

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Karen Richardson, M.D.,
(NPI: 1780789131),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1020

ALJ Ruling No. 2014-9

Date: October 29, 2013

DISMISSAL AND REMAND

Petitioner, Karen Richardson, M.D., challenges the effective date of her participation in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) moves to dismiss her appeal. CMS argues that Petitioner has no right to a hearing before an administrative law judge, because she has not obtained a reconsidered 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) filed October 9, 2012, she applied for enrollment in the Medicare program and asked that her 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 December 4, 2012, the Medicare contractor, Novitas Solutions, Inc., advised Petitioner that her enrollment application had been approved with an effective date of October 27, 2012. The notice advised her that, if she disagreed with the established effective date, she could request reconsideration before a contractor hearing officer. CMS Ex. 3.

Apparently, one of Petitioner's medical group colleagues, Ian Smalling, N.P., had earlier received a similar letter approving his Medicare application. On January 15, 2013, with Petitioner and other members of the practice, he filed a joint request for reconsideration challenging their effective dates of enrollment. CMS Ex. 4. 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, including Petitioner, it states that "a formal decision is not rendered in this letter for [those] providers." CMS Ex. 5 at 1.

CMS acknowledges, but does not explain or justify, that, to date, the contractor has not issued a reconsidered determination in Petitioner's case. In a letter dated June 20, 2013, Petitioner requested an ALJ hearing to challenge the effective date of her 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 her Medicare billing privileges. For physicians, the effective date for billing privileges "is the *later* of the date of filing" a subsequently approved enrollment application or "the date an enrolled physician . . . first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d) (emphasis added).

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). A supplier or prospective supplier dissatisfied with an initial determination may request reconsideration 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 administrative law judge. 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).

I am deeply troubled by the contractor's unjustified failure to issue a timely reconsidered determination in this matter. Nevertheless, my authority is limited. I simply have no jurisdiction to review the merits of this case. I therefore remand the matter to CMS and recommend that it or its contractor immediately issue a reconsidered determination. *But see Ian Smalling, N.P.*, DAB CR2971 (2013) (finding that the contractor properly determined the effective date for Nurse Practitioner Smalling).

Conclusion

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

/s/
Carolyn Cozad Hughes
Administrative Law Judge