

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

James Shepard, M.D.<sup>1</sup>  
(NPI: 1265844112),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-652

Decision No. CR4720

Date: October 13, 2016

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, determined that February 27, 2016, was the effective date for Dr. James Shepard's (Dr. Shepard or Petitioner) Medicare billing privileges and for Dr. Shepard's reassignment of Medicare benefits. Dr. Shepard requested a hearing to dispute the effective date, arguing that the CMS administrative contractor improperly rejected previously filed enrollment and reassignment applications, resulting in a later effective date following Dr. Shepard's resubmission of enrollment and reassignment applications. Because I do not have jurisdiction to review CMS's rejection of Dr. Shepard's previously filed enrollment and reassignment applications, I affirm CMS's determination regarding the effective dates for Medicare billing privileges based on the application Dr. Shepard filed with CMS on March 28, 2016, which CMS processed to completion.

---

<sup>1</sup> In his hearing request, Petitioner indicated "M.D." after his name. However, in other documents in this case, Petitioner places a "D.O." after his name. Whichever degree Petitioner holds, he is a physician.

## **I. Case Background and Procedural History**

On December 14, 2015, Dr. Shepherd mailed applications to enroll in the Medicare program and to reassign his Medicare benefits to an organization or group practice called SMS DO PA. CMS Exhibit (Ex.) 2 at 1-15. The CMS administrative contractor received Dr. Shepherd's applications on December 16, 2015. CMS Ex. 2 at 16.

On February 9, 2016, the CMS administrative contractor sent letters to Dr. Shepherd indicating that his applications for Medicare enrollment and reassignment of Medicare benefits were missing necessary information and that Dr. Shepherd had 30 days to provide that information. CMS Ex. 3 at 1-7. The CMS administrative contractor sent the letter regarding the deficiencies in the reassignment application by fax to Dr. Shepherd. CMS Ex. 3 at 8-9; CMS Ex. 6 at 4. Dr. Shepherd timely provided corrected information for the reassignment application, but did not do so for the enrollment application. CMS Ex. 3 at 10-13.

On March 17, 2016, the CMS administrative contractor informed Dr. Shepherd once again of the deficiencies in his enrollment application, but stated that because he did not timely respond to the February 9, 2016 letter, the CMS administrative contractor closed his application. CMS Ex. 4 at 1-2. Also on March 17, 2016, the CMS administrative contractor informed Dr. Shepherd that it would not process his reassignment application because it had rejected his enrollment application. CMS Ex. 4 at 3-4. On March 21, 2016, Dr. Shepard mailed the missing information to the CMS administrative contractor, which had been requested of him in the February 9, 2016 letter. CMS Ex. 3 at 14-17.

On March 28, 2016, Dr. Shepherd filed new applications for enrollment and reassignment of his Medicare benefits. CMS Ex. 5. On April 27, 2016, the CMS administrative contractor issued an initial determination approving Dr. Shepherd's applications and making his billing privileges and reassignment of Medicare benefits effective February 27, 2016. CMS Ex. 1 at 4.

Dr. Shepherd requested reconsideration of the effective date of enrollment. Dr. Shepherd asserted that he had significant difficulty dealing with the CMS administrative contractor's personnel responsible for his applications and that he did not receive a copy of the February 9, 2016 letter indicating deficiencies in his December 2015 enrollment application until he received the March 17, 2016 notice that he had failed to provide additional required information. In particular, Dr. Shepherd did not understand why the CMS administrative contractor sent the letter regarding the deficiencies in the December 2015 application to reassign Medicare benefits by fax to Dr. Shepherd, but did not do so for the letter related to the December 2015 enrollment application. CMS Ex. 3 at 8-9; CMS Ex. 6 at 2, 4.

On May 16, 2016, the CMS administrative contractor issued an unfavorable reconsidered determination. CMS Ex. 1 at 1-3. On June 17, 2016, Dr. Shepherd requested a hearing to obtain a new effective date of November 1, 2015, for his enrollment. Dr. Shepherd also provided supplemental information related to the difficulties that he experienced related to his December 2015 enrollment application.

Following the issuance of my July 1, 2016 Acknowledgment and Pre-hearing Order (Order), CMS filed a motion for summary judgment and pre-hearing brief, and six exhibits (CMS Exs. 1-6). Petitioner submitted a motion for summary judgment and pre-hearing brief (P. Br.) and two exhibits (P. Ex. 1-2). CMS then filed an opposition to Petitioner's motion for summary judgment.

## **II. Decision on the Record**

Because neither party objected to the opposing party's proposed exhibits, I admit all of the proposed exhibits into the record. *See* Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order stated that the parties must submit written direct testimony for each proposed witness and that I would only hold an in-person hearing if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; CRDP § 16(b). Neither party submitted written direct testimony for any witnesses. Therefore, I issue this decision based on the written record. Order ¶ 11; CRDP § 19(d).

## **III. Issue**

Whether CMS had a legitimate basis to make Petitioner's Medicare billing privileges effective February 27, 2016.

## **IV. Jurisdiction**

I have jurisdiction to hear and decide this case. 42 C.F.R. §§ 498.3(b)(15), (17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

## **V. Findings of Fact, Conclusions of Law, and Analysis<sup>2</sup>**

The Social Security Act authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and

---

<sup>2</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

suppliers in the Medicare program.<sup>3</sup> 42 U.S.C. §§ 1302, 1395cc(j). The terms “*Enroll/Enrollment*” mean the process that Medicare uses to establish eligibility to submit claims for Medicare covered services and supplies.” 42 C.F.R. § 424.502. 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.” 42 C.F.R. § 424.510(a).

***1. The CMS administrative contractor received Petitioner’s enrollment application seeking billing privileges on March 28, 2016, and the CMS administrative contractor approved that application.***

Dr. Shepherd filed an enrollment application that the CMS administrative contractor received on March 28, 2016. CMS Ex. 5. The CMS administrative contractor approved that application and granted Dr. Shepherd billing privileges effective February 27, 2016. CMS Ex. 1 at 4.

***2. The CMS administrative contractor correctly granted Dr. Shepard billing privileges retrospectively to February 27, 2016.***

In its initial determination, the CMS administrative contractor stated that the effective date for Petitioner’s billing privileges was February 27, 2016. CMS Ex. 1 at 4.

The Secretary’s regulations provide that the effective date of enrollment of physicians, non-physician practitioners, and physician or non-physician practitioner organizations is the later of the “date of filing” or the date the supplier 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 CMS administrative contractor “receives” a signed supplier enrollment application that the Medicare administrative contractor is able to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008). Because the CMS administrative contractor received an application from Dr. Shepherd on March 28, 2016, which the administrative contractor was able to process to approval, the regulations require that the effective date of Dr. Shepherd’s billing privileges be March 28, 2016. However, the regulations permit CMS to grant retrospective billing for physician or non-physician practitioner services provided up to 30 days before the effective date of enrollment. 42 C.F.R. § 424.521(a)(1). Thus, the CMS administrative contractor correctly determined, based on a March 28, 2016 date of receipt of Petitioner’s enrollment application, Petitioner could retrospectively bill for services provided to beneficiaries beginning on February 27, 2016.

---

<sup>3</sup> A “supplier” furnishes services under Medicare, and the term “supplier” applies to physicians and other nonphysician practitioners and facilities that are not included within the definition of the phrase “provider of services.” 42 U.S.C. § 1395x(d).

Dr. Shepherd disagrees with the effective date provided to him based on the application he filed on March 28, 2016, and would rather receive an earlier effective date based on the application he filed in December 2015. Dr. Shepherd argues that the CMS administrative contractor improperly failed to communicate with him, resulting in the rejection of his application from December 2015. Further, Dr. Shepherd notes that CMS had the authority to extend the date by which he could provide the information necessary to rehabilitate his December 2015 application so as to avoid rejection. P. Br. at 2-3.

Although I agree that it appears that the CMS administrative contractor may not have provided Dr. Shepherd notice of the deficiencies in his December 2015 application, I am without jurisdiction to review the administrative contractor's actions related to the December 2015 application because the administrative contractor rejected it. 42 C.F.R. § 424.525(d) ("Enrollment applications that are rejected are not afforded appeal rights"). Once the CMS administrative contractor rejected the December 2015 application, Dr. Shepherd had to resubmit a completely new application. 42 C.F.R. § 424.525(c). It is the CMS administrative contractor's determination related to that second application, filed on March 28, 2016, which I have jurisdiction to review because the CMS administrative contractor issued a reconsidered determination regarding that application. *See* 42 C.F.R. §§ 405.803, 424.545(a); 498.3; 498.25, 498.40; *see also Ramaswamy v. Burwell*, 83 F. Supp. 3d 846, 854 (E.D. Mo. 2015).

As Dr. Shepherd points out, the CMS administrative contractor could have afforded Dr. Shepherd 30 additional days to remedy the deficiency in his December 2015 enrollment application. 42 C.F.R. § 424.525(b). Dr. Shepherd had already complied with the request for additional information related to the December 2015 reassignment application and, upon learning of the deficiencies in the December 2015 enrollment application, immediately remedied the deficiencies in that application as well. It is unclear why the CMS administrative contractor failed to exercise the authority it had to remedy this matter equitably, especially since it appears that the contractor failed to provide the notice regarding deficiencies in the December 2015 enrollment application.

## **VI. Conclusion**

I affirm CMS's determination that Petitioner's effective date of Medicare billing privileges is March 28, 2016, with a 30-day retrospective billing period commencing on February 27, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
Scott Anderson  
Administrative Law Judge