

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Karen Ingrid Hunt, M.D.
(NPI: 1891799524; PTAN: A3378101),

Petitioner,

v.

Centers for Medicare & Medicaid Services,

Respondent.

Docket No. C-16-746

ALJ Ruling No. 2017-6

Date: December 22, 2016

DISMISSAL

Karen Ingrid Hunt, M.D. (Dr. Hunt or Petitioner) seeks money allegedly owed to her under the provisions in 42 U.S.C. § 1395l(x) regarding incentive payments for primary care physicians (incentive payments). The Centers for Medicare & Medicaid Services (CMS) did not pay Dr. Hunt the money she seeks because Dr. Hunt incorrectly identified her medical specialty as infectious diseases on a CMS-855I Medicare enrollment application filed in 2008, and not as one of the specialties related to primary care physicians. CMS Exhibit (Ex.) 1 at 2, 5; Petitioner (P.) Ex. 10 at 1; P. Ex. 14 at 2. Dr. Hunt filed another CMS-855I on May 27, 2014, to correct her medical specialty to family practice. CMS Ex. 5 at 1, 10. On June 25, 2014, a CMS administrative contractor made that correction retroactively effective to December 1, 2011. CMS Ex. 6 at 1.

During 2014 and 2015, Dr. Hunt requested incentive payments. CMS Ex. 10 at 3-6. On December 9, 2014, the CMS administrative contractor confirmed Dr. Hunt's change of medical specialty. CMS Ex. 7. On May 6, 2015, the CMS administrative contractor stated that Dr. Hunt was eligible for incentive payments starting in 2013. P. Ex. 11. However, on July 7, 2015, the CMS administrative contractor indicated that Dr. Hunt would not receive incentive payments until 2016. P. Ex. 12.

Following the July 7, 2015 letter, Dr. Hunt continued to request incentive payments. CMS Exs. 8, 10; P. Exs. 13, 14. The CMS administrative contractor construed one of Dr. Hunt's letters as a request for reconsideration of the initial determination setting the December 1, 2011 effective date for Dr. Hunt's change in her medical specialty; however, the CMS administrative contractor dismissed the request as untimely. CMS Exs. 8, 9. Dr. Hunt disputed the dismissal and the CMS Administrative contractor issued a reconsidered determination on May 26, 2016, upholding its previous effective date determination concerning Dr. Hunt's medical specialty.¹ CMS Exs. 10, 11.

Dr. Hunt subsequently requested a hearing before an administrative law judge (ALJ). However, Dr. Hunt's purpose in doing so was to obtain incentive payments to which Dr. Hunt believes she is entitled. Hearing Request at 2, 6. CMS moves for dismissal of the hearing request asserting that Dr. Hunt does not have a right to an ALJ hearing on CMS's decision regarding eligibility for incentive payments. CMS Pre-Hearing Brief with Incorporated Motion to Dismiss at 9-10. In response, Dr. Hunt clearly states that she is not disputing the effective date of the change in her enrolled medical specialty; however, Dr. Hunt asserts she has a right to appeal CMS's decision related to incentive payments. Petitioner's Pre-Hearing Brief with Incorporated Motion for Summary Judgment at 4-5.

The question before me is whether Dr. Hunt has the right to ALJ review of CMS's decision not to pay her incentive payments for services provided prior to 2016.

By statute, on or after January 1, 2011, CMS pays primary care practitioners ten percent more than the amount normally payable under Medicare rules for primary care services. For a physician to receive these incentive payments, he or she must have a primary specialty in family medicine, internal medicine, geriatric medicine, or pediatric medicine. Further, the physician's primary care services must have accounted for at least 60 percent of allowed Medicare charges for a certain period of time (as determined by the Secretary of Health and Human Services) before receiving incentive payments. Significantly, "[t]here shall be no administrative or judicial review under section 1395ff of [title 42 U.S.C.], 1395oo of [title 42 U.S.C.], or otherwise, respecting the identification of primary care practitioners under this subsection." 42 U.S.C. § 1395l(x); *see* 42 C.F.R. § 414.80.

The main reasons that CMS will not make incentive payments to Dr. Hunt until 2016 are that Dr. Hunt incorrectly designated her medical specialty on her 2008 enrollment application and the fact that she did not correct that error until 2014. *See* CMS Ex. 5; P. Ex. 12. Although Dr. Hunt's enrollment issue (i.e., the effective date of the change in medical specialty) is connected to CMS's decision concerning Dr. Hunt's incentive

¹ The reconsidered determination indicates that the initial determination was the CMS administrative contractor's December 9, 2014 letter to Dr. Hunt confirming a change in enrollment records regarding her medical specialty; however, the actual initial determination was dated June 25, 2014. CMS Exs. 6, 7, 11.

payments, 42 U.S.C. § 1395l(x) clearly prohibits administrative review of the latter decision. This is consistent with 42 C.F.R. § 498.3(b), which does not include decisions related to incentive payments as initial determinations that are appealable to ALJs.

An ALJ may dismiss a hearing request when the party who made the hearing request does not have a right to a hearing or withdraws a request for a hearing. 42 C.F.R. §§ 498.68, 498.70(b). In the present case, Dr. Hunt has no right to an ALJ hearing to contest CMS's decision not to make incentive payments to her until 2016. Further, to the extent that the hearing request could have been construed as appealing CMS's determination of the effective date of Dr. Hunt's correction of her medical specialty (i.e., the issue in the reconsidered determination), I consider Dr. Hunt to have withdrawn the request in regard to that issue based on her clear statement that she is not appealing that matter. Petitioner's Pre-Hearing Brief with Incorporated Motion for Summary Judgment at 4-5. Therefore, I dismiss Dr. Hunt's hearing request.² As a result, the reconsidered determination upholding the December 1, 2011 effective date for the correction of Dr. Hunt's medical specialty is binding.³ 42 C.F.R. § 498.25(b).

It is so ordered.

_____/s/_____
Scott Anderson
Administrative Law Judge

² Within 60 days of receiving this Dismissal, either party may request that I vacate this Dismissal. A party must provide good cause to support its request. 42 C.F.R. § 498.72.

³ On August 5, 2016, the CMS administrative contractor issued a "Corrected Letter" modifying the effective date of Dr. Hunt's change of her medical specialty to June 13, 2014. P. Ex. 19 at 1. Like the initial determination, the "Corrected Letter" provided a right to reconsideration. CMS Ex. 6 at 2; P. Ex. 19 at 2. However, to modify an initial determination upheld in a reconsidered determination, the CMS administrative contractor needed to reopen and revise the May 26, 2016 reconsidered determination or request that I change the effective date in my decision. 42 C.F.R. § 498.25(b). But, by August 5, 2016, CMS could not reopen and revise the reconsidered determination because that was more than one year after it issued the June 25, 2014 initial determination. 42 C.F.R. § 498.30. Further, since CMS has sought and received dismissal of this case, I will not issue a decision on the merits. Therefore, the reconsidered determination upholding the earlier effective date is binding. 42 C.F.R. § 498.25(b).