

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Spine Physicians Institute, P.A.,

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-755

Decision No. CR2669

Date: November 21, 2012

DECISION

Spine Physicians Institute, P.A. (Petitioner) appealed the determination of Trailblazer Health Enterprises, LLC (Trailblazer), a Medicare contractor, that it was not eligible for enrollment in the Medicare program earlier than November 30, 2011 and could not submit claims for reimbursement earlier than November 1, 2011. I deny the Centers for Medicare and Medicaid Services' (CMS's) motion to dismiss because it did not have a proper basis to reject Petitioner's application. I find Trailblazer and Petitioner were actively communicating to resolve issues relating to Petitioner's application that Trailblazer received on September 26, 2011, the date which necessarily determines Petitioner's effective date of Medicare enrollment.

I. Background

Dr. Venkat Sethuraman, an orthopedic surgeon and Petitioner's sole owner, began providing services to Medicare beneficiaries at the Spine Physicians Institute Professional Association (Petitioner's legal business name) in June 2011. P. Exs. 1, 2. On September 26, 2011, Trailblazer received Petitioner's enrollment application for Medicare billing privileges that included an Electronic Funds Transfer (EFT) Authorization Agreement, a required part of the Medicare application. *See* 42 C.F.R. § 424.510(d)(2)(iv). Along with its application, Petitioner submitted a voided check for account holder "Spine Physicians

Institute P.A. LLC” and a June 23, 2011 bank letter listing “Spine Physicians Institute PA, LLC” as the account designated to receive the EFT funds. Trailblazer informed Petitioner, by letter dated October 18, 2011 and faxed on October 19, 2011, that there were several errors in its application. In the section detailing the errors with the EFT agreement, Trailblazer informed Petitioner that “[i]f the [voided] check is in a name other than your legal business name, we can accept a copy of a letter from your bank that ‘*your legal business name*’ and ‘*the name on your check*’ are one in the same entity. . . .” CMS Ex. 2, at 2 (emphasis in original). On October 26, 2011, Trailblazer received Petitioner’s submission including a new EFT agreement, an October 24, 2011 bank letter, and another voided check. CMS Ex. 3.

By letter dated November 22, 2011, Trailblazer denied Petitioner’s application for enrollment. Petitioner and Trailblazer had made progress on resolving the errors except for Trailblazer’s request for a bank letter confirming that Petitioner’s legal name and account name were referring to the same entity despite the “LLC” appearing after Petitioner’s name in the bank information. The November 22, 2011 letter stated that Trailblazer denied Petitioner’s application because Petitioner had failed to submit the missing information or documentation within 30 days of Trailblazer’s request. CMS Ex. 4. The denial notified Petitioner that it could request a Corrective Action Plan (CAP) or request reconsideration.

Petitioner requested a CAP and resubmitted the October 24, 2011 bank letter on November 30, 2011. CMS Ex. 5. Trailblazer treated Petitioner’s submission as a new application. CMS Ex. 13. On February 16, 2012, Trailblazer notified Petitioner that there were errors in the CAP, specifically that its voided check was in a name other than Petitioner’s legal business name and that Trailblazer could accept a letter from the “bank stating that ‘your legal business name’ and ‘the name on your check’ are one in the same and [you] have an account in their bank.” CMS Ex. 6, at 1. On the same day, Petitioner faxed a corrected CAP and a new bank letter that stated, “[p]lease note, Spine Physicians Institute Professional Association and Spine Physicians PA LLC are one in the same.” CMS Exs. 7, 8.

On March 1, 2012, Trailblazer granted Petitioner a Medicare number with an effective date of November 30, 2011 and a retrospective billing date of November 1, 2011.¹ CMS

¹ Trailblazer erroneously referred to November 1, 2011 as Petitioner’s “effective date” (CMS Ex. 10). Regulations actually require the contractor to assign the date of receipt of the application as the effective date of Petitioner’s enrollment while permitting the contractor to grant retrospective billing privileges for 30 days prior to the effective date. *See* 42 C.F.R. § 424.521(a)(1). Thus, I am treating Trailblazer’s action as if it intended to set November 1, 2011 as the earliest date for which Petitioner may submit claims, with the effective date of Petitioner’s enrollment as November 30, 2011.

Ex. 10. Trailblazer informed Petitioner that, if dissatisfied with this determination, Petitioner could request reconsideration. Seeking an earlier billing date, Petitioner timely requested reconsideration. CMS Exs. 11, 12. On March 29, 2012, CMS issued an unfavorable decision letter, which informed Petitioner of its hearing rights before an Administrative Law Judge (ALJ). On May 22, 2012, Petitioner timely filed a hearing request.

On June 1, 2012, this case was assigned to me for hearing and decision. CMS filed a Motion to Dismiss (CMS MTD) accompanied by 13 exhibits. Petitioner filed a Response to CMS's Motion To Dismiss and Brief in Support of Petitioner's Appeal (P. Br.) accompanied by 10 exhibits.

CMS proposed no witness testimony. Petitioner proposed the testimony of four witnesses: Dr. Venkat Sethuraman, James Degollado, Lisa Hoyos, and an unnamed witness from "CMS c/o Trailblazer." As directed by my prehearing order, Petitioner submitted declarations of written direct testimony for two proposed witnesses, James Degollado and Lisa Hoyos. CMS moved to strike testimony from Dr. Sethuraman and the unnamed witness from "CMS c/o Trailblazer" because Petitioner did not provide any written direct testimony from them. I grant CMS's motion.

Neither party objected to any proposed exhibits. Accordingly, I admit them all into evidence. CMS did not request an opportunity to cross-examine Petitioner's remaining witnesses, James Degollado or Lisa Hoyos; therefore, a hearing is not necessary, and I make my decision based on the written record.

II. Issue

The issue in this case is whether CMS had a legal basis to determine November 30, 2011 as Petitioner's effective date of Medicare enrollment.

III. Findings

My findings of fact and conclusions of law are set forth in italics and bold in the discussion captions of this decision.

A. I deny CMS's Motion to Dismiss because CMS did not properly reject Petitioner's September 26, 2011 application.

CMS argues that the November 22, 2011 denial letter from Trailblazer to Petitioner was a "clear mischaracterization." CMS now urges that the "denial" was really a "rejection."

CMS MTD at 9. Accordingly, CMS argues that I must dismiss because a rejection of an application is not afforded appeal rights. *See* 42 C.F.R. § 424.525(d). However, the regulations do not bar an ALJ, on a properly filed appeal of an effective date of enrollment determination, from considering an earlier application in that process to determine the correct effective date for the supplier. *See Andrew J. Elliot, M.D.*, DAB No. 2334, at n.7 (2010).

A Medicare contractor that receives an enrollment application with missing information or supporting documentation will request the information or documentation from the provider or supplier and give the provider or supplier at least 30 days to respond with the missing information in order to cure any deficiencies in the application. *See* 42 C.F.R. § 424.525. The regulatory history of section 424.525 makes it clear that applicants will be given an opportunity to cure any deficiencies or supply any missing documentation before an application will be rejected. *See* 71 Fed. Reg. 20,754, 20,759 (April 21, 2006) (“if a provider or supplier enrolling in the Medicare program for the first time fails to furnish complete information on the CMS [form] 855, or fails to furnish missing or any necessary supporting documentation as required by CMS under this or other statutory or regulatory authority within 60 calendar days of our request to furnish the information, we would reject the provider or supplier’s 855 application.”); 68 Fed. Reg. 22,064, 22,070 (April 25, 2003). Further, the preamble to the final rule shortening the time period for submitting information or supporting documentation from 60 to 30 days specifically stated that “[r]ejection would not occur if the provider or supplier is actively communicating with us to resolve any issues regardless of any timeframes.” 71 Fed. Reg. at 20,759; *see Tri-Valley Family Medicine, Inc.*, DAB No. 2358, at 5 (2010).

Petitioner’s September 26, 2011 application listed the account to receive EFT funds as “Spine Physicians Institute PA LLC” while Petitioner’s legal business name is “Spine Physicians Institute Professional Association.” CMS Ex. 1. An enrollment application must include an EFT agreement and must “*uniquely* identify the provider or supplier.” 42 C.F.R. §§ 424.510(d)(ii), (iv) (emphasis added). The name on the voided check did not exactly match Petitioner’s legal business name because the “LLC” was not included in Petitioner’s legal business name. The bank letter that accompanied Petitioner’s September 26, 2011 application also referenced Petitioner’s account using the “LLC” suffix. Trailblazer was therefore unable to confirm that the EFT agreement was accurate and complete because there was a discrepancy between Petitioner’s legal business name and the name on the bank account.

In response to Trailblazer’s October 19, 2011 fax, Trailblazer received additional information from Petitioner on October 26, 2011. Although Petitioner provided corrected information on some deficiencies in the application, the bank letter that Petitioner submitted was similar to the original bank letter received on September 26, 2011. CMS Ex. 3, at 5. Therefore CMS now wants to reject Petitioner’s application as of November 22, 2011 because 35 days had passed since Trailblazer first requested, on October 19,

2011, bank confirmation that Petitioner's legal business name and the name on Petitioner's bank account information were the same entity.

However, I find there was no 30-day period that Petitioner was not in active communication with the contractor. Trailblazer received Petitioner's application on September 26, 2011. On October 19, 2011 Trailblazer requested corrected information from Petitioner. Within 30 days, on October 26, 2011, Trailblazer received additional information from Petitioner that partly satisfied Trailblazer's request, except an updated bank letter still did not satisfy an issue Trailblazer had with reconciling the two names. On November 22, 2011 Trailblazer sent its denial letter. Within 30 days and as part of its corrective efforts, on November 30, 2011, Petitioner resubmitted the same bank letter it submitted on October 26, 2011 along with an IRS notice confirming an EIN for Petitioner issued in the name of "Spine Physicians Institute Professional Association." CMS Ex. 5. The next communication from Trailblazer was dated February 16, 2012 and informed Petitioner that it needed a new bank letter stating that Petitioner's legal business name and the name on its sample check were the same. CMS Ex. 6, at 1; CMS Ex. 2, at 2. Within 30 days, actually that same afternoon, Petitioner sent a letter that satisfied Trailblazer's concerns. CMS Exs. 8, 10.

After Trailblazer received the September 26, 2011 application, every time Trailblazer requested information from Petitioner, Petitioner responded without letting 30 days lapse. Although Trailblazer may not have definitively confirmed Petitioner's names within 30 days, I find Petitioner and CMS were actively communicating to resolve this outstanding issue. Therefore, I do not find that CMS had a basis to reject Petitioner's application.

B. CMS's September 26, 2011 receipt of Petitioner's application is determinative of Petitioner's Medicare enrollment date and billing privileges.

The effective date for enrollment for a physician practitioner organization is "the *later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor* or the date an enrolled physician . . . first began furnishing services at a new practice location." (Emphasis added). See 42 C.F.R. § 424.520(d). The "date of filing" is the date that the Medicare contractor "receives" a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008).

In this case, the effective date of Medicare enrollment depended on the date the contractor first received an *approvable* application considering that event happened after June 2011, the time when Petitioner first started providing services to Medicare covered beneficiaries. As discussed in detail above, Trailblazer received an application from Petitioner on September 26, 2011 that it was able to subsequently process to approval on March 1, 2012.

IV. Conclusion

Accordingly, I deny CMS's Motion to Dismiss and conclude that Petitioner's effective date of Medicare enrollment was September 26, 2011. Petitioner is also authorized to retrospectively bill Medicare for services provided to Medicare beneficiaries up to 30 days prior to its new effective date. *See* 42 C.F.R. § 424.521.

/s/

Joseph Grow

Administrative Law Judge