded on July 13, 2015 by submitting an indecipherable copy of a check to the contractor along with a form CMS-855R. CMS Ex. 5 at 2. On August 6 and 18, 2015, the contractor sent letters to Petitioner telling it that it had not processed Petitioner's application because Petitioner had not submitted a voided pre-printed check or bank verification letter. CMS Ex. 3 at 9, 11.

Petitioner filed a second application for participation on October 5, 2015. CMS Ex. 2 at 2; CMS Ex. 3 at 15. On December 1, 2015, the contractor informed Petitioner that Petitioner's second application was incomplete and inaccurate. Again, the contractor told Petitioner that the application lacked a pre-printed voided check or confirmation of account information on bank letterhead. CMS Ex. 3 at 17, 19. Once again, the contractor advised Petitioner that it might reject Petitioner's application if Petitioner failed to supply the requested information within 30 days. *Id.*

On December 7, 2015, Petitioner submitted yet another indecipherable copy of a check to the contractor. CMS Ex. 8 at 2. On February 17, 2016, the contractor told Petitioner that it would not process Petitioner's application due to Petitioner's failure to submit a voided check or requisite bank information. CMS Ex. 3 at 20, 22.

Petitioner submitted a third application for participation on March 7, 2016. CMS Ex. 9; CMS Ex. 3 at 26. The contractor processed this application to completion and assigned Petitioner an effective participation date of March 7, 2016 (enabling Petitioner to claim reimbursement for services provided as early as February 6, 2016). CMS Ex. 3 at 31-32, 38.

These facts establish that the *earliest* effective participation date that the contractor could have assigned to Petitioner was March 7, 2016, because that is the date on which Petitioner filed a Medicare enrollment application that the contractor subsequently approved. 42 C.F.R. § 424.520(d). The contractor could not assign an earlier effective date to Petitioner because Petitioner did not file an acceptable enrollment application prior to March 7.

Medicare regulations provide that a rejected enrollment application is one that may not be processed to completion. A contractor may reject an application if the applicant fails to provide requested information within 30 days from the date that the contractor requests that information. 42 C.F.R. § 424.525(a)(1). Here, Petitioner submitted two applications that were incomplete. In both instances, the contractor requested additional information and Petitioner failed to supply that information within 30 days. Consequently, the contractor rejected each of Petitioner's first two applications. The earliest application that the contractor was able to process to acceptance was the March 7 application.

Petitioner asserts that the checks it submitted to the contractor were readable, or at least the originals of these checks were readable, and were not indecipherable. It complains that the contractor failed to tell it that the checks that it submitted were indecipherable. It suggests that it could easily have fixed the problems with the indecipherable checks had it known about them. It argues additionally that the failure to approve an effective participation date based on either Petitioner's first or second enrollment application has caused substantial hardship on Petitioner and it complains about the unfairness of that rejection.

These arguments are an attempt by Petitioner to challenge the contractor's rejection of its April 30 and October 5, 2015 applications. An applicant has no right to appeal a decision to reject an enrollment application. 42 C.F.R. § 424.525(d). Consequently, I may not consider Petitioner's argument that the contractor improperly rejected Petitioner's applications.

Additionally, Petitioner's argument boils down to an assertion that the contractor acted unfairly in rejecting Petitioner's applications. I have no authority to consider arguments premised on equitable considerations. Consequently, I must reject Petitioner's unfairness argument.

/s/

Steven T. Kessel
Administrative Law Judge