

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Ramarao Kaza, M.D.
Ramarao Kaza, M.D., P.C.
Docket No. A-18-100
Decision No. 2924
January 31, 2019

**REMAND OF
ADMINISTRATIVE LAW JUDGE DECISION**

Ramarao Kaza, M.D. and Ramarao Kaza, M.D., P.C. (Petitioners) appeal the decision by an Administrative Law Judge (ALJ) to grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) and to sustain the reactivation dates of Petitioners' Medicare billing privileges of August 13, 2017, for the group medical practice enrollment, and August 20, 2017, for the individual enrollment. *Ramarao Kaza, M.D. and Ramarao Kaza, M.D., P.C.*, DAB CR5084 (2018) (ALJ Decision).

For the reasons we explain below, we vacate the ALJ's grant of summary judgment and remand this case to the ALJ for further proceedings.

Legal Background

A supplier of Medicare services (which term includes physicians and physician practices, such as Petitioners) must maintain active enrollment in the Medicare program to receive payment for Medicare-covered items and services furnished to Medicare beneficiaries. 42 C.F.R. §§ 400.202 (defining "Supplier"), 424.500, 424.502, 424.505, 424.510, 424.516. The Medicare enrollment process includes: (1) identifying a supplier; (2) validating the supplier's eligibility to provide items or services to Medicare beneficiaries; (3) identifying and confirming the supplier's practice locations and owners; and (4) granting the supplier Medicare billing privileges. *Id.* § 424.502.

To maintain Medicare billing privileges, an enrolled supplier is required to resubmit and recertify its enrollment information every five years. *Id.* § 424.515. However, "CMS reserves the right to perform off cycle revalidations in addition to the regular 5-year revalidations and may request that a . . . supplier recertify the accuracy of the enrollment information when warranted to assess and confirm the validity of the enrollment information maintained by CMS." *Id.* § 424.515(d)(1). In addition, "[o]n or after March 23, 2012, Medicare . . . suppliers . . . may be required to revalidate their enrollment outside the routine 5-year validation cycle." *Id.* § 424.515(e).

CMS may deactivate a supplier's Medicare billing privileges if, among other reasons, a "supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information." *Id.* § 424.540(a)(3). Once a supplier's billing privileges have been deactivated, the "supplier must complete and submit a new enrollment application to reactivate its Medicare billing privileges, or, when deemed appropriate, at a minimum, recertify" the accuracy of its enrollment information. *Id.* § 424.540(b)(1).

CMS may reject a supplier's enrollment application if the "supplier fails to furnish complete information on the . . . enrollment application within 30 calendar days from the date of the contractor request for the missing information." *Id.* § 424.525(a)(1). After rejection of an enrollment application, "the . . . supplier must complete and submit a new enrollment application and submit all supporting documentation for CMS review and approval." *Id.* § 424.525(c). A supplier whose enrollment application has been rejected has no right to appeal that rejection. *Id.* § 424.525(d).

Once CMS approves an enrollment application, the effective date of a physician's billing privileges is the latter of either: "(1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) The date that the supplier first began furnishing services at a new practice location." *Id.* § 424.520(d). The "date of filing" means "the date that the Medicare . . . contractor receives a signed . . . enrollment application that the Medicare . . . contractor is able to process to approval." 73 Fed. Reg. 69,726, 69,766-67 (Nov. 19, 2008); *accord Alexander C. Gatzimos, MD, JD, LLC d/b/a Michiana Adult Medical Specialists*, DAB No. 2730, at 5 (2016).

CMS's determination of the effective date of a supplier's billing privileges is an "initial determination" subject to review under 42 C.F.R. Part 498. 42 C.F.R. § 498.3(a)(1), (b)(15). A supplier may request an ALJ hearing and, if dissatisfied with the ALJ's decision, may request review from the Departmental Appeals Board (Board). *Id.* § 498.5(f).

Case Background¹

1. The revalidation process and Petitioners' applications

CMS, acting through its contractor Wisconsin Physicians Service Insurance Corporation Government Health Administrators (WPS), sent Dr. Kaza letters dated March 6, 2017, stating: "Every five years, CMS requires you to revalidate your Medicare enrollment

¹ The facts contained in this section derive from the ALJ Decision and the record and are presented to provide context for the discussion of the issues raised in this appeal.

record. You need to update or confirm all the information in your record, including your practice locations and reassignments.” CMS Ex. 1, at 1, 3, 5. Two of the letters referenced the National Provider Identifier (NPI) for Dr. Kaza’s individual enrollment, and one letter referenced the NPI for Dr. Kaza’s group enrollment. *Id.* The letters all directed Dr. Kaza to respond by revalidating the identified records by May 31, 2017. *Id.*

Dr. Kaza has asserted throughout the appeals process that he submitted form CMS-855B, for the group enrollment, via the Provider Enrollment, Chain, and Ownership System (PECOS) on March 21, 2017, which submission was assigned a tracking number of T032120170002123. *See, e.g.*, CMS Ex. 22, at 2. However, according to CMS, the first application received in response to the March 6 letters was the CMS-855I, the application for the individual physician, on May 22, 2017.² CMS Response to Petitioners’ Request for Review (CMS Response) at 2. WPS sent a development request dated May 25, 2017, for that application and requested certain information within 30 days. CMS Ex. 3, at 1. WPS did not receive a response to that development request.³ CMS Response at 2. By letter dated June 27, 2017, WPS informed Dr. Kaza that it was rejecting the May 22, 2017 application because it had not received a response to the development request within 30 days. CMS Ex. 4, at 1. WPS then sent two additional letters, both also dated June 27, 2017, informing Dr. Kaza: **“We have stopped your Medicare billing privileges on June 26, 2017, because you haven’t revalidated your enrollment record with us, or you didn’t respond to our requests for more information. We will not pay any claims after this date.”** CMS Ex. 5, at 1, 3.

On July 5, 2017, WPS received via PECOS an 855I application, which was assigned tracking number T070520170000845. CMS Ex. 6, at 1; CMS Response at 2. In response to a July 10, 2017 development request, CMS Ex. 7, Dr. Kaza submitted corrections via PECOS on July 11, 2017, CMS Ex. 8. On August 4, 2017, Dr. Kaza submitted a CMS-855R to reassign benefits.⁴ CMS Ex. 11, at 1. On August 11, 2017, WPS rejected both the 855I and the 855R, in part because they were missing an 855B application.⁵ CMS Ex. 12, at 1; CMS Ex. 13, at 1.

² CMS has explained that the control number appearing on the bottom of the application, 2017142, CMS Ex. 2, at 1, indicates the date of receipt, “2017” being the year and “142” being the 142nd day of the year, i.e. May 22. CMS Response to Petitioners’ Request for Review (CMS Response) at 2 n.1.

³ Dr. Kaza asserted that he did not receive the development request, but WPS later confirmed that it was sent to the correct mailing address. CMS Ex. 10, at 1-2; Request for Review, “Summary of Facts” ¶ 2 (“We have no record of any requests for more information from the contractor or else we would have responded in a prompt manner . . .”).

⁴ CMS has explained that the control number on the bottom left of the application, 2017216, CMS Ex. 11, at 1, indicates the date of receipt, “216” being the 216th day of 2017, i.e. August 4, 2017. CMS Response at 3 n.3.

⁵ WPS’s rejection of Dr. Kaza’s 855I filed on May 22, 2017, did not reference a missing 855B application as a reason for the rejection. *See* CMS Ex. 4, at 1.

Then, according to CMS, on August 14, 2017, WPS received the 855B application that it ultimately approved. CMS Response at 3; CMS Ex. 14, at 5. The tracking number indicated on the application is T032120170002123, with an “L&T ID”⁶ number of 20170705001996. CMS Ex. 14, at 1. The last page of the application appears to be a partial screenshot stating: “PE – Web Signature 115518140 for RAMARAO KAZA MD PC, received on 8/14/2017.” *Id.* at 5. On August 21, 2017, WPS received via postal mail the 855I application which it ultimately approved.⁷ CMS Response at 4.

By letters dated September 15, 2017, and September 18, 2017, WPS informed Dr. Kaza that the 855B and 855I applications, respectively, had been approved, with an effective date of September 23, 2010. CMS Exs. 20, 21. For the group enrollment, WPS stated that “the effective date . . . reflects a gap in coverage from June 26, 2017 to August 13, 2017 for failure to respond to the revalidation request,” CMS Ex. 20, at 1, and for the individual enrollment, there was “a gap in coverage from June 26, 2017 to August 20, 2017” for the same reason, CMS Ex. 21, at 2.

2. *The reconsideration determination*

On reconsideration, Dr. Kaza asserted, among other arguments, that he had submitted an application via PECOS on March 21, 2017. CMS Ex. 22, at 2. He outlined the chronology of events as he understood them and asserted that “[t]here has not been even a 15 day gap in our reaching out and in fulfilling each request we have had . . . [and that] [t]here has been a lot of conflicting information as to what is needed.” *Id.* at 2. In its reconsidered determination, WPS acknowledged that it had received applications on: May 22, 2017 (855I), rejected June 27, 2017; July 5, 2017 (855I), rejected August 11, 2017; August 4, 2017 (855R), rejected on August 11, 2017; and that these applications had been rejected for failure to respond completely to development requests. CMS Ex. 23, at 3. WPS then stated that it had received the 855B application via web application (application ID: 115518140 and web tracking ID: O20101014000731)⁸ on August 14, 2017, and the 855I application (application ID: 130309953)⁹ on August 21, 2017, and

⁶ CMS has not identified what an “L&T ID” number is, and it is not readily apparent from the record. However, the L&T ID number appears to be related to the date of some event in the application process.

⁷ CMS states that the control number at the bottom of the page, 2017233, CMS Ex. 17, at 1, indicates the year and day of the year that WPS received the application, the 233rd day of the year being August 21. CMS Response at 4 n.4.

⁸ This “application ID” does not appear on the application that CMS submitted to the ALJ, though it does appear on the screenshot page appended to the application. *See* CMS Ex. 14. The “web tracking ID” that WPS identified is listed on the application CMS submitted as the “Enrollment ID.” *Id.* at 1.

⁹ This “application ID” does not appear on the application that CMS submitted to the ALJ. *See* CMS Ex. 17. Instead, the application contains three other distinct numbers, one of which CMS has asserted reflects the date that WPS received the application. *Id.* at 1-2; CMS Response at 4 n.4.

that these forms were ultimately approved on September 15, 2017, and September 18, 2017, respectively. CMS Ex. 23, at 3-4. WPS also responded to Dr. Kaza's assertion that he had submitted an application via PECOS on March 21, 2017, and stated that "WPS GHA has no record of receiving your application submission on March 21, 2017. When the PECOS enrollment is not completed such as an e-signature WPS GHA does not receive the application to process." *Id.* at 4. WPS also responded to Dr. Kaza's assertion that the 855B and 855I that were ultimately approved had been submitted in the same envelope and, therefore, should have the same receipt date; according to WPS, the 855B was submitted via PECOS whereas the 855I was submitted by mail, which accounted for the different dates of receipt. *Id.* Finally, WPS stated that "[t]he contractor correctly deactivated the provider or supplier's Medicare billing privileges due to not receiving the requested information to revalidate your Medicare enrollment records." *Id.* WPS also stated that there was a "gap in [Petitioners'] reimbursement from June 26, 2017, through August 20, 2017, for your Medicare enrollment record." *Id.*

3. Proceedings before the ALJ

Dr. Kaza requested an ALJ hearing, asserting that "[o]ur original application, 855B for Group via PECOS, was received on March 21, 2017." Request for Hearing at 1. Dr. Kaza further asserted that he responded to a telephone inquiry on May 16, 2017, which requested the 855I application, which he submitted on May 22, 2017. *Id.* Dr. Kaza stated that, on May 25, 2017, he was asked to submit information that did not apply to his practice and then by letter dated June 27, 2017, Dr. Kaza's billing privileges were deactivated. *Id.* Dr. Kaza asserted that he was in contact with several different WPS representatives throughout the process and that he received confusing and conflicting information. *Id.* at 1-3. Dr. Kaza stated: "My office has repeatedly tried to comply with the wishes of WPS, despite the lack of clarity as to what the actual requirements are and under what circumstances those requirements were required for revalidation/re-enrollment." *Id.* at 3.

CMS, in arguing for summary judgment, asserted that Petitioners' billing privileges were deactivated on June 26, 2017, and that WPS did not receive the group enrollment application it ultimately approved until August 13, 2017, and the individual enrollment application it ultimately approved until August 20, 2017. CMS's Combined Motion and Memorandum of Law in Support of Summary Judgment and Prehearing Brief (CMS MSJ) at 1. CMS argued that Petitioners were not permitted to challenge the deactivations but that the deactivations were appropriate nonetheless. *Id.* at 7-8. Finally, CMS asserted that equitable relief, premised on Petitioners' arguments that WPS gave conflicting information, that Dr. Kaza practices in an underserved area, and that he has practiced without issue for forty years, is not available in these administrative proceedings. *Id.* at 8 (citing *Amber Mullins, N.P.*, DAB No. 2729, at 5-6 (2016); *US Ultrasound*, DAB No. 2302, at 8 (2010)).

Dr. Kaza responded to CMS's motion for summary judgment and asserted, again, that he filed the 855B application on March 21, 2017. Petitioners' Response to Brief (P. Response); Petitioners' Response to CMS's Combined Motion and Memorandum of Law in Support of Summary Judgment and Prehearing Brief (P. Response to CMS MSJ) at 1. Dr. Kaza further asserted that "July 21, 2017, was the first indication that CMS had a problem with it." P. Response (citing CMS Ex. 9, at 9, annotation¹⁰). Dr. Kaza, for the first time, also asserted that CMS possibly confused him with another physician who was located in a different state. *Id.*; P. Response to CMS MSJ at 4-5. Petitioner then requested that "CMS . . . rescind that deactivation." P. Response.

4. The ALJ Decision

The ALJ granted summary judgment in favor of CMS and sustained the reactivation date of August 13, 2017, for the group enrollment and August 20, 2017, for the individual enrollment. ALJ Decision at 1. The ALJ determined that, pursuant to 42 C.F.R. § 498.3(b) and (d), the CMS contractor's decision to deactivate billing privileges is not subject to review, and, therefore, he had no authority to decide that issue. *Id.* at 2. The ALJ next determined that the date of reactivation of billing privileges is "the date when the contractor receives a re-enrollment application that it processes to completion." *Id.* at 3 (citing 42 C.F.R. § 424.520(d); *Willie Goffney, Jr., M.D.*, DAB No. 2763 (2017), *appeal docketed*, *Goffney v. Hargan*, No. 2:17-cv-08032 (C.D. Cal. Nov. 3, 2017); Medicare Program Integrity Manual, § 15.27.1.2). The ALJ then made findings of undisputed facts, which we excerpt below:

- Petitioners submitted a reenrollment application on May 22, 2017.
- WPS rejected Petitioners' application and deactivated their billing privileges on June 27, 2017.
- Petitioner Kaza submitted a second enrollment application on July 5, 2017.
- On August 4, 2017, Petitioner Kaza submitted an application for reassignment of the individual billing privileges to the group.
- On August 11, 2017, WPS rejected the July 5 and August 4 applications.
- On August 14, 2017, Dr. Kaza submitted a group enrollment application and on August 21, 2017, Dr. Kaza submitted an individual enrollment application. The contractor subsequently approved these applications and reactivated the group's billing privileges effective August 13, 2017, and Dr. Kaza's individual's billing privileges effective August 20, 2017.

¹⁰ Page 9 of CMS Exhibit 9 is a photocopy of an envelope addressed to WPS from Dr. Kaza, and we see no annotation on this page. However, CMS Exhibit 10 includes a call log reflecting a "Provider Enrollment – Service Request" telephone call on July 21, 2017, from Dr. Kaza's employee during which she was informed that "the signatures are needed on the 855B tracking T032120170002123/." CMS Ex. 10, at 2.

Id. at 3-4. The ALJ then reasoned that he could “only decide whether the contractor based its determinations to reactivate Petitioners’ billing privileges . . . on applications that the contractor subsequently approved” and that “[t]he undisputed facts establish that it was the August 14 and August 21 applications that the contractor subsequently approved.” *Id.* at 4. The ALJ concluded that “these applications are the basis for the reactivation dates.” *Id.* In a footnote, the ALJ recognized that “[t]echnically, the earliest possible reactivation date[s]” were August 14, 2017, and August 21, 2017, for the group and individual enrollments respectively. *Id.* at 4 n.1. However, the ALJ stated that he would “not adjust the August 13 and August 20 reactivation dates in this case to reflect the actual submission dates of the enrollment applications . . . given that CMS evidently does not dispute those reactivation dates.” *Id.* Finally, the ALJ rejected the “equitable aspect to Petitioners’ argument” as something that he had “no authority to hear and decide inasmuch as equitable challenges to CMS’s determinations are not appealable.” *Id.* at 5 (citing *U.S. Ultrasound* at 8).

5. The appeal to the Board

Dr. Kaza then appealed the ALJ Decision, requesting that the Board reactivate his billing privileges as of June 26, 2017. Request for Review “Summary of Relief Sought.” In his “Summary of Facts,” Dr. Kaza asserts that WPS mistook him for another physician, which error sparked the revalidation process that has unfolded. *Id.*, “Summary of Facts” ¶¶ 1-4. Dr. Kaza further asserts that he submitted both the 855B and the 855I applications in the same envelope on August 8, 2017, but WPS acknowledged receipt of the applications on different days, leading to different reactivation dates. *Id.* ¶ 5. Dr. Kaza also states that WPS has made errors and asserts that WPS rejected his July 5, 2017 application for not having submitted the 855B application and stated: “I am confused as to how the contractor can reference the reception of the application and then reject us, in that same letter, for the application as ‘missing.’” *Id.* ¶ 8.

Standard of Review

Whether the ALJ properly granted summary judgment is a legal issue we review *de novo*. *OC Housecalls, Inc.*, DAB No. 2893, at 8 (2018) (citing *Livingston Care Ctr.*, DAB No. 1871, at 5 (2003), *aff’d*, *Livingston Care Ctr. v. U.S. Dep’t of Health & Human Servs.*, 388 F.3d 168, 17-73 (6th Cir. 2004)). The party moving for summary judgment initially must demonstrate that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the moving party meets that burden, the non-moving party must “come forward with specific facts showing that there is a genuine issue for trial.” *Id.* (quoting *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

(internal quotation marks and citation omitted)). The adjudicator must view the record in the light most favorable to the non-moving party and draw all reasonable inferences from the evidence in favor of the non-moving party. *Id.* (citing *Livingston Care Ctr.* at 5); *see also Daniel H. Kinzie, IV, M.D.*, DAB No. 2341, at 5 (2010).

Analysis

1. The Board denies CMS's motion to dismiss Petitioners' Request for Review.

We turn first to the preliminary matter of CMS's pending motion to dismiss Petitioners' Request for Review. CMS asserts that Petitioners filed the Request for Review 61 days after receiving the ALJ's decision and, therefore, it is untimely. CMS Response at 1, 7. A party seeking the Board's review of an ALJ's decision under 42 C.F.R. Part 498 must request review within 60 days after receiving the ALJ's decision. 42 C.F.R. § 498.82(a)(2). The ALJ issued his decision in this case via electronic filing (DAB E-file) on April 30, 2018. *See* Transmittal of ALJ Decision. Dr. Kaza, who participated in DAB E-file, is deemed to have received the ALJ's decision the day it was issued. *See* E-Filing Notice for Non-Federal Parties ("Parties are considered served when a document is filed electronically."). Sixty days after April 30, 2018, was June 29, 2018. Dr. Kaza first filed his Request for Review with the Board on June 30, 2018. *See* Request for Review. Therefore, Dr. Kaza filed the Request for Review one day past the deadline for filing.

However, the Board may extend the time for filing for good cause. 42 C.F.R. §§ 498.82(b); 498.40(c). The Board has never adopted an exhaustive definition of "good cause" and has declined to determine whether that term is limited to circumstances beyond a party's control, reasoning often that petitioners have "failed to establish good cause under any reasonable definition of that term." *See, e.g., Maximum Hospice and Palliative Care*, DAB No. 2898, at 4, 6 (2018); *Rutland Nursing Home*, DAB No. 2582, at 5 (2014). The Board, though, has found good cause to extend the time for filing where a party has demonstrated that it had a reasonable basis to misunderstand a filing deadline. *Steven Getchell*, Recommended Decision, Docket No. A-08-111, at 5-6 (2008). As we explain below, we find that the circumstances presented in this case also establish good cause to extend the time period for filing by one day.

Dr. Kaza asserts that, on June 27, 2018, within the 60-day period for filing, he sent his appeal to the Provider Reimbursement Review Board (PRRB) for CMS to review its decision "with the understanding from the ALJ's decision that the contractor's decision cannot be challenged and [that the ALJ] has no authority to hear, although he saw an equitable argument in the Petitioner's appeal." Petitioners' Response to Respondent's Request for Dismissal and Motion for Summary Judgement (P. Response to MTD) at 1.

Dr. Kaza further asserts that “[t]he PRRB after some research responded by directing the Petitioner to go to the website that gives all the details of the appeal process” and that he “followed the instructions and faxed the completed appeal form to the correct place on June 30, 2018, and before the 60 days had lapsed.” *Id.*

We note, first, that Dr. Kaza did make timely, albeit misdirected, efforts to elevate his case after the ALJ Decision. Within the 60-day filing period, Dr. Kaza did attempt to file an appeal with the PRRB. Promptly after Dr. Kaza received information from the PRRB as to the correct way to appeal, he sent his appeal to the Board by facsimile. Second, it appears that Dr. Kaza believed that he had no right to appeal the ALJ’s decision to the Board based on the ALJ’s rejection of Petitioners’ equitable arguments. With respect to Dr. Kaza’s assertions that WPS had made various errors, the ALJ stated: “This is an argument that I have no authority to hear and decide inasmuch as equitable challenges to CMS’s determinations are not appealable.” ALJ Decision at 5. Considering the ALJ’s statement, the equitable nature of Dr. Kaza’s arguments, and his pro se status, we find that Dr. Kaza’s confusion as to whether and how he could appeal to the Board was understandable. In sum, given Dr. Kaza’s confusion both about where to appeal and whether he could appeal and given the very brief delay in his filing the Request for Review, we find that Dr. Kaza has demonstrated good cause to excuse his one-day lapse. For these reasons, we deny CMS’s motion to dismiss and proceed to the merits of Petitioners’ appeal.

2. Petitioners’ argument of mistaken identity is not material to the issue before the Board.

Dr. Kaza has argued both before the ALJ and now before the Board that WPS confused him with another doctor with a practice in a different state. *See* P. Response to CMS MSJ at 4; Request for Review, “Summary of Facts” ¶¶ 1-4. Due to this confusion, Dr. Kaza argues, WPS erroneously required him to recertify his enrollments in 2017 and to submit information pertaining to a non-existent second practice location. Request for Review, “Summary of Facts” ¶¶ 1-2. Dr. Kaza submitted evidence to the ALJ—printouts from Data.CMS.gov provider search results—that demonstrates that both he and the other physician had their individual enrollment records updated on the same date. P. Ex. 1, at 1, 3, 4, 5. He has also referenced an “Application Data Report” CMS submitted, which he asserts demonstrates that WPS confused him with an out-of-state physician. Request for Review, “Summary of Facts” ¶ 1. The referenced “Application Data Report” is the CMS-855I that CMS asserts Dr. Kaza submitted on July 5, 2017 (CMS Ex. 6), and then corrected on July 11, 2017 (CMS Ex. 8). *See* CMS List of Proposed Exhibits. The data listed under “DEA Registration Information” on that application identifies both Michigan, where Dr. Kaza practices, as well as the state where Dr. Kaza asserts the physician with whom WPS has confused him is located. CMS. Ex. 6, at 2; CMS Ex. 8, at

2. Considering this evidence, Dr. Kaza has raised a question as to whether WPS actually confused his enrollments with that of another physician. However, while we recognize the evident frustration Dr. Kaza has experienced throughout this process, his argument is not material to the only issue the Board is authorized to hear in this case—that of the effective date of the reactivation of his billing privileges.

Once CMS requested that Dr. Kaza recertify his enrollment applications, Dr. Kaza was required to submit the requested information, and if he did not CMS was authorized to deactivate Petitioners' billing privileges. *See* 42 C.F.R. § 424.540(a)(3). CMS's determination to deactivate Petitioners' billing privileges is not subject to appeal. *Goffney* at 3-5. Nor is CMS's rejection of Dr. Kaza's enrollment applications. *Lindsay Zamis, M.D., a Professional Corporation*, DAB No. 2802, at 9-10 (2017); *James Shepard, M.D.*, DAB No. 2793, at 8 (2017) (both citing 42 C.F.R. § 424.525(d)). Because Dr. Kaza's argument of mistaken identity, at its essence, challenges CMS's decision to request recertification of his enrollments, the subsequent deactivation of his billing privileges, and the rejection of his applications, it is not subject to Board review. Moreover, resolution of the remaining issue—the effective date(s) of the reactivation of Petitioners' billing privileges—is dictated by the date on which WPS received the applications that were ultimately approved. *Shepard* at 7.

To the extent that Dr. Kaza argues that the reactivation dates should be set retroactively to the date that CMS deactivated his billing privileges because the situation in which Dr. Kaza finds himself is somehow unfair, the Board has no authority to provide any equitable relief, as Dr. Kaza himself appears to have acknowledged in his Request for Review (at "Summary of Facts" ¶ 7). *Mullins* at 6 ("The Board has consistently held that neither it nor an ALJ may provide equitable relief." (citing, *e.g.*, *US Ultrasound* at 8)). Therefore, regardless of whether WPS mistook Dr. Kaza for another physician or not (and we make no finding on that question), the argument is irrelevant in determining the effective date(s) of the reactivation of Petitioners' billing privileges after Dr. Kaza's applications were ultimately approved.

3. *The ALJ erred in granting summary judgment in favor of CMS.*

We now consider whether the ALJ properly granted CMS summary judgment. As we explain below, we conclude that the date on which WPS received Dr. Kaza's CMS-855B application is in fact in dispute. Because the date of receipt (i.e. the date of filing) is material to determine the effective date of the reactivation of Dr. Kaza's medical practice's billing privileges, pursuant to 42 C.F.R. § 424.520(d), this disputed issue precludes summary judgment in favor of CMS.

The ALJ identified as an undisputed fact that, “[o]n August 14, 2017, Petitioner Kaza submitted a new enrollment application on behalf of Petitioner Kaza, P.C.” ALJ Decision at 4. CMS has asserted that the application WPS ultimately approved for Dr. Kaza’s group enrollment was received by WPS on August 14, 2017. CMS MSJ at 3; CMS Response at 3; CMS Ex. 14. However, Dr. Kaza has maintained that he submitted a CMS-855B application on March 21, 2017, and has provided a tracking number—T03212017000213—associated with that application as well as pointed to evidence of an application that reflects that tracking number. P. Response to CMS MSJ at 2 (citing CMS Ex. 22, at 13). Reviewing the evidence submitted to the ALJ, it appears that the 855B application WPS ultimately approved is the same application that Dr. Kaza submitted through PECOS on March 21, 2017. The tracking number identified on the application CMS asserts was received on August 14, 2017, is the same tracking number that Dr. Kaza asserts pertains to the application he submitted on March 21, 2017: T032120170002123. *Compare* CMS Ex. 14, at 1, *with* CMS Ex. 22, at 13. This observation is significant because, if WPS received the application Dr. Kaza submitted on March 21, 2017, that is, prior to August 14, 2017, Dr. Kaza, P.C. would be entitled to an earlier effective date.¹¹

Although CMS asserts that WPS did not receive the 855B application until August 14, 2017, and Dr. Kaza asserts that he submitted it on March 21, 2017, the application on its face indicates that it was received on July 5, 2017. CMS Ex. 14, at 1. Specifically, under the section entitled “Submission History for the Application,” the application indicates that it was “RECEIVED” on “07/05/2017.” *Id.* CMS directed the ALJ to the last page of CMS Exhibit 14 as evidence that the application was received on August 14, 2017. CMS MSJ at 3. That page appears to be a screenshot appended to the application that states that a “Web Signature” was received on August 14, 2017. CMS Ex. 14, at 5. While CMS has not clarified how the “Web Signature” receipt date is equivalent to the application receipt date, on reconsideration WPS offered a generic explanation. CMS Ex. 23, at 4. WPS stated that “[w]hen the PECOS enrollment is not completed such as an e-signature WPS GHA does not receive the application to process.” *Id.* While this might

¹¹ Dr. Kaza also disputes CMS’s assertion that WPS received the CMS-855B and CMS-855I applications that were ultimately approved on different dates because, he says, he mailed both of the applications to WPS in the same envelope on August 8, 2017. Request for Review, “Summary of Facts” ¶ 8; CMS Ex. 22, at 3. Even if the 855B application ultimately approved was originally submitted by PECOS on March 21, 2017, the 855I application was signed on August 18, 2017, the envelope addressed to WPS from Dr. Kaza is postmarked August 18, 2017 and, no evidence has been provided of any earlier submission of the 855I that was ultimately approved, through PECOS or otherwise. CMS Ex. 17, at 33, 37. Therefore, there is no genuine dispute as to the date WPS received the 855I application it ultimately approved.

explain an August 14, 2017 date of receipt for an application that was submitted on March 21, 2017, it does not explain why the application itself indicates that it was received on July 5, 2017. And no explanation is self-evident from the exhibits submitted to the ALJ.¹²

Viewing this evidence in the light most favorable to Petitioners, the non-moving parties, as we are required to do, we conclude that there is a genuine dispute of material fact with respect to the date on which WPS actually received Dr. Kaza's 855B application. Therefore, we conclude that summary judgment in favor of CMS is inappropriate. Accordingly, we vacate the ALJ's decision granting summary judgment in favor of CMS and remand this case to the ALJ for further proceedings consistent with this decision. On remand, the ALJ should receive evidence into the record and conduct a hearing, if appropriate; weigh the evidence of record; and make findings of fact with respect to the date WPS first received Dr. Kaza's 855B enrollment application that it ultimately approved.

We also identify another discrepancy that the ALJ must resolve on remand. In its briefs, CMS asserts that WPS received the enrollment applications (and therefore set the effective dates) on August 13, 2017, for the group enrollment, and August 20, 2017, for the individual enrollment, while simultaneously asserting that the pertinent dates are August 14, 2017, and August 21, 2017, respectively. CMS MSJ at 1, 3-4; CMS Response at 1, 3-4. The ALJ recognized that the effective date of the reactivation of Dr. Kaza's billing privileges was "[t]he date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor." ALJ Decision at 3 (quoting 42 C.F.R. § 424.520(d)). The ALJ found that the applications that were subsequently approved were received on August 14, 2017, and August 21, 2017, but then determined that the earliest effective dates were August 13, 2017, and August 20, 2017. *Id.* at 4 n.1. The ALJ acknowledged the discord between the regulation and the effective dates but stated that he would "not adjust the August 13 and August 20 reactivation dates in this case to reflect the actual submission dates of the reenrollment applications that the contractor subsequently approved, given that CMS evidently does not dispute those reactivation dates." *Id.* However, granting Petitioners effective dates based on dates other than the dates on which WPS received the applications that were subsequently approved violates 42 C.F.R. § 424.520(d). *See Shepard* at 7 (rejecting petitioner's argument that the effective date should be based on the date of an earlier application that was rejected). On remand, the ALJ shall determine the correct effective dates of the reactivation of Petitioners' billing privileges based on the evidence of record and in accordance with 42 C.F.R. § 424.520(d).

¹² We note that the 855I submitted through PECOS, which CMS acknowledged WPS received on July 5, CMS MSJ at 2-3, has receipt markings similar to the 855B. CMS Ex. 6, at 1; CMS Ex. 8, at 1. We view this as a further indication that the actual receipt date of the 855B may also be July 5, and the ALJ may take this into account on remand.

Conclusion

For the reasons discussed above, we vacate the ALJ's decision and remand this case to the ALJ for further proceedings consistent with this decision.

/s/
Christopher S. Randolph

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member