

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Reverence Home Health and Hospice  
(NPI: 1649524331),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-449

ALJ Ruling No. 2014-34

Date: June 3, 2014

**ORDER OF REMAND**

Petitioner, Reverence Home Health and Hospice, challenges the effective date of enrollment as a supplier in the Medicare program. Palmetto GBA National Supplier Clearinghouse (Palmetto NSC), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), granted Petitioner enrollment but with a later effective date than Petitioner requested. Petitioner requested reconsideration. Because Palmetto NSC did not properly issue a reconsidered determination, I remand this case for Palmetto NSC to assign this matter to a hearing officer and issue a reconsidered determination.

**I. Background**

Petitioner acquired an existing Durable Medical Equipment, Orthotics, Prosthetics and Supplies (“DMEPOS”) supplier of infusion pharmacy services and sought to obtain Medicare billing privileges under its ownership. On February 5, 2013, Petitioner filed a Form CMS-855S enrollment application (change of ownership) with Palmetto NSC. CMS Exhibit (Ex.) 1. Palmetto NSC initially denied Petitioner’s enrollment application. CMS Ex. 3. In response, Petitioner timely filed both a corrective action plan (CAP) and a

request for reconsideration. CMS Ex. 4; CMS Ex. 5 at 1-2. Palmetto NSC subsequently accepted Petitioner's CAP and granted Petitioner enrollment effective October 9, 2013. CMS Ex. 6. Petitioner pursued its reconsideration request, seeking an enrollment effective date of January 1, 2013. P. Ex. 1. In a November 14, 2013 email, Nancy Parker, Director of Palmetto NSC, informed Petitioner that it could not grant the requested effective date. CMS Ex. 7 at 2.

On December 11, 2013, Petitioner requested a hearing before an administrative law judge, challenging the October 9, 2013 effective date. CMS Ex. 8. This case was assigned to me for a hearing and decision. In response to my December 24, 2013 Acknowledgment and Prehearing Order, CMS filed a motion to dismiss or in the alternative a motion for summary judgment (CMS Br.) with eight proposed exhibits (CMS Exs. 1-8). Petitioner filed an opposition to the CMS motions (P. Br.) and two proposed exhibits (P. Exs. 1-2). CMS filed a reply brief (CMS Reply). Petitioner objected to CMS Ex. 7. P. Br. at 8. CMS agreed that CMS Ex. 7 should be excluded and withdrew the exhibit from consideration. CMS Reply at 2. There were no other evidentiary objections. Accordingly, I admit CMS Exs. 1-6 and 8, and P. Exs. 1-2 into the record.

## **II. Discussion**

By regulation, an administrative law judge may hear and issue a decision in cases where a party has requested a hearing from a "reconsidered determination." 42 C.F.R. § 498.5(l)(2); *see Denise A. Hardy, D.P.M.*, DAB No. 2464, at 4-5 (2012). A party may request reconsideration only in cases where CMS or its contractor has issued an "initial determination." 42 C.F.R. § 498.5(l)(1). An "initial determination" includes, among other things, the "effective date of a Medicare provider agreement or supplier approval." *Id.* § 498.3(b)(15).

CMS originally moved for dismissal of Petitioner's hearing request contending that Petitioner did not request nor receive a reconsidered determination. CMS Reply Br. at 1. However, following submission of Petitioner's prehearing exchange, CMS conceded that Petitioner did request reconsideration (P. Ex. 1 at 3-5), which was denied (P. Ex. 2 at 1); therefore, CMS withdrew its motion to dismiss. CMS Br. at 2. CMS notes that Palmetto NSC never issued a formal reconsidered determination and would not object to remand if Petitioner requests it. However, CMS argues that I should decide this case on the merits because Palmetto NSC made it clear that it would issue an unfavorable reconsidered determination if I remanded this matter. CMS Br. at 2 n.1.

In a provider or supplier enrollment case, it is the reconsidered determination that is the predicate for administrative law judge jurisdiction. *See Hiva Vakil, M.D.*, DAB No. 2460, at 4-5 (2012) (holding that a supplier cannot obtain administrative law judge review of the initial determination; the supplier may only obtain administrative law judge

review when there is a reconsidered determination); *see also* 42 C.F.R. §§ 498.5(l)(2), 498.20(b)(1), 498.24(c), 498.25(b)(2). Based on a review of the documents submitted in this case, I cannot conclude that an email from Nancy Parker, the Director of Palmetto NSC, is a reconsidered determination. Due to the confusion at Palmetto NSC concerning reconsideration of this matter (CMS Reply Br. at 1-2) it is unclear that Palmetto NSC fully considered the matter as required by 42 C.F.R. § 498.24(b). Further, it is unclear whether the email constitutes a determination as specified in 42 C.F.R. § 498.24(c). It is unlikely that the email from Palmetto NSC was intended as a reconsidered determination because it failed to state the law and regulations that Petitioner failed to meet or provide notice of Petitioner's right to a hearing, as required by 42 C.F.R. § 498.25(a)(2)-(3). Further, in enrollment cases, a reconsidered determination must be issued by a "contractor hearing officer not involved in the initial determination." 42 C.F.R. § 405.803. Based on the documents submitted by the parties, there is no reason to believe that Ms. Parker, as the Director of Palmetto NSC, is also a hearing officer. Finally, because a hearing officer may decide this case differently than Ms. Parker and because the contractor can exercise discretion that I do not have the authority to exercise, *see Letantia Bussell*, DAB No. 2196, at 13 (2008), it is necessary for this case to be remanded.

### III. Remand Order

As explained above, the contractor failed to issue a reconsideration determination as required by the regulations. I am remanding the case under 42 C.F.R. § 498.56(d) in order for Palmetto NSC to assign this matter to a hearing officer. The hearing officer must consider the evidence admitted into the record of this case and render a reconsidered determination. The reconsidered determination will provide a notice that Petitioner has a right to request a hearing before an administrative law judge.<sup>1</sup>

It is so ordered.

\_\_\_\_\_  
/s/  
Scott Anderson  
Administrative Law Judge

---

<sup>1</sup> Because 42 C.F.R. § 405.803 permits CMS's regional office to render reconsidered determinations, the appropriate CMS regional office may assume jurisdiction over this case and issue the reconsidered determination in place of a Palmetto NSC hearing officer.