

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Oaks of Mid City Nursing and Rehabilitation Center
(CCN: 19-5368),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-949

Decision No. CR2261

Date: October 4, 2010

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Oaks of Mid City Nursing and Rehabilitation Center, because it has no right to a hearing.

I. Background

Petitioner is a skilled nursing facility in Baton Rouge, Louisiana. It filed a hearing request to challenge findings of noncompliance that were made at a survey conducted of its facility in June 2010 (June Survey). The Centers for Medicare and Medicaid Services (CMS) moved to dismiss the hearing request, and Petitioner opposed the motion.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue is whether Petitioner has a right to a hearing.

B. Findings of Fact and Conclusions of Law

The basis for CMS's motion to dismiss is that no remedies were imposed against Petitioner as a consequence of the June Survey findings. Petitioner does not dispute CMS's assertion but contends, essentially, that it should be given a hearing in light of the possibility that CMS might impose remedies against it at some date in the future.

Petitioner has no right to a hearing, because CMS did not impose a remedy against it. A skilled nursing facility is entitled to a hearing to challenge findings of noncompliance only where those findings result in the imposition of a remedy against the facility. 42 C.F.R. § 498.3(b)(13). The answer to Petitioner's concern that CMS might impose a remedy against it at some future date is that, if CMS eventually imposes some remedy against Petitioner based on the June Survey findings of noncompliance, then Petitioner may request a hearing.

An administrative law judge may dismiss a hearing request where there is no right to a hearing. 42 C.F.R. § 498.70(b). I dismiss Petitioner's request.

_____/s/
Steven T. Kessel
Administrative Law Judge