

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Yuanhui Zhang,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-492

Decision No. CR2411

Date: August 9, 2011

DECISION

Based upon the written record of this case, including the materials submitted by both the Centers for Medicare and Medicaid Services (CMS) and Petitioner Yuanhui Zhang, M.D. (Petitioner), I conclude that the undisputed evidence establishes that CMS properly enrolled Petitioner as a provider in the Medicare program effective September 28, 2010.

I. Background

Petitioner filed a hearing request and challenged the effective date of his enrollment in the Medicare program. Petitioner appears to allege that he should have been enrolled as of an earlier date than September 28, 2010, the date when CMS's contractor determined that Petitioner was eligible for enrollment. The case was assigned to me for a hearing and a decision.

CMS subsequently filed a pre-hearing brief (CMS Br.) and moved for summary disposition. Petitioner opposed CMS's motion.¹ CMS filed four proposed exhibits,

¹ Prior to receiving the CMS Pre-Hearing Brief and Memorandum in Support of Its Motion for Summary Judgment, filed on July 7, 2011, Petitioner filed a letter (P. Br.) and proposed exhibits. On July 17, 2011, Petitioner indicated that he did not have any further materials or information to submit. Therefore, I am treating Petitioner's letter and proposed exhibits received by my office on July 6, 2011 as Petitioner's opposition to the CMS Pre-Hearing Brief.

which it designated CMS Ex. 1 – CMS Ex. 4. Petitioner filed three proposed exhibits, which I have designated P. Ex. 1 – P. Ex. 3. I receive all of the parties’ proposed exhibits into the record of this case.

Neither party proffered direct testimony of any proposed witnesses and both parties indicated that they would not call witnesses at a hearing. Thus, I am deciding this case based on the written record.

II. Issue, Finding of Fact, and Conclusion of Law

A. Issue

The issue in this case is whether:

1. CMS’s contractor and CMS properly determined Petitioner’s effective date of enrollment to be September 28, 2010.

B. Finding of Fact and Conclusion of Law

I make the following finding of fact and conclusion of law (Finding).

- 1. CMS correctly determined that the effective date of Petitioner’s enrollment is September 28, 2010.*

The effective date of a physician’s enrollment in Medicare is governed by regulations at 42 C.F.R. § 424.520(d). The effective date of enrollment for a physician may only be the *later* of two dates: the date when the physician filed an application for enrollment that was subsequently approved by a Medicare contractor charged with reviewing the application on behalf of CMS; or the date when the physician first began providing services at a new practice location. *Id.* The regulations do not empower CMS or me to grant a provider an earlier effective date, nor may I waive the regulations’ criteria.

The undisputed facts of this case are as follows. On September 28, 2010, Petitioner filed an enrollment application with Wisconsin Physicians Service Insurance Corporation (WPS), a Medicare contractor operating on CMS’s behalf. CMS Ex. 2 at 2; P. Br. On November 8, 2010, WPS informed Petitioner that he was enrolled in Medicare with an “effective billing date” of August 29, 2010.² CMS Ex. 4 at 1. Petitioner was dissatisfied with this determination and requested reconsideration. On May 11, 2011, WPS advised Petitioner that his effective billing date remained August 29, 2010, 30 days prior to the date Petitioner initially applied for enrollment. CMS Ex. 2.

² It appears that WPS may have intended to assure that Petitioner could claim reimbursement for services provided up to 30 days prior to the date of his application, consistent with 42 C.F.R. § 424.521.

The undisputed facts establish that the *earliest* date when CMS could have approved Petitioner's application for enrollment was the date of his application, September 28, 2010. 42 C.F.R. § 424.520(d). Petitioner does not assert that there are any facts that would entitle him to an earlier enrollment date pursuant to the requirements of 42 C.F.R. § 424.520(d). He does not contend that he filed an application on any date prior to September 28, 2010.

Instead, Petitioner argues that there was a delay in the submission of his Medicare enrollment application to WPS due to several factors including poor service provided by his billing company, multiple conferences that consumed Petitioner's professional time in August of 2010, and the fact that Petitioner was unaware of the need to reapply for Medicare enrollment and billing privileges when changing practice venues. P. Br. Petitioner's arguments are equitable in nature and do not show as a matter of fact that Petitioner filed an application on an earlier date than CMS determined or that the contractor or CMS incorrectly applied the regulatory criteria. Even if true, Petitioner's complaints, such as his issues with his billing company's service, provide no ground for me to grant Petitioner an earlier effective date of enrollment.

Petitioner points to no source of authority for me to grant him an exemption from regulatory compliance. Moreover, I have no authority to declare statutes or regulations invalid or ultra vires. *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) ("An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground."). Thus, I have no authority to address Petitioner's arguments or to change Petitioner's Medicare enrollment date based upon equitable considerations. Nor do I have authority to consider a challenge to the way in which this Department implements regulations.

Petitioner submitted an application that was subsequently approved by the contractor on September 28, 2010 and CMS's determination of Petitioner's effective date of Medicare enrollment was entirely consistent with regulatory requirements. I have no authority to order CMS to make payment for claims prior to August 29, 2010 that were provided outside of the 30-day retroactive billing period provided by regulation.

/s/
Steven T. Kessel
Administrative Law Judge