Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Steven Reppuhn, Ph.D.,
(PTAN: MI6852),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-356

Decision No. CR3186

Date: April 1, 2014

DECISION

I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) sustaining its determination to reactivate the Medicare billing privileges of Petitioner, Steven Reppuhn, Ph.D., effective May 23, 2013.

I. Background

Petitioner is a clinical psychologist practicing in the State of Wisconsin. He filed a hearing request challenging the determination of a Medicare contractor, as ratified by CMS, to reactivate his billing privileges with the effective date that I recited in the opening paragraph of this decision. In his hearing request Petitioner contends that his effective date of participation should be July 2012.

CMS moved for summary judgment. With its motion CMS filed 14 exhibits that it identified as CMS Ex. 1 – CMS Ex. 14. Petitioner opposed the motion and he filed nine exhibits that he identified as P. Ex. 1 – P. Ex. 9. CMS filed a reply brief.

I receive CMS Ex. 1 – CMS Ex. 14 into the record. I also receive P. Ex. 1 – P. Ex. 9. It is unclear whether Petitioner filed any of these exhibits with his reconsideration request. However, CMS did not object to my receiving them. I note, however, that the contents of Petitioner's exhibits are irrelevant to the issue that I address here.

II. Issues, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether CMS correctly established an effective date of May 23, 2013 for reactivation of Petitioner's Medicare billing privileges.

B. Findings of Fact and Conclusions of Law

Petitioner's participation in Medicare is governed by regulations contained in 42 C.F.R. Part 424. In order to maintain active status as a participant, a Medicare provider or supplier is obligated to resubmit and recertify his or her enrollment information every five years.

> All providers and suppliers currently billing the Medicare program or initially enrolling . . . are required to complete the applicable enrollment application. The provider or supplier then enters a 5-year revalidation cycle once a completed enrollment application is submitted.

42 C.F.R. § 424.515. Once a provider or supplier receives a notice from CMS or its contractor to resubmit information pursuant to the five-year cycle, he or she must submit the required information within 60 days. 42 C.F.R. § 424.515(a)(2). CMS may deactivate a provider or supplier's Medicare enrollment if that provider or supplier does not respond within 90 days to CMS's request for enrollment information. 42 C.F.R. § 424.540(a)(3). Once a provider's enrollment is deactivated, he or she must submit a new participation application if he or she wishes to have her participation reactivated. 42 C.F.R. § 424.540(b)(1). A request for reactivation is treated by CMS in the same manner as any new application for enrollment. *Arkady Stern, M.D.*, DAB No. 2329, at 4 n.5 (2010). The earliest effective participation date that CMS may establish for such an application is the date that an acceptable application is received by the Medicare contractor. 42 C.F.R. § 424.520(d).

The following facts are undisputed. On September 26, 2011, the contractor sent to Petitioner a request that he update his enrollment information. Petitioner did not respond to this request until May 3, 2012. On review, the contractor determined that the information Petitioner had submitted was incomplete. On May 31, 2012, the contractor sent a letter to Petitioner telling him that the information he had supplied was incomplete. CMS Ex. 2. The contractor specifically told Petitioner that his Medicare billing

privileges would be deactivated if he did not submit a completed enrollment application and requisite supporting documentation. *Id.* at 2.

Petitioner did not reply to this request. On July 9, 2012, the contractor sent a letter to Petitioner advising him that his Medicare billing privileges had been deactivated due to his failure to comply with the contractor's May request for information. CMS Ex. 3.

Petitioner did not provide additional information for more than a year. He filed new applications to reactivate his Medicare participation beginning on June 22, 2013 (he filed additional applications on June 24 and August 14, 2013). CMS Ex. 4. These applications were incomplete and the contractor requested additional information from Petitioner. Petitioner eventually complied with this request. On September 18, 2013 the contractor reactivated Petitioner's Medicare enrollment effective May 23, 2013.

These undisputed facts establish that the *earliest* date that the contractor could have granted Petitioner for reactivation of his billing privileges was May 23, 2013.[1] Petitioner did not file an application for re-enrollment that the contractor determined was complete until June 22, 2013 and, consequently, the regulations establish that date as the effective date of Petitioner's reactivation of his billing privileges. 42 C.F.R. § 424.520(d).

Petitioner has offered nothing that would challenge the undisputed facts as I recite them. Instead, he offers a series of equitable arguments which, taken individually and collectively, are an assertion that he was treated unfairly by the contractor and CMS.

These arguments are unavailing as a matter of law. Equitable arguments cannot prevail in a case such as this absent evidence that the government willfully misled or defrauded Petitioner. *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 63 (1984). Petitioner's assertions establish no such basis for relief.

First, Petitioner asserts that he never received notice that his May 3, 2012 filing was incomplete or inaccurate. The May 31 and July 9, 2012 letters from the contractor to Petitioner, however, belie that assertion. CMS Exs. 2-3. The undisputed facts are that the contractor explicitly asked for more information from Petitioner and that Petitioner did not respond to the request even after being told the consequences for his failure to respond. Petitioner does not deny that the contractor's letters were sent to an address that he utilized as an office. Petitioner claims that the contractor sent the letters to his

[1] Technically, the earliest effective date that could be established for Petitioner was June 22, 2013. 42 C.F.R. § 424.520(d). However, CMS may give participants a grace period of 30 days prior to their effective dates of participation within which CMS will process claims submitted for Medicare items or services. 42 C.F.R. § 424.521(a)(1). Thus, Petitioner was authorized to file claims beginning on May 23, 2013 and the contractor erroneously referred to this date as Petitioner's "effective date" of participation.

"secondary" office, but he does not deny that those letters were received at that office nor does he explain why he would not have seen or received mail sent to his secondary office. Petitioner's implication that he would not have received mail sent to his secondary office strains credulity and overlooks that he listed an individual at his secondary office as a contact person that CMS or its contractor was to contact regarding his enrollment application. CMS Ex. 1, at 19.

Petitioner also argues that the information that the contractor requested already was on file and need not be updated through an enrollment application because the requested information is contained in the claims information that Petitioner submits or that Petitioner had filed previously with the contractor or CMS. But, that is not a credible assertion that Petitioner complied with regulatory requirements. The whole purpose of requiring recertification from a provider is to assure that the provider is not filing false or misleading information with his or her claims. CMS is entitled to request and obtain that information in a format that it establishes and a provider is obligated by law to provide it in the required format.

Petitioner also argues, effectively, that if he failed to provide requisite information to the contractor it was not his fault but the fault of clerical staff that either erred or was unaware of the need to provide the requisite information. But even if that is true, it does not excuse Petitioner from complying with his obligations under the regulations. The regulations impose a compliance obligation on Petitioner. He cannot delegate that obligation to someone else and then hide behind that person's failure to fulfill the obligation that was Petitioner's to begin with.

/s/
Steven T. Kessel
Administrative Law Judge