

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Matthew D. McLaren, M.D., PLLC,  
(NPI No. 1598760332)

Petitioner

v.

Centers for Medicare and Medicaid Services

Docket No. C-11-434

Decision No. CR2453

Date: October 18, 2011

**DECISION**

Petitioner, Matthew D. McLaren, M.D., appeals the determination of the Noridian Administrative Services LLC (Noridian), a Medicare contractor, that Petitioner cannot retrospectively bill for services rendered to Medicare-eligible beneficiaries earlier than June 27, 2010. I grant the Centers for Medicare and Medicaid Services' (CMS's) motion for summary judgment and uphold Noridian's reconsideration determination that Petitioner's effective enrollment date is July 26, 2010 and that his retrospective billing period started on June 27, 2010.

**I. Background**

Petitioner is a physician practicing in Great Falls, MT. By letter dated November 3, 2010, Noridian informed Petitioner that it had approved his Medicare enrollment application and had assigned him an effective billing date of June 27, 2010. CMS Ex. 1, at 1. Petitioner then requested a reconsideration review seeking to change the retrospective billing date from June 27, 2010 to March 1, 2010. CMS Exs. 2, 3, 5. In a determination dated March 22, 2011, Noridian informed Petitioner that the reconsideration review was unfavorable and that his enrollment date and retrospective billing date were correctly calculated. CMS Ex. 6.

On April 29, 2011, Petitioner requested a hearing to challenge his effective billing date. I issued orders on May 9, 2011 and August 3, 2011 that allowed the parties to file their exchanges and arguments.

CMS submitted a motion for summary judgment and a pre-hearing brief in support of its motion, along with nine exhibits identified as CMS Exs. 1-9. Petitioner filed his response, along with a copy of his initial April 29, 2011 request for hearing.

## II. Issue

This issue in this case is whether Petitioner is entitled to bill for services he provided to Medicare-eligible beneficiaries earlier than June 27, 2010.

## III. Analysis

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

### *A. Summary judgment is appropriate in this case as a matter of law.*

CMS argues that it is entitled to summary judgment because there is no genuine issue as to any material fact. CMS Brief at 5-6. The Departmental Appeals Board (Board) has explained that –

[s]ummary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

*Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300 at 3 (2010) (citations omitted).

The Board has further explained that the role of an Administrative Law Judge (ALJ) in deciding a summary judgment motion differs from its role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Vill. at Notre Dame, Inc.*, DAB No. 2291 at 5 (2009).

Having accepted all of Petitioner's factual assertions as true and having drawn all reasonable inferences in his favor, I find that Petitioner has not disputed the key material fact in this case – the date on which Noridian received Petitioner's application that it was able to process to approval. Accordingly, for the reasons set forth below, I agree with CMS that summary judgment is appropriate in this case.

***B. Noridian received an approvable Medicare enrollment application from Petitioner on July 26, 2010, which necessarily determined Petitioner's effective date.***

Petitioner seeks to file claims and receive payment for services he provided to Medicare-eligible beneficiaries beginning March 1, 2010, instead of June 27, 2010. Noridian has determined June 27, 2010 to be the earliest date Petitioner can receive payment for services he furnished.

To receive payment for services a supplier furnishes to Medicare-eligible beneficiaries, a supplier must first be enrolled in the Medicare program and also be issued a billing number.\* 42 C.F.R. § 424.505. The determination of the effective date of Medicare enrollment is governed by 42 C.F.R. § 424.520, which provides in part, that the effective date for enrollment for physicians 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.*” 42 C.F.R. § 424.520(d) (emphasis added). Therefore, the effective enrollment date here depends on the date the contractor first *received* Petitioner's *approvable* application. This is consistent with the preamble to the final rule and the plain language of the regulation. 73 *Fed. Reg.* 69,769 (Nov. 19, 2008); 42 C.F.R. § 424.520(d).

In this case, CMS has come forward with evidence of a postmarked envelope showing that Petitioner's CMS-855I Medicare Enrollment Application was mailed to Noridian on July 23, 2010. CMS Ex. 7. CMS presents evidence that Noridian received Petitioner's application three days later on July 26, 2010. CMS Ex. 8, at 1. Petitioner does not claim to have submitted his enrollment application prior to July 23, 2010, nor does he challenge the July 26, 2010 date Noridian received his application.

I find that Petitioner has not shown as a matter of fact that he filed an application on an earlier date. Therefore, the undisputed facts establish that the earliest date when Noridian

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\* Medicare defines “supplier” to mean “a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services” under the Medicare statute. Social Security Act (Act) § 1861(d), 42 U.S.C. § 1395x(d). *See also* 42 C.F.R. § 400.202.

could have approved Petitioner's enrollment application was July 26, 2010. 42 C.F.R. § 424.520(d).

***C. Noridian properly determined Petitioner's Medicare retrospective billing privileges.***

A physician may retrospectively bill for up to 30 days prior to the date of filing of the approved Medicare enrollment application when a physician has met all program requirements and if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. 42 C.F.R. § 424.521(a)(1). Noridian has afforded Petitioner this 30-day retrospective billing privilege.

Although the regulation permits physicians, in rare circumstances, to bill retrospectively for up to 90 days prior to the effective date of enrollment, this exception can only be applied if the physician establish that there was a Presidentially-declared disaster that precluded the physician from filing his or her application sooner. 42 C.F.R. § 424.521(a). Petitioner does not claim this exception. Rather, Petitioner presents equitable considerations in defense of the date his application was submitted. With his request for hearing, Petitioner presents a November 24, 2010 letter from his billing service, Medical Data Management, LLP. This letter states that Petitioner's enrollment application was intended to be submitted earlier once credentialing had been completed, but there was an unexpected delay due to both a personnel health issue with one of its key employees and a software upgrade. Petitioner states, in a letter dated November 9, 2010, that his enrollment application was not mailed until July 2010 due to these circumstances.

Petitioner's assertions provide no legal grounds for me to grant him an earlier effective date. Petitioner received an effective date based upon the date that Noridian received his application. Although I may be sympathetic to Petitioner's position, I am unable to grant the relief Petitioner seeks. The regulations are clear, and Petitioner's equitable considerations cannot be a basis to grant Petitioner an earlier date for billing privileges. *US Ultrasound*, DAB No. 2302 at 8 (2010) ("Neither the ALJ nor the Board is authorized to provided equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements."); *Oklahoma Heart Hosp.*, DAB No. 2183 at 16 (2008). Here, there simply are no material issues in dispute, and CMS prevails as a matter of law.

The undisputed facts establish that Petitioner submitted an application on July 23, 2010, that was received by the contractor on July 26, 2010, and subsequently approved. Noridian's determination of Petitioner's effective date of enrollment was entirely consistent with regulatory requirements. I find that Petitioner received the earliest possible effective billing date allowable under the applicable regulations.

**IV. Conclusion**

I find that CMS is entitled to summary judgment. Petitioner's effective date of enrollment is July 26, 2010, with a retrospective billing period starting 30 days prior, on June 27, 2010.

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/s/  
Joseph Grow  
Administrative Law Judge