

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Gopal Popli, M.D.,
(NPI: 1518002245; PTAN: L68491),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-752

ALJ Ruling No. 2017-3

Date: November 2, 2016

DISMISSAL

This matter is before me on the Centers for Medicare & Medicaid Services' (CMS's) Motion to Dismiss or, in the alternative, Motion for Summary Judgment. Petitioner, Gopal Popli, M.D (Petitioner or Dr. Popli), opposed the Motion to Dismiss and cross-moved for Summary Judgment. Petitioner's Brief (P. Br.). For the reasons explained below, I grant CMS's Motion to Dismiss. The parties' cross-motions for summary judgment are therefore moot. As detailed below, the initial determination by National Government Services (NGS), a CMS administrative contractor, revoking Petitioner's Medicare enrollment and billing privileges, became administratively final after Petitioner failed timely to request reconsideration of that determination. Because Petitioner did not timely request a reconsidered determination, he has forfeited his right to the contractor's reconsideration as well as to a hearing by an administrative law judge.

I. Background

On December 31, 2015, NGS issued an initial determination revoking Dr. Popli's Medicare enrollment and billing privileges and imposing a one-year re-enrollment bar pursuant to 42 C.F.R. §§ 424.535(a)(1) and 424.535(c). CMS Exhibit (Ex.) 2. NGS

stated that it took these actions based on its finding that Dr. Popli's license to practice medicine in the State of Illinois had been suspended. CMS Ex. 2 at 1. Dr. Popli, or someone on his behalf, acknowledged receipt of the initial determination on January 5, 2016. CMS Ex. 2 at 3. Petitioner filed a request for reconsideration dated June 8, 2016, which NGS received on June 13, 2016. CMS Ex. 4. On June 20, 2016, NGS denied Petitioner's request for reconsideration because it had been untimely filed. CMS Ex. 5.

On July 22, 2016, Petitioner requested an ALJ hearing contesting the revocation and the case was assigned to me.

II. Discussion

Although the parties filed opposing Motions for Summary Judgment, I need not address those motions because Petitioner did not timely request a reconsidered determination and the contractor never issued one. Without a reconsidered determination, Petitioner does not have a right to an administrative law judge hearing. 42 C.F.R. § 498.5(1)(2).

Revocation of a supplier's Medicare enrollment and billing privileges is an "initial determination" that is subject to the review procedures set forth in 42 C.F.R. Part 498. 42 C.F.R. §§ 498.3(a)(1), (b)(17). Under the review procedures in Part 498, a provider or supplier "dissatisfied with an initial determination or revised initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration in accordance with § 498.22(a)." 42 C.F.R. § 498.5(1)(1). Section 498.22(a) states that CMS or one of its contractors "reconsiders an initial determination that affects a prospective provider or supplier . . . if the affected party files a written request in accordance with paragraphs (b) and (c) of this section." Section 498.22(b) provides, in relevant part, that the affected party may request reconsideration if the party files the request "[w]ithin 60 days from receipt of the notice of initial determination, unless the time is extended in accordance with paragraph (d) of this section." 42 C.F.R. § 498.22(b)(3). Section 498.22(d)(1) states that a party "unable to file the request within the 60 days . . . may file a written request with CMS, stating the reasons why the request was not filed timely." CMS will extend the 60-day deadline for filing a request for reconsideration "if the affected party shows good cause for missing the deadline." 42 C.F.R. § 498.22(d)(2). If the affected party does not request reconsideration of an initial determination, then the initial determination is binding. 42 C.F.R. § 498.20(b).

Here, NGS issued its initial determination on December 31, 2015, and Dr. Popli received it on January 5, 2016. CMS Ex. 2. It was not until 155 days later that Petitioner requested contractor reconsideration, by letter dated June 8, 2016. CMS Ex. 4. The contractor denied Petitioner's request for reconsideration pursuant to 42 C.F.R. § 498.22 because it was filed untimely. CMS Ex. 5.

Dr. Popli does not dispute that he received the initial determination on or about January 5, 2016, or that his reconsideration request was filed untimely. *See, e.g.*, P. Br. at 5. Instead, he contends that he was under the “reasonable belief” that it was not necessary for him to request reconsideration because he had negotiated a consent agreement with the Illinois licensing authorities that resolved his license suspension. *Id.* On this basis, Dr. Popli argues that he had good cause for filing the reconsideration request out of time.

I am without authority to decide whether Dr. Popli had good cause for filing the reconsideration request out of time. The contractor’s denial of Dr. Popli’s reconsideration request as untimely is not a “reconsidered determination” as described by the regulations. Without a reconsidered determination by the contractor, the initial determination is “binding” and, therefore, administratively final.¹ 42 C.F.R. § 498.20(b). Moreover, the regulations plainly require that CMS or one of its contractors must issue a “reconsidered determination” before the affected party is entitled to request a hearing before an administrative law judge. 42 C.F.R. § 498.5(1)(2); *see Haissam Elzaim, M.D.*, DAB No. 2501 (2013); *Hiva Vakil, M.D.*, DAB No. 2460 (2012); *Denise A. Hardy, D.P.M.*, DAB No. 2464 (2012). Because there is no reconsidered determination, it follows that there is no right to administrative review of the contractor’s determination that the reconsideration request was untimely. *See Karthik Ramaswamy, M.D.*, DAB No. 2563 (2014) (en banc), *aff’d, Ramaswamy v. Burwell*, 83 F. Supp. 3d 846 (E.D. MO 2015). This is true even where a party contends that the timeliness determination was factually or legally erroneous. *Id.* at 7-8.

Moreover, even if I had authority to consider Petitioner’s explanation for filing the reconsideration request out of time, I would not find good cause for the late filing. I am not persuaded that it was reasonable for Dr. Popli to assume that his consent agreement with the State of Illinois would automatically reinstate his Medicare enrollment and billing privileges without further action on his part. At a minimum, I would expect a reasonable supplier in Dr. Popli’s position to inform NGS promptly that the suspension of his medical license had been vacated. The instructions in the initial determination from NGS clearly informed Dr. Popli that, if he wished to contest the revocation of his Medicare enrollment and billing privileges he must do so within 60 days. *See CMS Ex. 2 at 1.* Further, the instructions stated explicitly: “Failure to timely request reconsideration is deemed a waiver of all rights to further administrative review.” *CMS Ex. 2 at 2.* Dr. Popli failed to heed those instructions at his peril.

¹ NGS’s letter denying Dr. Popli’s request for reconsideration as untimely incorrectly stated that Dr. Popli could request an administrative law judge hearing. *CMS Ex. 5 at 2.* Nevertheless, neither the contractor nor an administrative law judge may create a hearing right where none is authorized by statute or regulation. *See Conchita Jackson, M.D.*, DAB No. 2495 at 9 (2013); *see also Integrated Diagnostic of South Florida, Inc.*, DAB CR2508 at 2-3 (2012).

Without a reconsidered determination, NGS's initial determination revoking Dr. Popli's Medicare enrollment and billing privileges is the final administrative determination in this matter and Dr. Popli has no right to an administrative law judge hearing. *See Hiva Vakil, M.D.*, DAB No. 2460 at 5, n.4.

III. Conclusion

Petitioner does not have a right to a hearing before an administrative law judge in this matter. The contractor's revocation of Dr. Popli's Medicare enrollment and billing privileges and one-year bar on re-enrollment are final, not subject to review, and remain in force exactly as stated by the contractor in the initial determination. Therefore, pursuant to 42 C.F.R. § 498.70(b), I order that Petitioner's hearing request be dismissed.

/s/

Leslie A. Weyn
Administrative Law Judge