Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Alan Hand, M.D.,
(NPI: 1851391114),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1015

ALJ Ruling No. 2014-3

Date: October 25, 2013

DISMISSAL

Petitioner, Alan Hand, challenges the effective date of his participation in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) moves to dismiss his appeal. CMS argues that Petitioner has no right to a hearing before an administrative law judge (ALJ), because he has not obtained an initial determination.

For the reasons set forth below, I grant CMS's motion and dismiss this case pursuant to 42 C.F.R. § 498.70(b).

Background

Petitioner is an emergency room physician and member of the Oakbend Medical Group. In an application (CMS-855R) dated October 9, 2012, he applied for enrollment in the Medicare program and asked that his benefits be reassigned to the group practice. CMS Ex. 1. Apparently, other members of the practice filed similar applications at about the same time.

In a letter dated June 17, 2013, the Medicare contractor, Novitas Solutions, Inc., advised Petitioner that his enrollment application had been rejected because there were "new signatures on section 4A and 4B of the CMS-855R application." CMS Ex. 2. The notice advised him that, "[i]f you would like to resubmit an application, you must complete a new Medicare enrollment application(s)," and that "providers and suppliers are required to submit complete application(s) and all supporting documentation within 30 calendar days from the postmark date of the contractor request for missing/incomplete information." CMS Ex. 2. It is not clear from the record whether Petitioner attempted to cure the defects in his enrollment application. The notice did not establish an effective date for Petitioner's billing privileges.

Apparently, one of Petitioner's medical group colleagues, Ian Smalling, NP, had earlier received a letter approving his Medicare application. He disagreed with the effective date and requested reconsideration on January 15, 2013, which was well before the contractor issued its rejection of Petitioner's application. CMS Ex. 4. Petitioner (along with other members of the medical practice) attempted to join Mr. Smalling's reconsideration request. However, Petitioner could not then validly request reconsideration, because the contractor had not issued an initial determination. *See* 42 C.F.R. §§ 498.5(d)(1); 498.5(l)(1); 498.22, and discussion below.

In a letter dated May 17, 2013, the contractor's hearing specialist issued its reconsidered determination in Mr. Smalling's case. CMS Ex. 5. Although the letter refers to similar initial determinations issued to other members of the practice, it states that "a formal decision is not rendered in this letter for [those] providers." CMS Ex. 5 at 1.

In a letter dated June 20, 2013, Petitioner requested an ALJ hearing to challenge the effective date of his enrollment. CMS now moves to dismiss that hearing request.

Discussion

To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. To enroll in Medicare, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1); 424.515(a). When CMS determines that a supplier meets the applicable enrollment requirements, it grants him Medicare billing privileges.

CMS's determination as to the effective date of enrollment is an "initial determination" that is subject to review under the procedures set forth in 42 C.F.R. Part 498. 42 C.F.R. §§ 498.3(1), (b)(15). An initial determination is binding unless reconsidered or otherwise reversed or modified. 42 C.F.R. § 498.20(b).

An affected provider or supplier may only request reconsideration of an enumerated initial determination, which it may do by filing a written request within 60 days from receipt of the notice of the initial determination. 42 C.F.R. §§ 498.5(d)(1); 498.5(l)(1); 498.22. If CMS (or its contractor) receives a properly-filed request for reconsideration, it makes a reconsidered determination affirming or modifying the initial determination. 42 C.F.R. § 498.24(c). A supplier or prospective supplier dissatisfied with a reconsidered determination is entitled to a hearing before an ALJ. 42 C.F.R. §§ 498.5(d)(2); 498.5(l)(2). The regulations do not provide for a hearing in the absence of a reconsidered determination. *Denise A. Hardy, D.P.M.*, DAB No. 2464 at 4-5 (2012); *Hiva Vakil*, DAB No. 2460 at 4-5 (2012).

Petitioner criticizes the Medicare contractor for not including his claim in the Smalling determination. I find this wholly without merit (and not reviewable by me). A Medicare contractor is certainly free to consider individual applications individually. Moreover, there was no initial determination for Petitioner that the contractor could reconsider.

Petitioner also argues that "[w]hile Novitas was aware of the consolidated request for reconsideration, Novitas failed to send proper notice to [Petitioner's counsel] of the different letters and notices addressed to the rest of the providers." P. Supp. Resp. and Opp. at 2. Petitioner's counsel argues that if he received notice (which his client actually did, *see* CMS Ex. 3, at 1), he would have filed a separate reconsideration request on Petitioner's behalf. That argument is not relevant here because Petitioner never received an initial determination for which Petitioner's counsel could request reconsideration.

I am authorized to dismiss a hearing request if the party requesting review does not have a right to a hearing. 42 C.F.R. § 498.70(b).

Conclusion

Because neither CMS nor its contractor issued an initial determination in this case, Petitioner does not have a right to an ALJ hearing. I therefore dismiss his hearing request pursuant to 42 C.F.R. 498.70(b).

/s/
Carolyn Cozad Hughes
Administrative Law Judge