

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Hrak Derderian, M.D.,
(NPI: 1619034725 / PTAN: CB241266),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-294

Decision No. CR4623

Date: June 02, 2016

DECISION

The request for hearing of Petitioner, Hrak Derderian, M.D., is dismissed pursuant to 42 C.F.R. § 498.70(b).

I. Procedural History

Noridian Healthcare Solutions (Noridian), a Medicare contractor, notified Petitioner by letter dated October 26, 2015, that his application to enroll in Medicare was approved effective September 1, 2015. CMS Ex. 1. The letter advised Petitioner that if he disagreed with the effective date determination he could request reconsideration before a contractor hearing officer within 60 days. The letter provided instructions for how to submit the request for reconsideration. The notice stated that a “reconsideration request must be signed and dated by the physician, non-physician practitioner or any responsible authorized or delegated official within the entity.” CMS Ex. 1 at 2.

Reconsideration was requested by letter dated October 27, 2015. However, the request for reconsideration was on the letterhead of Emergency Groups' Office, with a different address from Petitioner, and the request was signed by Carol Sharou, not Petitioner. CMS Ex. 2. On December 2, 2015, Noridian notified Petitioner that it rejected Petitioner's request for reconsideration, because it was not properly signed and dated by Petitioner, an authorized or delegated official, or a legal representative. CMS Ex. 3.

Petitioner requested a hearing by letter dated January 21, 2016, which was received by an express delivery service on January 29, 2016, and received at the Civil Remedies Division of the Departmental Appeals Board on February 1, 2016. The case was assigned to me for hearing and decision. I issued an Acknowledgment and Prehearing Order on February 11, 2016.

On February 25, 2016, CMS filed a motion to dismiss this case (CMS Motion) with CMS Exhibits (Exs.) 1 through 3. Petitioner filed a response on April 1, 2016. CMS filed a reply on April 14, 2016. Petitioner did not object to my consideration of CMS Exs. 1 through 3 and they are admitted.

II. Applicable Law

A provider or supplier may request reconsideration of an initial determination by CMS that affects the provider's or supplier's ability to participate in the Medicare program. 42 C.F.R. § 498.5(a), (b), (d) and (l). CMS or its contractor reconsiders an initial determination if there is a written request for reconsideration that complies with 42 C.F.R. § 498.22(b) and (c). The request for reconsideration must be filed in writing with CMS or its contractor; either directly by the provider/supplier or through the provider's or supplier's designated legal representative or authorized official, within 60 days of receipt of the notice of the initial determination. 42 C.F.R. § 498.22(b). The date of receipt of the initial determination is presumed to be five days after the date on the notice from CMS or its contractor, unless there is a showing that it was received earlier or later. 42 C.F.R. § 498.22(b). Pursuant to 42 C.F.R. § 498.5(l)(2), CMS, a CMS contractor, and a prospective or existing provider or supplier dissatisfied with a reconsidered determination are entitled to a hearing before an administrative law judge (ALJ).

III. Findings of Fact and Conclusions of Law

My conclusions of law are set forth in bold followed by the pertinent findings of fact and analysis.

A. Petitioner has no right to a hearing before an ALJ because there was no reconsidered determination.

B. Dismissal is appropriate as Petitioner has no right to a hearing.

CMS moved to dismiss Petitioner's request for hearing on grounds that I lack jurisdiction because no reconsidered determination was issued. CMS alleges more specifically that Petitioner failed to file a properly signed request for reconsideration and Noridian properly rejected the request. CMS Motion at 4.

On October 26, 2015, Noridian issued the initial determination approving Petitioner's enrollment and granting an effective date of September 1, 2015. CMS Ex. 1. The unsigned initial determination advised Petitioner that if he disagreed with the effective date determination, he could request reconsideration before a contractor hearing officer. The letter advised that the request for reconsideration had to be submitted in writing within 60 days of the postmark on the envelope bearing the initial determination. The initial determination stated that the reconsideration request had to **"be signed and dated by the physician, non-physician practitioner or any responsible authorized or delegated official within the entity."** CMS Ex. 1 at 2 (emphasis added). The initial determination also advised Petitioner that the request for reconsideration could be submitted to one of two addresses depending upon the manner of shipping. One address was Provider Enrollment, Noridian Healthcare Solutions, 900 42nd Street South, Fargo, ND 58103. CMS Ex. 1 at 2.

Petitioner filed a request for reconsideration dated October 27, 2015, addressed to Noridian at 900 42nd Street South in Fargo. There is no dispute that the request for reconsideration was timely. The request stated the background or history and requested an earlier effective date of November 1, 2007 or December 15, 2014. However, the request for reconsideration was on the letterhead of Emergency Groups' Office, with a different address from Petitioner, and the request was signed by Carol Sharou, not Petitioner. CMS Ex. 2.

By letter dated December 2, 2015, Noridian notified Petitioner that reconsideration was denied because the request for reconsideration "did not meet the requirements as stated in the PIM (Program Integrity Manual) 15.25." CMS Ex. 3. Bolded language in the letter denying reconsideration indicates that the reconsideration was denied because it was not "signed and dated by the provider/supplier, the authorized or delegated official, or a legal representative." CMS Ex. 3. CMS specifically alleges in its motion to dismiss that reconsideration was denied because Petitioner did not sign the reconsideration request. CMS Motion at 4.

Pursuant to 42 C.F.R. § 498.22(b), an affected party dissatisfied with an initial determination may request reconsideration by filing the request in writing directly or through its legal representative or other authorized official. CMS policy for submitting a request for reconsideration is set forth in the Medicare Program Integrity Manual (MPIM), CMS Pub. 100-08, chap. 15, § 15.25.1.2. The CMS policy is consistent with the requirements established by 42 C.F.R. § 498.22. According to the MPIM, § 15.25.1.2B, a reconsideration request must be in the form of a letter that is signed and dated by the “provider/supplier, the authorized or delegated official, or a legal representative.” There is no definition of “authorized official” in 42 C.F.R. pt. 498. However, the regulations that control enrollment of providers defines an “authorized official” to be:

an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program, to make changes or updates to the organization’s status in the Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program.

42 C.F.R. § 424.502. MPIM, § 15.1.1, contains a similar definition of authorized official.

In this case, the reconsideration request was not signed by Petitioner. CMS Ex. 3. Petitioner has not presented any evidence to show the relationship between him and Ms. Sharou or Emergency Groups’ Office and he has not presented evidence that Ms. Sharou was his authorized or delegated official or legal representative. Petitioner does not address this deficiency in his opposition to the motion to dismiss. Accordingly, I conclude that the reconsideration request did not comply with MPIM § 15.25.1.2B or 42 C.F.R. § 498.22(b).

I conclude that Noridian committed no legal error by refusing to conduct reconsideration on grounds that the request for reconsideration was not signed and dated by Petitioner, Petitioner’s legal representative, or an authorized official. Pursuant to 42 C.F.R. § 498.5(l)(2), a supplier dissatisfied with a reconsidered determination is entitled to a hearing before an ALJ. In this case reconsideration was denied and no reconsidered determination was issued. Accordingly, Petitioner has no right to a hearing before an ALJ and dismissal pursuant to 42 C.F.R. § 498.70(b) is appropriate.

