

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Shalbhadra Bafna, M.D.,
(NPI: 1497921621),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-498

Decision No. CR2419

Date: August 23, 2011

DECISION

Based upon the written record of this case, including the materials submitted by both the Centers for Medicare and Medicaid Services (CMS) and Petitioner, Shalbhadra Bafna, M.D., I conclude that the undisputed evidence establishes that CMS properly enrolled Petitioner as a provider in the Medicare program effective November 11, 2010.

I. Background

Petitioner filed a hearing request and challenged the effective date of his enrollment in the Medicare program. Petitioner alleges that he should have been enrolled as of an earlier date than November 11, 2010, the date when CMS's contractor determined that Petitioner was eligible for enrollment, and asks that his Medicare billing privileges be reactivated effective September 1, 2010. The case was assigned to me for a hearing and a decision.

CMS subsequently filed a pre-hearing brief (CMS Br.) and moved for summary judgment. Petitioner opposed CMS's motion and filed a response (P. Br.). CMS filed eleven proposed exhibits, which it designated CMS Exhibit (Ex.) 1 – CMS Ex. 11. Petitioner filed seven proposed exhibits, which he designated P. Ex. 1 – P. Ex. 7. I receive all of the parties' proposed exhibits into the record of this case.

Neither party proffered direct testimony of any proposed witnesses or indicated that they would call witnesses at a hearing. Thus, I decide this case based on the written record.

II. Issue, Finding of Fact, and Conclusion of Law

A. Issue

The issue in this case is whether:

1. CMS's contractor and CMS properly determined Petitioner's effective date of Medicare enrollment to be November 11, 2010.

B. Finding of Fact and Conclusion of Law

I make the following finding of fact and conclusion of law (Finding).

- 1. CMS correctly determined that the effective date of Petitioner's Medicare enrollment is November 11, 2010.*

The effective date of a physician's enrollment in Medicare is governed by regulations at 42 C.F.R. § 424.520(d). The effective date of enrollment for a physician may only be the *later* of two dates: the date when the physician filed an application for enrollment that was subsequently approved by a Medicare contractor charged with reviewing the application on behalf of CMS; or the date when the physician first began providing services at a new practice location. *Id.* The regulations do not empower CMS or me to grant an earlier effective date, nor may I waive the regulations' criteria.

The undisputed facts of this case are as follows. On October 18, 2010, Wisconsin Physicians Service Insurance Corporation (WPS), a Medicare contractor operating on CMS's behalf, notified Petitioner that his Medicare Provider Transaction Access Number (PTAN) and his associated National Provider Identifier (NPI) were deactivated effective October 16, 2010, due to twelve consecutive months of non-billing. CMS Ex. 1. In the deactivation notice, WPS advised Petitioner that he could reactivate his Medicare billing privileges by submitting a Medicare enrollment application via the online Provider Enrollment, Chain, and Ownership System (PECOS) or via mail. *Id.* On November 11, 2010, Petitioner filed an enrollment application. CMS Ex. 2, CMS Ex. 3; P. Br at 1. On February 3, 2011, WPS informed Petitioner that the application he submitted was incomplete and advised Petitioner that he needed to submit additional information. CMS Ex. 4. Petitioner timely submitted the requested information on February 8, 2011. CMS Ex. 5. On February 17, 2011, WPS informed Petitioner that his Medicare enrollment application was approved and that his billing privileges were reactivated effective November 11, 2010. CMS Ex. 6. Petitioner was dissatisfied with this determination and requested reconsideration. On May 17, 2011, WPS issued a reconsideration decision and

affirmed the decision to grant Petitioner a reactivation date of Medicare billing privileges effective November 11, 2010. CMS Ex. 10.

The undisputed facts establish that the *earliest* date when CMS could have approved Petitioner's application was November 11, 2010. 42 C.F.R. § 424.520(d). Petitioner does not assert that there are any facts that would entitle him to an earlier enrollment date pursuant to the requirements of 42 C.F.R. § 424.520(d). Notably, he does not contend that he filed a valid application on any date prior to November 11, 2010. Petitioner also does not deny that his Medicare enrollment was properly deactivated.

Instead, Petitioner argues that his November 11, 2010 application was submitted as a "new enrollee" in Medicare. P. Br. at 1. Petitioner further claims that he received information by "voice communication" indicating that he did not need to file a separate application for a new practice location. *Id.* Petitioner also asserts that he began seeing patients at the Behavior Center of Michigan on September 12, 2010, and this entity submitted an application for Medicare participation on Petitioner's behalf, without his knowledge. P. Br. at 2. Petitioner attaches this application, dated October 27, 2010, seeking assignment of benefits from Petitioner to Behavior Center of Michigan effective September 19, 2010. P. Ex. 1. Petitioner argues, however, that this application is invalid because his signature was forged by someone else. P. Br. at 2-4. Despite asserting that the Behavior Center of Michigan application is forged, Petitioner subsequently argues that it would have been better if CMS has processed that application so he "could have been saved all of this trouble and agony." P. Br. at 3. Petitioner also makes several assertions regarding the unfairness of the delay in the processing his application. Petitioner claims he repeatedly called CMS while awaiting the assignment of his PTAN without positive results and contends that his application was "not looked after expeditiously." P. Br. at 2.

Even if true, Petitioner's arguments provide no ground for me to grant Petitioner an earlier effective date. The regulation does not distinguish between "new enrollee" and "reactivation" applications, when determining the effective date of a physician's participation in Medicare. Nor does the issue of Petitioner's practice location affect the effective date of his Medicare participation. Petitioner received an effective date based upon the date he filed a valid application, and his practice location had nothing to do with CMS's effective date determination. Also, Petitioner now wants a previous forged, hence invalid, application to be used to establish an effective date of Medicare participation prior to November 11, 2010. Obviously, Petitioner cannot have it both ways. If the prior application is forged, as Petitioner contends, then CMS could not process it. Thus, Petitioner cannot receive an effective date based upon the filing of this application. Petitioner also states that CMS delayed the processing of his application but has provided no evidence to support this assertion. Moreover, this is an equitable argument that I have no jurisdiction to hear and decide. None of Petitioner's arguments show as a matter of fact that he filed a valid application on an earlier date than CMS determined or that the

