

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

Gaurav Lakhanpal, MD  
Docket No. A-19-47  
Decision No. 2951  
July 5, 2019

**FINAL DECISION ON REVIEW OF  
ADMINISTRATIVE LAW JUDGE DECISION**

Petitioner Gaurav Lakhanpal, MD appeals the November 29, 2018 decision of an administrative law judge (ALJ). *Gaurav Lakhanpal, MD*, DAB CR5219 (2018) (ALJ Decision). The ALJ upheld on summary judgment a Centers for Medicare & Medicaid Services (CMS) Medicare Administrative Contractor (MAC)'s reconsidered determination, which assigned an effective date of July 21, 2017 for the reassignment of Petitioner's right to bill the Medicare program and receive Medicare payments to Ravinder K. Rustagi, MD, PA, with retrospective billing permitted beginning June 21, 2017.

For the reasons explained below, we affirm the ALJ Decision.

**Legal authorities**

A physician or other "supplier" of Medicare services must be enrolled in the Medicare program to receive payment for Medicare-covered items and services. Social Security Act (Act)<sup>1</sup> § 1861(d)(1); 42 C.F.R. § 424.505. "Enrollment" is the process that CMS and its contractors use to: 1) identify the prospective supplier; 2) validate the supplier's eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier's practice location(s) and owner(s); and 4) grant the supplier Medicare billing privileges. *Id.* § 424.502.

An individual physician enrolled in the Medicare program may reassign his or her Medicare payments to an employer. *Id.* § 424.80(b)(1). The approved enrollment application for an individual health care practitioner to reassign Medicare payments is

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<sup>1</sup> The current version of the Social Security Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact.htm). Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at [https://www.ssa.gov/OP\\_Home/comp2/G-APP-H.html](https://www.ssa.gov/OP_Home/comp2/G-APP-H.html).

Form CMS-855R (reassignment application). 71 Fed. Reg. 20,754, 20,756 (Apr. 21, 2006) (eff. June 20, 2006).

Section 424.525 requires a Medicare contractor that receives an enrollment application with missing information or supporting documentation to request the information or documentation from the provider or supplier and to give the provider or supplier at least 30 calendar days to respond with the missing information in order to cure any deficiencies in the application. 42 C.F.R. § 424.525. CMS “may reject” an application if a supplier “fails to furnish complete information” within the 30-day period, but CMS “at its discretion, may choose to extend the 30 day period if CMS determines that the prospective . . . supplier is actively working with CMS to resolve any outstanding issues.” *Id.* § 424.525(a). “Enrollment applications that are rejected are not afforded appeal rights,” and to obtain billing privileges after rejection, the supplier must complete and submit a new enrollment application and supporting documents. *Id.* § 424.525(d).

Under section 424.520(d), the effective date for billing privileges for physicians is “the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician . . . first began furnishing services at a new practice location.” *Id.* § 424.520(d). The preamble for section 424.520(d) stated that the “date of filing” is the date that a Medicare contractor receives a signed application that the contractor is “able to process to approval.” 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *accord Alexander C. Gatzimos, MD, JD, LLC d/b/a Michiana Adult Medical Specialists*, DAB No. 2730, at 5 (2016).

A supplier whose enrollment application has been approved “may retrospectively bill for services” when the supplier “has met all program requirements” and “services were provided at the enrolled practice location for up to” “[t]hirty days prior to [the] effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries,” or “[n]inety days prior to their effective date if a Presidentially-declared disaster . . . precluded enrollment in advance of providing services to Medicare beneficiaries.” 42 C.F.R. § 424.521(a); *see also* 79 Fed. Reg. at 72,531 (Dec. 5, 2014).

A determination of the effective date of enrollment is an initial determination subject to appeal under 42 C.F.R. Part 498. 42 C.F.R. § 498.3(a)(1), (b)(15); *Victor Alvarez, M.D.*, DAB No. 2325 (2010).

## Case background<sup>2</sup>

On May 25, 2017, Novitas Solutions, Inc. (Novitas), a MAC, received Petitioner's application to reassign his right to bill and receive Medicare payments to his new employer, Ravinder K. Rustagi, MD, PA. ALJ Decision at 6 (citing CMS Ex. 1, at 5-11). By letter dated June 15, 2017, Novitas instructed Petitioner to provide his accurate Social Security Number (SSN) in section 3 of his reassignment application, and a new certification statement signed and dated by Petitioner in section 6. *Id.* at 6-7 (citing CMS Ex. 1, at 12-14). Novitas informed Petitioner that if he did "not furnish complete information within 30 calendar days from the postmarked/mailed date" of its letter, it "may reject" the application. CMS Ex. 1, at 12.

On July 17, 2017, Novitas issued a letter notifying Petitioner that it had rejected his reassignment application because he did not provide an accurate SSN or submit a new certification statement, and instructing Petitioner that he must file a new reassignment application if he desired to effect reassignment. ALJ Decision at 7 (citing CMS Ex. 1, at 34). On the same date, July 17, 2017, Petitioner submitted what appears to be a portion of Form CMS-855R intended to be responsive to Novitas's June 15, 2017 request for additional information. The July 17, 2017 submission included a new SSN in section 3, but did not include a new certification statement signed and dated by Petitioner in section 6. *Id.* (citing CMS Ex. 1, at 15, 20-21). Petitioner then submitted a new reassignment application that Novitas received on July 21, 2017. CMS Ex. 1, at 43-46. Novitas subsequently approved the new application, reassigning Petitioner's Medicare payments with an effective date of July 21, 2017, and a retrospective billing date of June 21, 2017.<sup>3</sup> *Id.*; ALJ Decision at 7.

On August 28, 2017, Petitioner filed a request for reconsideration, requesting an effective date for billing privileges of May 15, 2017 or, in the alternative, 90 days before June 21, 2017. CMS Ex. 1, at 50. On November 20, 2017, Novitas issued an unfavorable reconsidered determination, writing in pertinent part:

Gaurav Lakhanpal, MD has not provided evidence to support an earlier effective date. Therefore, Novitas Solutions is not granting you access to the Medicare Trust Fund (by way of issuance) of a new Medicare effective date. Based on the CMS-855R application being received on July 21, 2017,

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<sup>2</sup> The background information is drawn from the ALJ Decision and the record before the ALJ and is not intended to substitute for his findings.

<sup>3</sup> In its initial determination, Novitas identified June 21, 2017 as the "effective date." Because June 21, 2017 is 30 days prior to the date Novitas received Petitioner's reassignment application, it appears that Novitas used the term "effective date" to refer to the date from which Petitioner was authorized to retrospectively bill for Medicare services.

the effective date of Medicare billing privileges is July 21, 2017. The requirements for retrospective billing were met as required by 42 CFR § 424.521(a) and a retrospective effective date of billing of June 21, 2017 was provided and set up correctly for the reassignment based on the effective date regulations stated above. The CMS-855R application received May 25, 2017 cannot be considered in determining the effective date as it was not the application filed and subsequently approved.

Reconsideration Decision at 3; ALJ Decision at 7.

### **ALJ proceedings and decision**

Petitioner requested a hearing before an ALJ. On January 22, 2018, CMS moved for summary judgment in its favor, asserting that there was no genuine dispute of material fact, and “no authority allowing a date of retrospective reassignment of billing earlier than June 21, 2017 . . . .” CMS Pre-hearing Brief and Motion for Summary Judgment at 1.<sup>4</sup> On February 27, 2018, Petitioner filed an opposition to CMS’s motion, asserting that it received Novitas’s June 15, 2017 information request by facsimile on Friday, July 14, 2017, and that it submitted the “correct requested information” on Monday, July 17, 2017. Petitioner’s Pre-hearing Brief at 1. Petitioner stated that Novitas “did not give us the appropriate time to correct the mistake otherwise we would not have been in this situation.” *Id.* On April 5, 2018, CMS filed a reply, arguing, among other things, that Novitas emailed the request for information to Petitioner on June 15, 2017, that Petitioner’s July 17, 2017 response failed to correct all the issues identified in the information request because Petitioner did not submit a new certification statement, and that, in any event, Petitioner has no right to administrative review of its rejected enrollment application. CMS Reply at 1-2.

The ALJ issued a decision on November 29, 2018, granting summary judgment in favor of CMS. The ALJ first determined that Petitioner had no right to review of the rejection of his first reassignment application. ALJ Decision at 8 (citing 42 C.F.R. § 424.525(d)). The ALJ also stated that, even if he “were to accord review of the rejected application, the evidence supports the rejection” because “Petitioner failed to timely submit the correct SSN even though Petitioner admits he received a reminder in the form of a copy of [Novitas]’s June 15, 2017 letter by facsimile on July 14, 2017, before the deadline for submission.” *Id.*

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<sup>4</sup> CMS filed nine exhibits in support of its pre-hearing brief and motion for summary judgment. On January 23, 2018, the ALJ issued an order rejecting CMS’s exhibits because they did not conform to the requirements set forth by the ALJ in his pre-hearing order. On April 3 and 5, 2018, CMS filed three new exhibits (CMS Exs. 1-3), which the ALJ admitted into the record in his decision. ALJ Decision at 2.

The ALJ next determined that Petitioner had a right to review of the effective date of reassignment stemming from his second application that was processed to completion by Novitas. *Id.* Applying the regulations found at 42 C.F.R §§ 424.520(d) and 424.521(a),<sup>5</sup> the ALJ concluded that the effective date of reassignment must be July 21, 2017, and that the earliest date for retrospective billing is June 21, 2017. The ALJ wrote, in relevant part:

Applying the regulations in this case is straightforward. There is no dispute Petitioner started working for Ravinder K. Rustagi, MD, PA on June 6, 2017. There is also no dispute that on July 21, 2017, Petitioner filed (that is, the date it was received by the MAC) his reassignment application that was processed to completion by the MAC. The later of the two dates is July 21, 2017. Accordingly, the effective date of reassignment may only be July 21, 2017. Pursuant to 42 C.F.R. § 424.521, retrospective billing is permissible for only 30 days, in this case, beginning on June 21, 2017. Retrospective billing for 90 days as Petitioner suggests in his request for hearing is not permitted except in the case of a Presidentially-declared disaster, which did not occur in this case.

Petitioner's arguments may be construed to be a request for equitable relief. But, I have no authority to grant equitable relief. *US Ultrasound*, DAB No. 2302 at 8 (2010). I am also required to follow the Act and regulations and have no authority to declare statutes or regulations invalid. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009).

*Id.* at 10.

### **Standard of review**

Whether summary judgment is appropriate is a legal issue that we address *de novo*. *1866ICPayday.com*, DAB No. 2289, at 2 (2009) (citing *Lebanon Nursing & Rehab. Ctr.*, DAB No. 1918 (2004)). Summary judgment is appropriate when the record shows that there is no genuine dispute of fact material to the result. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-25 (1986)).

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<sup>5</sup> The ALJ arrived at the correct application of regulations but only after first stating the regulations do not state how to set the effective date of a reassignment, but then concluding that various provisions of Medicare Provider Integrity Manual (MPIM), CMS Pub. 100-08, "incorporates" these regulations. ALJ Decision at 8-9. While the MPIM provisions are certainly consistent with the regulations, it is unnecessary to rely on them. Section 424.520(d) sets the effective date of billing privileges for all physicians based on the filing of an enrollment application. The reassignment process requires the filing of an enrollment application to alter the recipient of payments. (The prior enrollment remains in effect until the new enrollment application altering the billing privileges to reassign payment is approved with an effective date assigned pursuant to the regulation.)

The Board's standard of review on a disputed conclusion of law is whether the ALJ's decision is erroneous. *Guidelines – Appellate Review of Decisions of Administrative Law Judges Affecting a Provider's or Supplier's Enrollment in the Medicare Program* (*Guidelines*), accessible at <https://www.hhs.gov/about/agencies/dab/different-appeals-at-dab/appeals-to-board/guidelines/enrollment/index.html>.

## Discussion

In his Request for Review (RR) and Reply brief (Reply), Petitioner argues that the effective date for reassignment of his Medicare payments should be changed so that he may reassign payment for services beginning on June 6, 2017, the date he started working for Ravinder K. Rustagi, MD, PA. RR at 2. The regulation at section 424.520(d) provides that the effective date of billing privileges is the later of either the date on which the enrollment application that was approved was filed with (that is, received by) the MAC, or the date on which the supplier first began providing services at a new practice location. 42 C.F.R. § 424.520(d); *see also Gatzimos* at 5. Petitioner does not dispute that the only reassignment application he filed that was “subsequently approved” by a MAC was the application received by Novitas on July 21, 2017. Thus, the effective date of Petitioner's reassignment of billing privileges is July 21, 2017, the date that Novitas received Petitioner's reassignment application that was subsequently approved. Section 424.521(a) provides, in relevant part, that a supplier whose enrollment application has been approved “may retrospectively bill for services” when the supplier “has met all program requirements” and “services were provided at the enrolled practice location for up to” “[t]hirty days prior to [the] effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries.” 42 C.F.R. § 424.521(a). Accordingly, the earliest date that Petitioner may retrospectively bill for services is June 21, 2017.

Petitioner does not dispute that Novitas set the reassignment effective date based on the only reassignment application that was processed to approval. Rather, Petitioner devotes a significant portion of his appeal to argue that Novitas improperly rejected his initial reassignment application, and that the reassignment effective date should be based on that initial application. Petitioner asserts that he did not receive Novitas's June 15, 2017 letter (or the email copy which CMS asserts was also sent by Novitas) requesting additional information until Novitas sent him the letter via facsimile on the afternoon of July 14, 2017. RR at 1. Petitioner argues that, while the 30th calendar day for submitting the requested information was July 15, 2017 – a Saturday – the submission deadline “should automatically be the next working day,” or Monday, July 17, 2017. *Id.* at 4; Reply at 1. Petitioner asserts that he submitted a new SSN to Novitas on July 17, 2017 and argues that his original application should therefore have been processed to approval. *Id.*

The regulations provide that rejected enrollment applications, such as Petitioner's initial reassignment application, "are not afforded appeal rights." 42 C.F.R. § 424.525(d). Petitioner's challenge to the rejection of his initial reassignment application is thus impermissible in this forum. *See, e.g., Wishon Radiological Medical Group, Inc.*, DAB No. 2941, at 6-8 (2019) (rejecting similar arguments because they "amount to an impermissible challenge to the rejection of [petitioner's] initial application and an attempt to circumvent the enrollment regulations . . ."). Moreover, "[t]here is . . . no applicable authority allowing a supplier to seek review of an unappealable rejection of an incomplete application by the 'back door' route of challenging the effective date of a later application which was processed to approval." *Id.* at 8. Because the undisputed evidence shows that the reassignment effective date was determined based on the filing date of Petitioner's second reassignment application, which was the only application approved by Novitas, any factual disputes raised by Petitioner, such as the date Novitas sent Petitioner the June 15, 2017 request for additional information, the correct due date for submitting the requested information, and whether Petitioner fully satisfied the information request in his June 17, 2017 response, are immaterial here as they cannot have any effect on the outcome of the reassignment effective date. In any event, while Petitioner contends that he provided his correct SSN to Novitas in his July 17, 2017 response, he does not dispute CMS's allegation that he failed to provide a new certification statement signed and dated by him in section 6 of the reassignment application. CMS Response at 6 (citing CMS Ex. 1, at 21, 34-35); CMS Reply to its Motion for Summary Judgment at 1. Therefore, even if we had the authority to review the rejected reassignment application, which we do not, there is no dispute that Petitioner failed to fully satisfy Novitas's June 15, 2017 request for additional information. Moreover, CMS has discretion to provide a second period to provide needed information, but has no obligation to do so. *Wishon* at 9 (citing *Lindsay Zamis, M.D.*, DAB No. 2802, at 12 (2017)).

We also reject Petitioner's equitable arguments. Petitioner states that he should "not be punished for a minor mistake for writing the wrong SSN." RR at 2. Petitioner asserts that his employer, Ravinder K. Rustagi, MD, PA, will lose "thousands of dollars" for the services provided by Petitioner between June 6, 2017 and June 21, 2017 because it has "already paid" Petitioner, as well as "the nuclear company, the pharmacy from where we bought the medicine and the supporting staff." *Id.*; Reply at 1. Petitioner also asserts that his employer provides "dedicated honest service to . . . needy patients," and "has been in business since August 1983 and never had any problem[s] with billing CMS." *Id.* at 2. The Board, however, has repeatedly held that it, and ALJs, are bound by the applicable regulations and cannot alter an effective date based on principles of equity. *See, e.g., James Shepard, M.D.*, DAB No. 2793, at 9 (2017) (quoting *Vijendra Dave, M.D.*, DAB No. 2672, at 8 (2016) and citing *Cent. Kan. Cancer Inst.*, DAB No. 2749, at 10 (2016), *appeal dismissed*, *Cent. Kan. Cancer Inst. v. Dep't of Health & Human Servs.*, No. 2:17-cv-02012 (D. Kan. June 2, 2017) (The Board "is bound by the regulations, and may not choose to overturn the agency's lawful use of its regulatory authority based on principles

of equity.”); *Decatur Health Imaging, LLC*, DAB No. 2805, at 11 (2017) (“Equitable considerations . . . provide no basis to . . . assign an earlier effective date.”). Here, the governing authority compels a reassignment effective date of July 21, 2017, with retrospective billing permitted no earlier than June 21, 2017, and we may not adjust either date based on equitable grounds. We also note that Petitioner’s equitable arguments are premised on his argument that he should be entitled to ALJ and Board review of Novitas’s rejection of his first application, an argument we have rejected.

### **Conclusion**

We affirm the ALJ Decision upholding on summary judgment Novitas’s determination that Petitioner’s reassignment effective date is July 21, 2017, with retrospective billing permitted beginning June 21, 2017.

/s/

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Sheila Ann Hegy

/s/

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Constance B. Tobias

/s/

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Leslie A. Sussan  
Presiding Board Member