

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jeffrey L. Tweedy, O.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-747

Decision No. CR4946

Date: October 4, 2017

DECISION

I sustain the determination of a Medicare contractor, as affirmed on reconsideration, to assign an effective Medicare participation date of February 15, 2017, to Petitioner, Jeffrey L. Tweedy, O.D.

I. Background

The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment. With its motion CMS filed 24 proposed exhibits, identified as CMS Ex. 1-CMS Ex. 24. Petitioner opposed the motion, filing no exhibits.

It is unnecessary that I decide whether the criteria for summary judgment are met inasmuch as neither side proffered testimony. No purpose would be served by convening an in-person hearing. I receive CMS's proposed exhibits into the record and I decide the case based on the parties' written submissions.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor properly assigned an effective Medicare participation date of February 15, 2017, to Petitioner.

B. Findings of Fact and Conclusions of Law

The parties do not dispute the essential facts. Petitioner filed an application for revalidation of his Medicare participation that the contractor received on October 19, 2016. CMS Ex. 3. The contractor found deficiencies in this application. After several communications between Petitioner and the contractor, the contractor determined that the October 19 application remained deficient and it rejected that application on November 22, 2016. CMS Ex. 8; CMS Ex. 9. The contractor deactivated Petitioner's Medicare billing privileges on November 21, 2016, meaning that it would not reimburse Petitioner for services performed after November 21 unless and until his billing privileges were reactivated. *Id.*

Petitioner filed a second application for revalidation that the contractor received on December 2, 2016. CMS Ex. 10. The contractor again found deficiencies with the application and, after several communications between the contractor and Petitioner, it rejected that application on January 20, 2017. CMS Ex. 19.

Petitioner filed a third application for revalidation that the contractor received on February 15, 2017. The contractor accepted this application and revalidated Petitioner's Medicare participation and reactivated Petitioner's billing privileges effective February 15. CMS Exs. 20, 22.

There are specific regulatory criteria and legal criteria that are applicable to this case. First, neither the rejection of a supplier's Medicare enrollment application nor the deactivation of a supplier's billing privileges may be appealed. 42 C.F.R. § 424.525(d); *see* 42 C.F.R. § 424.545(b), which permits a deactivated supplier to file a rebuttal to the deactivation but not an appeal. These regulations foreclose me from considering the merits of the contractor's rejections of Petitioner's application and the deactivation of his billing privileges.

Second, a supplier whose Medicare billing privileges have been deactivated must submit a new enrollment application to a contractor in order to reactivate his or her privileges. 42 C.F.R. § 424.540(b)(1).

Third, and as a general rule, the *earliest* effective date that a supplier may participate in Medicare, or a supplier whose billing privileges have been deactivated may reactivate them, is the date when a contractor receives an enrollment application that it successfully processes. 42 C.F.R. § 424.520(d).

By regulation, the earliest effective reactivation date that Petitioner may receive is February 15, 2017, the date that the contractor determined to reactivate his Medicare billing privileges based on Petitioner's third application for revalidation. Neither of the first two applications may be a basis for assigning an effective reactivation date because the contractor rejected them.

Petitioner recites a rather long series of communication difficulties that avers that he had with the contractor. He asserts that it was these communication problems that caused the rejection of his first two applications. Petitioner argues that he found himself caught in a series of misunderstandings with the contractor, misunderstandings that led him to believe that he was supplying the contractor with acceptable information when, in fact, that information was inadequate. Petitioner asserts that he continually acted in good faith even if the information and documents that he supplied to the contractor were inadequate and deficient. He contends that he should not be penalized given his good faith and the history of misunderstandings between himself and the contractor.

These are equitable arguments. At bottom, Petitioner requests me to assign him an earlier effective date because he was not willfully at fault and had, to the best of ability, sought to satisfy the contractor's various requests.

I am without authority to consider these arguments. At best they show that Petitioner's communications with the contractor may have been unintentionally maladroit. I may not override regulatory requirements based on equitable considerations, in the absence of evidence of malfeasance. *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51 (1984).

_____/s/_____
Steven T. Kessel
Administrative Law Judge