

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Stacie Cook, LCSW,
(PTAN: 202i802404)
(NPI: 1992855431),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-562

Decision No. CR3227

Date: May 12, 2014

DECISION

Cahaba Government Benefit Administrators, LLC (Cahaba), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), determined that the effective date for the Medicare enrollment of Petitioner, Stacie Cook, was June 21, 2013, with a retrospective billing period commencing May 20, 2013. Petitioner filed a request for hearing (RFH) seeking an earlier effective date. For the reasons discussed below, I affirm the determination that Petitioner's effective date for billing privileges is June 21, 2013, and leave unchanged the determination that Petitioner may retrospectively bill Medicare for services provided from May 20, 2013.

I. Background and Procedural History

Stacie Cook is a licensed clinical social worker in the state of Georgia. CMS Ex. 1, at 3. In March 2013, Ms. Cook submitted web-based applications, Form CMS-855I (CMS-855I) and Form CMS-855R (CMS-855R), to initially enroll as a Medicare supplier and to reassign some of her Medicare benefits to Mindful Transitions, LLC (MT). CMS Exhibits (Exs.) 1; 2. To complete the submission of these applications, Petitioner mailed

signed Certification Statements, which Cahaba received on March 19, 2013. CMS Exs. 1 at 13-16; 2 at 8; 4, at 1. Cahaba rejected Petitioner's CMS-855I on May 31, 2013, because Petitioner failed to timely submit additional information that Cahaba requested. CMS Ex. 4. Because Cahaba rejected her CMS-855I, Cahaba also rejected Ms. Cook's CMS-855R because she was not eligible to reassign benefits if she was not an approved Medicare supplier. CMS Ex. 9 at 1. On June 21, 2013, Cahaba received corrected applications, CMS-855I and CMS 855R, that MT submitted on Petitioner's behalf. CMS Ex. 9, at 1. On July 10, 2013, Cahaba notified Petitioner that it approved Petitioner's applications and established May 20, 2013 as the "effective date" for Petitioner's Medicare billing privileges and the reassignment of her benefits to MT.¹ CMS Ex. 6. On September 10, 2013, Cahaba received Petitioner's request for reconsideration of the "approval date" and a request to change the approval date to April 1, 2013. CMS Ex. 8. Once again, MT filed this on Petitioner's behalf. Although Cahaba appears to have at first rejected the filing from MT (CMS Exs. 7; 8), on December 4, 2013, Cahaba sent Petitioner, via MT, an unfavorable reconsidered determination affirming Petitioner's Medicare effective date as June 21, 2013. CMS Ex. 9. Cahaba explained that it received Petitioner's applications on June 21, 2013, and subsequently approved those applications. CMS Ex. 9, at 3-4. Therefore, "the effective date [of May 20, 2013] was set appropriately . . . [because] Cahaba cannot backdate the effective date of billing beyond the 30 day limitation." CMS Ex. 9.

On January 15, 2014, MT filed, on Petitioner's behalf, a timely RFH with the Departmental Appeals Board, Civil Remedies Division (CRD). On January 29, 2014, I issued an Acknowledgment and Pre-Hearing Order (Order), which instructed the parties how and when to present evidence and argument in this case. On February 3, 2014, in accordance with my Order, CMS counsel timely filed her notice of appearance, and on March 5, 2014, CMS counsel timely filed a motion for summary judgment and brief (CMS Br.), along with ten proposed exhibits (CMS Exs. 1-10). In my Order, I also directed Petitioner to file a written notice of appointment by February 10, 2014, and her pre-hearing exchange by April 9, 2014. Petitioner failed to file either submission, and on April 22, 2014, I issued an Order to Show Cause (OSC). In the OSC, I directed Petitioner to submit an explanation that demonstrated good cause for her failure to timely file a pre-hearing exchange in accordance with my Order. Along with this explanation, I also directed Petitioner to file her entire pre-hearing exchange and a notice of

¹ Cahaba erroneously characterized the beginning of the retrospective billing period to be the "effective date." See *Jorge M. Ballesteros*, DAB CR2067, at 2 (2010) ("CMS apparently sets enrollment effective dates 30 days prior to the date of application"). Therefore, I interpret the determination to mean that the "effective date" is the beginning of the retrospective billing period and not the enrollment effective date. *Rizwan Sadiq, M.D.*, DAB CR2401, at 5-6 (2011). Administrative decisions and rulings cited in this decision are accessible on the internet at: <http://www.hhs.gov/dab/decisions/index.html>.

appointment. Lastly, I warned Petitioner that if she failed to comply with the OSC or failed to show good cause, I would dismiss the case for abandonment. On April 29, 2014, MT's representative sent an email to the CRD staff attorney assigned to this case and stated that Petitioner had nothing further to submit.

II. Decision on the Written Record

Despite the failure of MT's representative to provide good cause for submitting a timely prehearing exchange, I will not dismiss Petitioner's RFH for abandonment because MT's representative responded to the OSC. I am particularly lenient in this case because MT's representative has never submitted a notice of appointment as Petitioner's non-attorney representative (42 C.F.R. § 498.10(b)),² despite repeated attempts to obtain documentation of MT's authority to act for Petitioner.³ Therefore, I will adjudicate this case to ensure that Petitioner's right to administrative law judge review has not been prejudiced.⁴

My Order advised that a party must file written objections to any exhibits submitted by the other party, submit written direct testimony for each proposed witness, and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8, 9, 10; *Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses). Petitioner did not object to any of CMS's proposed exhibits. See Order ¶ 7. Therefore, I admit CMS Exs. 1-10 into the record. Petitioner did not submit any proposed exhibits. Further, neither CMS nor Petitioner offered any

² Although MT has not argued that it has the right to request a hearing as the supplier to whom Petitioner was reassigning benefits, it is possible, although not likely, that MT might be an "affected party" under 42 C.F.R. § 498.2. However, because I have decided to adjudicate, rather than dismiss, the RFH, MT's right to review by an administrative law judge (should any right exist) is protected.

³ The CRD staff attorney working with me on this case spoke with MT's representative on the phone on or around February 10, 2014, and told the representative that Petitioner must file a written notice of appointment in order for MT to represent her in this appeal. This directive was restated in my April 22, 2014 OSC.

⁴ Because MT's representative has never been officially designated to act for Petitioner, I direct CRD to send a copy of this decision to Petitioner's address as it appears in CMS Ex. 4 as well as MT's address. If Petitioner determines that MT improperly acted on her behalf, Petitioner may request, within 60 days of the date of this decision, that I reopen this case. 42 C.F.R. § 498.100(a).

witnesses. Consequently, I will not hold an in-person hearing in this matter and will decide this matter based on the written record. Order ¶ 11.

III. Issue

Whether CMS had a legitimate basis for establishing June 21, 2013, as the effective date of Petitioner's Medicare billing privileges and May 20, 2013, as the beginning of Petitioner's retrospective billing period.

IV. Jurisdiction

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

V. Findings of Fact, Conclusions of Law, and Analysis⁵

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for suppliers.⁶ 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier who seeks billing privileges under Medicare 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" and establishes an effective date for billing privileges. 42 C.F.R. §§ 424.510(a), 424.520.

1. Cahaba received Petitioner's signed Medicare enrollment application on June 21, 2013.

Petitioner filed two Medicare enrollment applications, CMS-855I and CMS-855R, with Cahaba on March 19, 2013. CMS Ex. 1; CMS Ex. 2. Cahaba rejected Petitioner's enrollment applications, CMS-855I and CMS-855R, because Petitioner failed to provide Cahaba certain information within the required regulatory time frame.⁷ CMS Exs. 3; 4.

⁵ My findings of fact and conclusions of law are set forth in italics and bold font.

⁶ Petitioner, a licensed clinical social worker, is considered a "supplier" for Medicare purposes. *See* 42 U.S.C. §§ 1395x(d) (defining "supplier" as a physician or other practitioner); 1395u(b)(18)(C)(iv) (identifying clinical social workers as practitioners), 1395x(hh) (listing criteria for clinical social workers).

⁷ Under 42 C.F.R. § 424.525(a)(1), CMS may reject a prospective supplier's enrollment application if the prospective supplier fails to furnish complete information on the

After Cahaba rejected Petitioner's enrollment applications, Petitioner resubmitted completed CMS-855I and CMS-855R, which Cahaba received on June 21, 2013. CMS Ex. 9 at 1. Cahaba approved these applications on July 10, 2013. CMS Ex. 6. Since Petitioner does not dispute these facts, I find that Cahaba received Petitioner's completed applications on June 21, 2013, and that Cahaba subsequently approved these applications.

2. The effective date for Petitioner's Medicare billing privileges is June 21, 2013 because that is the date Cahaba received Petitioner's Medicare enrollment application that Cahaba subsequently approved.

Based on the date that Cahaba received Petitioner's completed CMS-855I and CMS-855R Cahaba established June 21, 2013, as Petitioner's effective Medicare enrollment date. *See* CMS Exs. 6 at 1; 9 at 2-3. The relevant regulation concerning the effective date of Medicare enrollment states:

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations 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 or nonphysician practitioner 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); *see also Caroline Lott Douglas, PA, DAB CR2406, at 5-7 (2011)*. It is Petitioner's June 21, 2013 signed enrollment application that CMS was able to process to approval, therefore, Cahaba correctly established June 21, 2013, as Petitioner's Medicare effective date.

The regulations also permit approved Medicare suppliers to retrospectively bill for services provided to Medicare beneficiaries based on the following regulation:

Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician or a nonphysician practitioner organization have met all program requirements, including State licensure requirements, and

provider/supplier enrollment application within 30 calendar days from the date of the contractor's request for the missing information.

services were provided at the enrolled practice location for up to—

- (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or
- (2) 90 days [in certain emergencies not applicable to this case].

42 C.F.R. § 424.521(a).

Cahaba established that, based on a Medicare effective date of June 21, 2013, Petitioner's retrospective billing period commenced on May 20, 2013. CMS Ex. 6.⁸

Petitioner seeks an earlier date on which she may bill Medicare for services she provided. Petitioner's argument is that the effective date established by Cahaba is "unjust" and that Petitioner's Medicare effective date should be based on the original applications that Petitioner submitted on March 19, 2013. RFH; CMS Ex. 8. However, as stated above, Cahaba rejected the original applications that Cahaba received on March 19, 2013, because Petitioner failed to submit certain information that Cahaba requested from her. CMS Exs. 3; 4 at 1.

I do not have the authority to determine whether Cahaba properly rejected Petitioner's March 19, 2013 CMS-855I and CMS-855R. *See* 42 C.F.R. § 424.525(d). Further, those applications can play no role in this case. As succinctly stated in another case:

The regulations provide that the effective date of enrollment is the date on which a contractor received an application which it was subsequently able to process to approval. Thus, while the contractor may require and request additional information to complete the application, the effective date will relate back to the date of filing so long as that application continues to be processed to a decision on whether to approve it. The process ends, however, once the application is rejected or denied. 71 Fed. Reg. at 20,759 (enrollment process culminates in "the granting of billing privileges or denial or rejection of the application"). A later submitted application, therefore, even if then processed to completion, will be approved with the effective date of its filing date, not that of any earlier application which the contractor was not able to process to approval.

⁸ In fact, thirty days prior to June 21, 2013, is May 22, 2013. If CMS wants to correct this error, it has the means to do so. 42 C.F.R. § 498.30-498.32.

Karthik Ramaswamy, M.D., DAB No. 2563, at 5 (2014) (en banc). For purposes of my review of this case, it is sufficient to show that Petitioner's March 19, 2013 CMS-855I and CMS 855R were rejected but her June 21, 2013 Form CMS-855I and CMS-855R were processed to completion. This is because, as explained above, the effective date for Medicare enrollment, and, consequently, for any retrospective billing privileges, is dependent upon the date CMS receives an application that is ultimately approved. 42 C.F.R. § 424.520(d). In this case, that application was Petitioner's June 21, 2013 CMS-855I and CMS-855R.

VI. Conclusion

For the reasons stated above, I affirm CMS's determination that Petitioner's effective date for Medicare billing privileges is June 21, 2013.

/s/

Scott Anderson
Administrative Law Judge