Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Omah Singh, M.D.,
(PTAN: E0518701),

Mark Hatton, M.D.,
(PTAN: A3413602),

Nadia Waheed, M.D.,
(PTAN: A3764707),

Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket Nos. C-14-545
C-14-546
C-14-547

ALJ Ruling Nos. 2014-20
2014-21
2014-22

Date: February 4, 2014

RULINGS DISMISSING REQUESTS FOR HEARING

I dismiss the hearing requests of Petitioners Omah Singh, M.D., (C-14-545), Mark Hatton, M.D. (C-14-546), and Nadia Waheed, M.D. (C-14-547) because they were not timely filed and Petitioners have not shown good cause for their failure to file their hearing requests timely.

I have not formally consolidated these cases. However, all three Petitioners work for the same employer, North Suburban Eye Associates, P.C., (North Suburban) and all three cases address the same issue, that being the effective date of the Petitioners' reassignment

of Medicare benefits to their employer. Furthermore, the three cases involve identical material facts concerning the history of the Petitioners' hearing requests. For these reasons I find it efficient to issue consolidated rulings that apply to all three Petitioners.

The parties filed essentially identical exhibits in all three cases. I receive the exhibits identified in each case into that case's record.

The material facts of these cases are that each Petitioner applied to a Medicare contractor, NHIC, to have his or her Medicare reimbursement reassigned to his or her employer, North Suburban. The applications were denied and on July 26, 2012 NHIC affirmed its denials with a reconsideration determination in each case. NHIC sent out a letter to each Petitioner which contained the following language:

> **FURTHER APPEAL RIGHTS: ADMINISTRATIVE LAW JUDGE (ALJ):** If you are satisfied with this decision you do not need to take any further action. If you believe that this determination is not correct, you may request a final ALJ review. You must act quickly and you must meet the requirements for requesting a final ALJ review. You must file your appeal within 60 calendar days after the receipt of this decision by writing to the following address:
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> Department of Health and Human Services
> Departmental Appeals Board
> Civil Remedies Division, Mail Stop 6132
> 330 Independence Avenue, S.W.
> Cohen Building, Room G-644
> Washington, D.C. 20201
> Attn: CMS Enrollment Appeal
>
> ***Alternatively, you can file your appeal electronically at the Departmental Appeals Board electronic filing system website (DAB E-File) at https://dab.efile.hhs.gov.***

C-14-545, CMS Ex. 1; C-14-546, CMS Ex. 1; C-14-547, CMS Ex. 1.

There is no dispute that Petitioners did not file their hearing requests until July 24, 2013, almost a full year after receiving NHIC's reconsideration determinations with the quoted language. And, on that date, they filed their requests with the Office of Medicare Hearings and Appeals (OMHA) rather than with the Departmental Appeals Board (DAB). Each Petitioner's hearing request is thus filed many months after the 60-day deadline for timely filing a request for hearing notwithstanding the fact that each Petitioner had been told explicitly that it must file his or her request with the DAB Civil

Remedies Division no later than 60 days after receiving NHIC's reconsideration determination.

Hearings in these cases are governed by regulations at 42 C.F.R. Part 498. An administrative law judge may dismiss a hearing request that is untimely filed and where the judge has not extended the deadline for filing the hearing request. 42 C.F.R. § 498.70(c). The deadline for filing a hearing request will not be extended beyond the 60-day period allowed for filing absent a showing of good cause for a failure to file timely. 42 C.F.R. § 498.40(c)(1), (2).

The regulatory term "good cause" is not defined. However, it has been held universally that "good cause" means an event or act beyond a party's ability to control that prevents him or her from filing a hearing request timely. *Hospicio San Martin*, DAB No. 1554 (1996). Ordinary negligence or even an honest misunderstanding of one's duties is not good cause.

Petitioners assert that good cause exists in their cases because they were affirmatively misled by an employee of CMS into believing that they did not have to file hearing requests while they pursued an alternate appeal process to the process for appeals established by regulation. They contend that the employee told them that they could pursue something called a "set aside appeal process" of the determination as to their effective date of benefits reassignment and that, if they were dissatisfied with the results of the process they could then file appeals of their adverse redeterminations. C-14-545, P. Ex. B; C-14-546, P. Ex. B; C-14-547, P. Ex. B. Effectively, Petitioners contend that they were told that the period during which they could file an appeal of the reconsideration determination would be extended indefinitely while they pursued a favorable outcome in the "set aside appeal process."[1]

Petitioners contend that the process was protracted but that they immediately filed their appeals, albeit with the wrong agency (OMHA), once they were advised that the outcome was unfavorable. They contend that they would have filed their hearing requests timely in these cases but for being told that they could pursue their rights in the "set aside appeal" process without jeopardizing their hearing rights.

For purposes of this ruling I conclude that a CMS employee did make a misleading statement to Petitioners about the impact of participating in the "set aside appeal process" and effectively told them that their right to a hearing at the Civil Remedies Division would be preserved while the alternative process ran its course. However, I find that this

[1] I have no idea what the "set aside appeal process" is inasmuch as neither party has provided me with an explanation of what it consists of. However, for purposes of this ruling I find that such a process exists and that Petitioner pursued a favorable outcome via the process and did not prevail.

misleading information should not have misled Petitioners to sleep on their rights. Consequently, I do not find good cause for extending their deadlines to file hearing requests.

I begin with the fact that Petitioners were told explicitly by the contractor that they *must* file hearing requests within 60 days of receiving adverse redeterminations if they wanted to preserve their rights to hearings. The language in the contractor's letter was unequivocal and offered no exceptions. Indeed, there was nothing in that statement to Petitioners that would lead any reasonable person to believe that his or her right to a hearing would be preserved beyond 60 days if he or she pursued some alternative appeal process.

Furthermore, Petitioners are not unsophisticated individuals. They are medical professionals who must deal with the intricacies of health insurance and the Medicare program every day of their lives. They are expected to understand the requirements of the program and, equally, they are expected to understand their rights and to exercise them consistent with regulatory requirements. Petitioners should not have been misled by the verbal assurances of a CMS employee given that they were on explicit written notice of their rights and obligations. In light of the fact that they had been given misleading and contradictory information they should have inquired further in order to verify their rights. They could have determined immediately exactly what their obligations were simply by contacting the Civil Remedies Division at the address given to them by the contractor.

Indeed, nothing that the CMS employee told Petitioners should have led them to believe that they could ignore the deadline for filing their hearing requests. The information that Petitioners received was certainly misleading but no reasonable person possessing Petitioners' level of sophistication would have concluded that it trumped the explicit notice sent by the contractor or, more importantly, the specific requirements of regulations that Petitioners, as Medicare participants, are charged with knowing.

/s/
Steven T. Kessel
Administrative Law Judge