

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Experts Are Us, Inc.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-813

Decision No. CR2180

Date: July 9, 2010

**DECISION REMAND**

This matter is back before me on remand from the Departmental Appeals Board (Board).

For the reasons discussed below, I remand this case to the Centers for Medicare and Medicaid Services (CMS) and direct CMS or its Medicare contractor to reconsider its August 1, 2007, December 11, 2007, and May 30, 2008 determinations denying Petitioner's applications for reenrollment in the Medicare program.

Prior to December 2003, Petitioner participated in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Thereafter, it tried, through a variety of means, to regain its supplier status but has not been successful. The Medicare contractor, Palmetto GBA National Supplier Clearinghouse, consistently denied its applications. *Experts Are Us, Inc.*, DAB No. 2322 at 4-5 (2010). While the matter was pending before the Board, CMS decided that three of the contractor's determinations -- which are set forth in letters dated August 1, 2007, December 11, 2007, and May 30, 2008 -- were, in fact, denials of reenrollment applications. *Id.* at 6-7. A supplier, whose reenrollment application, is denied is entitled to review by an administrative law judge (ALJ) followed by judicial review. Social Security Act § 1866(j)(2); 42 C.F.R. §§ 424.545(a), 498.1 (g), 498.3(b)(17); *Experts Are*

*Us, Inc.*, DAB No. 2322 at 2-4, 9. CMS suggested that the Board remand the case to me so that I could determine whether Petitioner is otherwise entitled to an ALJ hearing, and the Board obviously agreed. *Experts Are Us, Inc.*, DAB No. 2322 at 7, 12.

A contractor's determination to deny a prospective supplier's enrollment under 42 C.F.R. § 424.530 is an initial determination subject to further review. 42 C.F.R. § 498.3(b)(17). The dissatisfied prospective supplier may request reconsideration "in accordance with 42 C.F.R. § 498.22(a)." 42 C.F.R. § 498.5(l). Section 498.22 sets out procedures for reconsideration, and section 498.24 directs CMS to render a reconsidered determination that affirms or modifies the initial determination and that includes the findings on which its determination is based. If then dissatisfied with the reconsidered determination, the supplier is entitled to an ALJ hearing. 42 C.F.R. § 498.5(a)(2).

Thus, I have the authority to review a *reconsidered determination*. However, neither CMS nor its contractor has issued a reconsidered determination here. I therefore remand the matter to CMS and direct it (or its contractor) to reconsider the contractor's initial determinations, dated August 1, 2007, December 11, 2007, and May 30, 2008, in accordance with 42 C.F.R. §§ 498.22 and 498.24. 42 C.F.R. § 498.78(b).\*

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge

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\* A request for reconsideration ordinarily must be filed within 60 days from receipt of the notice of initial determination. 42 C.F.R. § 498.22(b)(3). However, none of the notice letters advised Petitioner of any appeal rights.