

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Saravanan Valliappan, M.D.  
(NPI: 1003805045 / PTAN: V114145)  
Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-17-172

Decision No. CR4810

Date: March 22, 2017

**DECISION**

I sustain the determination of a Medicare contractor, acting on behalf of the Centers for Medicare & Medicaid Services (CMS), to approve the application of Petitioner, Saravanan Valliappan, M.D., to participate in the Medicare program at a new practice location effective July 21, 2016, with a retrospective billing date of June 21, 2016.

**I. Background**

CMS moved for summary judgment, asserting that there are no disputed issues of material fact. Alternatively, CMS moved that I dismiss Petitioner's hearing request on the ground that Petitioner abandoned its request for hearing because he hadn't filed a pre-hearing exchange. I deny the motion to dismiss. Petitioner's February 28, 2017 letter addresses the merits of the case and I accept it as Petitioner's pre-hearing exchange.

As to CMS's motion for summary judgment, I find it unnecessary to rule on whether the standards for summary judgment are met here. CMS offered no witnesses and Petitioner offered no exhibits in support of his arguments. Consequently, no legitimate purpose will be served by convening an in-person hearing. I decide this case based on the parties' written submissions.

CMS filed 12 proposed exhibits, identified as CMS Ex. 1-CMS Ex. 12. I receive these exhibits into the record.

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

### **A. Issue**

The issue is whether CMS, acting through its contractor, appropriately assigned an effective participation date of July 21, 2016, to Petitioner at his new practice location.

### **B. Findings of Fact and Conclusions of Law**

The effective date of participation of a supplier-physician who either applies to participate initially in Medicare or who applies to change his or her practice location is governed by 42 C.F.R. § 424.520(d). The regulation states that the effective participation date is the *later* of the following: the date of filing of a Medicare enrollment application that is “subsequently approved” by a Medicare contractor; or the date that the supplier first begins furnishing services at a new practice location.

The term “subsequently approved” is critical. A prospective supplier does not preserve an effective date by filing an application that the contractor doesn’t approve. If a contractor rejects an application then the filing date of that rejected application cannot determine the effective date of participation. Moreover, a contractor’s determination to reject an application is non-appealable, because it is not an initial determination that confers appeal rights. *See* 42 C.F.R. § 498.3(b).

Petitioner filed applications for Medicare enrollment on May 26, 2016. CMS Ex. 1; CMS Ex. 2. The contractor subsequently rejected these applications. CMS Ex. 5.<sup>1</sup> Petitioner then filed new enrollment applications on July 21, 2016. CMS Ex. 6-CMS Ex. 8. The contractor approved these applications on August 10, 2016, and assigned an effective participation date to Petitioner of July 21, 2016, based on the filing date of these accepted applications. CMS Ex. 9.<sup>2</sup>

The contractor’s action is entirely consistent with the governing regulation. Petitioner filed the applications that the contractor subsequently approved on July 21, 2016. The contractor assigned Petitioner an effective participation date of July 21 – the earliest

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<sup>1</sup> The reason for the contractor’s rejection is irrelevant inasmuch as the rejection is not appealable.

<sup>2</sup> By virtue of this acceptance, Petitioner is entitled to file claims for Medicare reimbursement for services provided as early as June 21, 2016.

effective participation date that the regulation permits. The contractor could not assign Petitioner an effective participation date based on the rejected May 26, 2016 applications because the contractor rejected these applications.

Petitioner argues, essentially, that he was led to believe by the contractor's silence that corrections to his May 26 applications that he faxed to the contractor were acceptable. He asserts that, had he known that the corrections were not acceptable, he would have cured any defect that existed in his May 26 applications timely, and these applications – and not the July 21 applications – would have been accepted.

I find this argument to be without merit for two reasons. First, it is effectively an attempt to appeal the contractor's rejection of the May 26 applications. As I have stated, Petitioner may not appeal that rejection. Second, it is an equitable argument in which Petitioner asserts, essentially, that he is not at fault for the contractor's rejection of his May 26 applications. I have no authority to order CMS to assign Petitioner an effective date other than that which is allowed by regulations based on equitable considerations.

/s/

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Steven T. Kessel  
Administrative Law Judge