

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mary S. Stoliker-Diaz, O.T.
(PTAN: CB216392/ NPI: 1619051935),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-682

Decision No. CR5000

Date: December 21, 2017

DECISION

Noridian Healthcare Solutions, Inc. (Noridian), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), reactivated the Medicare billing privileges of Mary S. Stoliker-Diaz (Petitioner) effective October 18, 2016. Petitioner requested a hearing before an administrative law judge to dispute this effective date. Because Noridian approved Petitioner's revalidation enrollment application that it received on October 18, 2016, it correctly determined that the effective date for Petitioner's reactivated billing privileges is October 18, 2016. Therefore, I affirm the effective date determination.

I. Background

By letter dated May 12, 2016, Noridian informed Petitioner that she must revalidate her Medicare enrollment by July 31, 2016. CMS Exhibit (Ex.) 1. In a letter dated August 25, 2016, Noridian notified Petitioner that it had not received a revalidation application by the July 31, 2016 deadline. CMS Ex. 2. The August 25 letter warned Petitioner that her billing privileges might be deactivated, resulting in a gap in reimbursement, if she failed to revalidate. *Id.* Finally, by letter dated October 20, 2016, Noridian notified Petitioner

that her Medicare enrollment and billing privileges were deactivated effective September 29, 2016, because she had not revalidated her enrollment information. CMS Ex. 3. Noridian mailed a copy of each of these letters, addressed to Petitioner at “970 S Petit Ave Ste A, Ventura, CA 930042215” (Petit Avenue address). *See, e.g.*, CMS Ex. 1 at 1. Petitioner does not dispute that 970 Petit Avenue, Suite A is (and was) her correct practice address. Petitioner’s Brief (P. Br.) at 1. She points out that when she was first enrolled as a Medicare supplier, the postal service zip code for her address was listed as 93009-0001.¹ P. Br. at 3; P. Ex. 1. Petitioner denies receiving Noridian’s May 12 and August 25 letters; she acknowledges that she received the October 20 letter. P. Br. at 3-4.

On October 18, 2016, Petitioner submitted an online application to revalidate her Medicare enrollment using the Provider Enrollment, Chain and Ownership System (PECOS). *See* CMS Ex. 4 at 1. The October 18 enrollment application listed the Petit Avenue address as Petitioner’s address. *Id.* Noridian ultimately approved the application. *See* CMS Ex. 5. In its approval letter, Noridian informed Petitioner that there was a lapse in her Medicare billing privileges from September 29, 2016 through October 17, 2016. CMS Ex. 5 at 1.

Petitioner requested reconsideration of the determination that her Medicare billing privileges were reactivated effective October 18, 2016. CMS Ex. 6. In response, Noridian issued a reconsidered determination concluding that October 18, 2016, was the correct effective date of reactivation. CMS Ex. 7.

Petitioner requested a hearing before an administrative law judge and the case was assigned to me. I issued an Acknowledgement and Pre-Hearing Order, dated May 18, 2017 (Pre-Hearing Order), that required each party to file a pre-hearing exchange consisting of a brief and any supporting documents. Pre-Hearing Order ¶ 4. CMS filed its brief (CMS Br.), which incorporated a motion for summary judgment, and nine proposed exhibits (CMS Exs. 1-9). Petitioner, through counsel, filed a brief opposing CMS’s motion for summary judgment (P. Br.) and two exhibits (P. Exs. 1-2). CMS filed a reply (CMS Reply) and a tenth exhibit. Neither party objected to the exhibits offered by the opposing party. Therefore, in the absence of objection, I admit CMS Exs. 1-10 and P. Exs. 1-2. Neither party offered the written direct testimony of any witness as part of its pre-hearing exchange. As stated in my Pre-Hearing Order, “[a]n in-person hearing to cross-examine witnesses will be necessary only if a party files admissible, written direct testimony, and the opposing party asks to cross-examine.” Pre-Hearing Order ¶ 10. Therefore, an in-person hearing is not necessary and I decide this case based on the parties’ written submissions, without regard to whether the standards for summary judgment are satisfied.

¹ I take administrative notice that a query to the U.S. Postal Service’s zip code look-up tool returns 93004-2215 as the zip code for the Petit Avenue address.

II. Issue

The issue in this case is whether Noridian, acting on behalf of CMS, properly established October 18, 2016, as the effective date of reactivation of Petitioner's Medicare enrollment and billing privileges.

III. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 498.3(b)(15), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

IV. Discussion

A. Applicable Legal Authority

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. 42 U.S.C. §§ 1302, 1395cc(j). A "supplier" is "a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services" under the Medicare provisions of the Act. 42 U.S.C. § 1395x(d); *see also* 42 U.S.C. § 1395x(u).

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 define "*Enroll/Enrollment*" as "the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services." 42 C.F.R. § 424.502. A provider or supplier seeking billing privileges under the Medicare program must "submit enrollment information on the applicable enrollment application. 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). CMS then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retrospective billing under 42 C.F.R. § 424.521.

To maintain Medicare billing privileges, providers and suppliers must revalidate their enrollment information at least every five years. 42 C.F.R. § 424.515. However, CMS reserves the right to perform revalidations at any time. 42 C.F.R. § 424.515(d), (e). When CMS notifies providers and suppliers that it is time to revalidate, the providers or suppliers must submit the appropriate enrollment application, accurate information, and supporting documentation within 60 calendar days of CMS's notification. 42 C.F.R. § 424.515(a)(2). CMS can deactivate an enrolled provider's or supplier's Medicare billing privileges if the enrollee fails to comply with revalidation requirements. 42 C.F.R. § 424.540(a)(3). When CMS deactivates providers' or suppliers' 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). If CMS deactivates a provider’s or supplier’s billing privileges due to an untimely response to a revalidation request, the enrolled provider or supplier may apply for CMS to reactivate its Medicare billing privileges by completing a new enrollment application or, if deemed appropriate, recertifying its enrollment information that is on file. 42 C.F.R. § 424.540(b)(1).

B. Findings of Fact and Conclusions of Law²

- 1. Noridian received Petitioner’s application to revalidate her Medicare billing privileges on October 18, 2016, and approved that application.***
- 2. The effective date of reactivation for Petitioner’s Medicare billing privileges is October 18, 2016.***

The effective date for Medicare billing privileges for physicians, non-physician practitioners, and physician or non-physician practitioner organizations is the later of the “date of filing” or the date the supplier first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). The “date of filing” is the date that the Medicare contractor “receives” a signed enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *Donald Dolce, M.D.*, DAB No. 2685 at 8 (2016).

Noridian received a revalidation application from Petitioner via PECOS on October 18, 2016. *See* CMS Ex. 4 at 1. Noridian approved that application. CMS Ex. 5. Accordingly, as required by regulation, the effective date of reactivation of Petitioner’s Medicare enrollment is October 18, 2016.

- 3. I have no authority to review the deactivation of Petitioner’s Medicare billing privileges on September 29, 2016.***

Petitioner argues that her Medicare enrollment should not have been deactivated because she did not receive the notices Noridian sent advising her of the need to revalidate her enrollment information. P. Br. at 4-6. Petitioner does not contend that the Petit Avenue address to which the revalidation requests were sent is not a correct address for her. *See* P. Br. at 5. Nevertheless, Petitioner represents that she did not receive the notices Noridian sent to that address. P. Br. at 2-3. I note that Petitioner did not submit her

² My findings of fact and conclusions of law appear as numbered headings in bold italic type.

factual representations in the form of an affidavit or declaration.³ Yet, even giving full credit to Petitioner's contention that she did not receive the notices, this does not change the outcome in this case. That is because the lack of notice is only relevant, if at all, to whether Noridian acted properly in deactivating Petitioner's billing privileges.

Petitioner implicitly acknowledges that her hearing request is, in essence, a challenge to the deactivation of her billing privileges. P. Br. at 4 (“[i]nasmuch as the action to suspend Petitioner's Medicare billing privileges should never have been taken, the effective date of reinstatement should be the same date the privileges were suspended”). However, I do not have jurisdiction to review CMS's deactivation of Petitioner's Medicare billing privileges because deactivation is not an “initial determination” and deactivation decisions have a separate review process. *See* 42 C.F.R. §§ 424.545(b), 498.3(b); *see also Willie Goffney, Jr., M.D.*, DAB No. 2763 at 4-5 (2017).

Thus, even if Petitioner never received the notices to revalidate, this would not be a basis to grant her an earlier effective date. As an appellate panel of the Departmental Appeals Board (DAB) observed in *James Shepard, M.D.*, DAB No. 2793 (2017), providers and suppliers may not challenge indirectly an action for which the regulations prohibit direct administrative review. *Id.* at 8. In *Shepard*, the panel held that the supplier could not obtain review of a CMS contractor's rejection of a previous enrollment application by challenging the effective date of enrollment based on a later approved application. For the same reasons articulated by the panel in *Shepard*, Petitioner's arguments in the present case amount to a backdoor challenge to a contractor determination—here, deactivation—for which there are no administrative appeal rights. *See id.*

Finally, to the extent Petitioner contends I should grant her an earlier effective date based on principles of equity or fairness, I may not set aside CMS's lawful exercise of its discretion based on principles of equity. *See, e.g., Cent. Kan. Cancer Inst.*, DAB No. 2749 at 10 (2016); *see also Shepard*, DAB No. 2793 at 9.

³ My Pre-Hearing Order required the parties to submit the testimony of any proposed witness in writing, in the form of an affidavit made under oath or a declaration signed under penalty of perjury. Pre-Hearing Order ¶ 8.

V. Conclusion

For the reasons explained above, I affirm CMS's determination that the effective date of Petitioner's Medicare enrollment and billing privileges is October 18, 2016.

/s/
Leslie A. Weyn
Administrative Law Judge