

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Civil Remedies Division

I. Barry Bell, Ph.D.,
(PTANs: 553641, 002768ZYAX)
(NPIs: 1982875092, 1932118809),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-577

Decision No. CR4930

Date: August 24, 2017

DECISION

I sustain a determination by the Medicare contractor, as affirmed on reconsideration, to assign an effective Medicare participation date of December 16, 2016, with the authority to bill Medicare for services provided as early as November 16, 2016, to Petitioner, I. Barry Bell, Ph.D.

I. Background

Petitioner, a Medicare supplier, filed a hearing request in order to challenge his effective date of participation in Medicare. He contended that he should be granted an effective participation date in September 2016, as opposed to the December 16, 2016 effective participation date determined by the Medicare contractor. The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment. With its motion CMS filed ten proposed exhibits that it identified as CMS Exhibit (Ex.) 1-CMS Ex. 10. Petitioner opposed the motion and filed proposed exhibits that he identified as P. Ex. 1, P. Ex. 2(a)-(c), P. Ex. 3(a)-(d), P. Ex. 4, and P. Ex. 5(a)-(g).

It is unnecessary that I decide whether the criteria for summary judgment are met here inasmuch as neither party proposed testimony by a witness. Although there are, in fact, no disputed facts in this case I decide it based on the parties' written exchanges. I receive all of the proposed exhibits into evidence.

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

A. Issue

The issue is whether a Medicare contractor correctly assigned an effective participation date of December 16, 2016, to Petitioner.

B. Findings of Fact and Conclusions of Law

The undisputed facts of this case are that Petitioner filed applications electronically with the contractor to participate in Medicare on December 16, 2016. CMS Ex. 4. The contractor reviewed Petitioner's applications and on February 3, 2017, it notified Petitioner that he was approved to participate in Medicare with an effective participation date of November 16, 2016. CMS Ex. 8.¹

The contractor's determination conforms to regulatory requirements. With an exception that is inapplicable here, the *earliest* effective participation date that a contractor or CMS may assign to a participating supplier such as Petitioner is the date when that supplier files an application with the contractor or CMS that is subsequently approved. 42 C.F.R. § 424.520(d).

Petitioner concedes that his effective participation date assignment is in accord with regulatory requirements. He contends that considerations of equity and fairness should operate in his favor to give him an effective participation date of September 20, 2016. He contends that he could not file a Medicare participation application until December 16, 2016, because prior to that date he was enmeshed in a state approval process that effectively put his Medicare application on hold. He claims that, despite this, he began treating Medicare beneficiaries in September 2016, and he asserts that he ought to receive reimbursement from Medicare for those services.

¹ In fact, the effective participation date that the contractor assigned to Petitioner was December 16, 2016, the date that he filed an application that the contractor subsequently approved. November 16, 2016, is the earliest date of services for which Petitioner may claim reimbursement based on the contractor's approval of his December 16, 2016 application. 42 C.F.R. § 424.521(a).

Whatever may have happened to Petitioner in a state approval process is irrelevant here. I make no findings as to the merits of Petitioner's argument inasmuch as it is an equitable argument that I have no authority to hear and decide. *Willie Goffney, Jr., M.D.*, DAB No. 2763 at 8 (2017); *U.S. Ultrasound*, DAB No. 2302 at 8 (2010).

/s/
Steven T. Kessel
Administrative Law Judge