

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Balaji Charlu, M.D.  
(NPI Number 1609980432),

Petitioner

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-366

Decision No. CR2105

Date: April 07, 2010

**DECISION GRANTING SUMMARY DISPOSITION  
TO CENTERS FOR MEDICARE & MEDICAID SERVICES**

I grant summary disposition to the Centers for Medicare & Medicaid Services (CMS) sustaining its determination and that of its contractor, Palmetto GBA (Palmetto), to enroll Petitioner, Balaji Charlu, M.D., in the Medicare program with an effective date of participation of May 21, 2009.

**I. Background**

Petitioner is a physician. He filed a hearing request to challenge CMS's and Palmetto's determination to enroll him in the Medicare program with an effective participation date of May 21, 2009. In his hearing request, Petitioner contended that he should have been enrolled effective March 2, 2009.

The case was assigned to me for a hearing and a decision. I issued a pre-hearing order directing the parties to exchange proposed exhibits and briefs. CMS filed an exchange, which included five proposed exhibits (CMS Ex. 1 – CMS Ex. 5) and a motion for summary disposition. Petitioner filed three proposed exhibits (P. Ex. 1 – P. Ex. 3) and a brief in opposition to CMS's motion.

I receive all of the parties' proposed exhibits into the record.

## II. Issue, findings of fact and conclusions of law

### A. Issue

The issue in this case is whether CMS and Palmetto properly determined Petitioner's effective date of Medicare enrollment to be May 21, 2009.

### B. Findings of fact and conclusions of law

I make the following findings of fact and conclusions of law.

#### *1. CMS and Palmetto gave Petitioner the earliest effective enrollment date that is permitted by regulations.*

Regulations provide that the effective date of enrollment in Medicare of a physician shall be the later of the following:

The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d).

In this case, the undisputed material facts establish that on June 19, 2009, Petitioner filed an enrollment application that Palmetto GBA "subsequently approved." CMS Ex. 5. His effective date of enrollment, therefore, could not lawfully be earlier than June 19, 2009.<sup>1</sup>

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<sup>1</sup> Palmetto's grant of an "effective" enrollment date to Petitioner of May 21, 2009 appears to result from Palmetto's erroneous use of terminology. Regulations provide that, under most circumstances, an enrolled physician may not receive reimbursement for claims generated more than 30 days prior to that physician's effective enrollment date. 42 C.F.R. §424.521(a)(1). When Palmetto found Petitioner's June 19, 2009 application to be acceptable, it should have granted him an effective date of enrollment of June 19, with an *earliest reimbursement date* of May 21. That is clearly what Palmetto intended and, therefore, its incorrect use of terminology – referring to Petitioner's earliest reimbursement date of May 21, 2009 as his effective date of enrollment – is harmless error on Palmetto's part.

The June 19 application, in fact, constituted Petitioner's second attempt to enroll in Medicare. He had filed a previous application in March, 2009.<sup>2</sup> CMS Ex. 1. Palmetto returned this application to Petitioner, because the form that Petitioner used was obsolete. CMS Ex. 2. The March application cannot be a basis for enrolling Petitioner in Medicare, because it was not subsequently approved by Palmetto.

***2. I am without authority to order CMS and Palmetto to grant Petitioner an earlier effective date of enrollment than May 21, 2009.***

Petitioner disputes none of the facts that I have recited above. He does not challenge Palmetto's and CMS's determination that his March application was invalid, because it was submitted on an obsolete form. Nor does he contend that Palmetto should have approved his March application. Rather, Petitioner makes an equitable argument that I lack authority to consider. He contends that Palmetto ought to have processed his March application more quickly and ought to have returned it to him sooner. He asserts that, had Palmetto done so, he would have re-filed his application at an earlier date and would have received an earlier effective date of enrollment. Petitioner argues that in the period between March and May 2009, he saw Medicare beneficiaries as part of his practice and would have been reimbursed for the services he provided to these beneficiaries had Palmetto acted more timely.

I am not unsympathetic to Petitioner's predicament. However, I lack authority to consider his argument. The regulations governing enrollment, and in particular, 42 C.F.R. § 424.520(d), brook no exceptions to the rule that the earliest effective date can only be the later of the dates specified in that section. In this case, Palmetto gave Petitioner the earliest date that the regulation allowed, that being the date when Petitioner filed an application that Palmetto subsequently approved. Consequently, I may not direct Palmetto to give Petitioner an earlier effective date of enrollment.

/s/

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Steven T. Kessel  
Administrative Law Judge

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<sup>2</sup> Petitioner and CMS disagree as to the precise filing date of the March application. Petitioner contends that it was received by Palmetto on March 2, 2009, whereas CMS asserts that it was not received until March 20. I find this disagreement to be irrelevant, because Palmetto did not subsequently approve the March application.