

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Willie Goffney, Jr., M.D.
(PTAN: CB241567),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-365

Decision No. CR4619

Date: May 26, 2016

DECISION

I grant summary judgment sustaining the determination of a Medicare contractor, as affirmed upon reconsideration and ratified by the Centers for Medicare & Medicaid Services (CMS), establishing an effective date of August 31, 2015, of reactivation of Medicare billing privileges for Petitioner Willie Goffney, Jr., M.D.

I. Background

Petitioner, a physician, requested a hearing in order to challenge the effective date of reactivation of Petitioner's Medicare billing privileges. CMS moved for summary judgment, filing a brief and four exhibits that are identified as CMS Ex. 1-CMS Ex. 4. Petitioner filed a brief in opposition and 12 exhibits that are identified as P. Ex. 1-P. Ex. 12. Petitioner also filed an affidavit, and I have identified it as P. Ex. 13. I receive these exhibits into the record for purposes of ruling on CMS's motion.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor properly determined August 31, 2015, to be the effective date of reactivation of Petitioner's Medicare billing privileges.

B. Findings of Fact and Conclusions of Law

In support of its motion CMS relies on the following facts:

- On October 31, 2012, a Medicare contractor notified Petitioner that his provider transaction access number (PTAN) was deactivated on the ground that Petitioner had not filed Medicare reimbursement claims since 2008. P. Ex. 5; *see* Ex. 3 to Petitioner's Hearing Request; *see* CMS Ex. 4.
- On August 31, 2015, a Medicare contractor received an initial Medicare enrollment application from Petitioner. The contractor treated this application as an application by Petitioner to reactivate his billing privileges and PTAN. CMS Ex. 1.
- On October 2, 2015, the contractor advised Petitioner that his application was approved and that he was assigned an effective billing date of August 31, 2015. CMS Ex. 2.

CMS contends that these facts are both undisputed and that they establish that, as a matter of law, Petitioner was assigned a correct reactivation date. Petitioner contends that the facts are very much in dispute. I disagree. The essential facts cited by CMS are undisputed and, as CMS asserts, they establish that the effective reactivation date assigned to Petitioner is correct as a matter of law.

What is certainly undisputed is that a contractor notified Petitioner on October 31, 2012, that Petitioner's PTAN was deactivated. Petitioner's only recourse from that action was to file a request to have his PTAN reactivated. *Arkady B. Stern, M.D.*, DAB No. 2329, at 4 n.5 (2010) (citing Medicare Program Integrity Manual (MPIM) Rev. 289, issued April 15, 2009, effective January 1, 2009); *see also* MPIM, Chapter 15, Section 15.27.1.2.3, effective October 8, 2013. Petitioner had no right to challenge the provider's action via a hearing request inasmuch as that action is not an initial determination that gives rise to hearing rights. 42 C.F.R. §§ 498.3, 498.5(1). Thus, I may not consider any arguments from Petitioner concerning the propriety of the contractor's action in deactivating his PTAN.

Given that, the only question I may consider is whether the contractor properly assigned Petitioner an effective reactivation date of August 31, 2015, based on the application for reactivation that the contractor received on that date. The propriety of the contractor's action is governed by 42 C.F.R. § 424.520(d). The regulation states that:

The effective date for billing privileges 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.

The effective reactivation date of August 31, 2015, that the contractor assigned to Petitioner was the *earliest possible* effective date that Petitioner could have received inasmuch as the contractor received Petitioner's application for reactivation on that date.

Petitioner makes a series of fact assertions that he contends raise a dispute as to the material facts of this case. I find that they raise no dispute because the assertions are irrelevant.

Petitioner contends that, in 2005, CMS stopped paying his Medicare reimbursement claims. He contends that he demanded an explanation from CMS but that he did not receive one until years later. Petitioner's brief at 2. Whether or not this is true is irrelevant because, at best, it relates to the reasons for the contractor's deactivation of Petitioner's PTAN. As I have explained Petitioner may not challenge that action.¹

Petitioner then asserts that beginning in September 2013 he engaged in a "lengthy campaign of letter-writing, phone calls, and emails to CMS to get a clear answer about why he had not been reimbursed after eight years of providing payments to Medicare beneficiaries, submitting claims to Medicare, and not being paid." Petitioner's brief at 3. This assertion plainly is irrelevant because it relates to deactivation of Petitioner's PTAN.

Next, Petitioner asserts that in September 2015 someone named "Mary F" explained to him that he was "dropped from the reimbursement system" when CMS transitioned from paper claims to a new on-line reimbursement system (PECOS). Petitioner's brief at 3. Petitioner has not explained how this assertion – assuming it to be correct – relates to the contractor's deactivation of Petitioner's

¹ Petitioner has not explained how the alleged refusal to pay his claims beginning in 2005 has anything to do with deactivation of his PTAN in 2008.

PTAN in 2012. But, even if there is some relationship, the attributed statement by “Mary F” is irrelevant for the reasons that I have explained. Petitioner may not challenge the contractor’s deactivation of his PTAN.

Taken as a whole, Petitioner’s arguments seem to add up to a contention that the contractor treated him unfairly, and that as a matter of equity, he should be entitled to claim reimbursement for services that he provided earlier than August 31, 2015. If that is Petitioner’s argument I have no authority to hear it. My authority is limited in this case to deciding whether CMS or its contractor acted appropriately consistent with regulatory authority. *US Ultrasound*, DAB No. 2302, at 8 (2010).

Finally, Petitioner seems to be making an argument that the contractor did not give him adequate notice in 2012 for the reasons for deactivating his PTAN. That assertion again is a challenge to the deactivation of his PTAN. As I have explained, I have no authority to hear that challenge, whether direct or indirect. If I cannot consider the propriety of a deactivation then the issue of notice is also something that I have no authority to consider, inasmuch as Petitioner has no right to challenge the substantive grounds for deactivation.

/s/

Steven T. Kessel
Administrative Law Judge