Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Civil Remedies Division

Premier Family Clinic & Urgent Care LLC[*]
a/k/a Premier Urgent Care Center
(NPI: 1154671824; PTAN: 285465),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-190

Decision No. CR3138

Date: March 4, 2014

DECISION

The request for hearing dated October 23, 2013, filed October 24, 2013, by Petitioner, Premier Family Clinic & Urgent Care LLC, is dismissed pursuant to 42 C.F.R. § 498.70(b), because Petitioner has no right to a hearing.

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[*] Petitioner stated in its hearing request that its "legal business name" is "Premier Urgent Care Center." However, Petitioner's application for enrollment in Medicare state that its legal business name is "Premier Family Clinic & Urgent Care." Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 3, at 10, 43, 45-46. The Medicare contractor processing Petitioner's enrollment application requested clarification of Petitioner's legal name by letter dated June 4, 2013. CMS Ex. 3, at 58-59. The Medicare contractor letter notifying Petitioner of its enrollment lists Petitioner's name as Premier Family Clinic & Urgent Care LLC with the National Provider Identifier (NPI) 1154671824 and Provider Transaction Access Number (PTAN) 285465, which matches the PTAN listed in Petitioner's hearing request. CMS Ex. 3, at 61-66. Accordingly, I conclude that Petitioner's legal name is Premier Family Clinic & Urgent Care LLC but I have added "a/k/a Premier Urgent Care Center" to the caption of this case as that is how it was originally docketed.

I. Case Background

Novitas Solutions, the Medicare administrative contractor for CMS, notified Petitioner by letter dated June 20, 2013, that its Medicare enrollment application had been approved with an effective date of March 23, 2013. CMS Ex. 3, at 61-65. On the same day, Novitas notified Nurse Practitioner (NP) Shelia Sancillo Tice that her Medicare billing privileges were reassigned to Petitioner effective March 23, 2013. CMS Ex. 1, at 31-34. On July 9, 2013, NP Tice requested reconsideration of the initial determination that the effective date of her reassignment of benefits to Petitioner was March 23, 2013. CMS Ex. 1, at 36. Novitas acknowledged that NP Tice's reconsideration request was received on July 12, 2013. CMS Ex. 1, at 44. On October 8, 2013, Novitas issued a reconsideration determination that denied NP Tice an earlier effective date for the reassignment of her billing privileges to Petitioner. CMS Ex. 1, at 1-3.

On October 24, 2013, Petitioner filed a request for hearing (RFH) arguing that it should have been approved for participation in Medicare effective January 2, 2013, rather than March 23, 2013. Petitioner asserts that Novitas did not approve its appeal and the March 23, 2013 date stood. RFH at 1. Petitioner filed with its request for hearing a copy of the October 8, 2013 reconsideration determination addressed to NP Tice. However, Petitioner's hearing request does not mention NP Tice or state that the request for hearing relates to the effective date of the reassignment of her billing privileges to Petitioner. The case was assigned to me on November 12, 2013. I issued an Acknowledgment and Prehearing Order the same day, which established the prehearing filing requirements and deadlines.

On December 1, 2013, prior to any filing deadlines, Petitioner filed a letter requesting that the case be decided on summary judgment. Petitioner stated in the letter that "the only information that we have to support our claim was sent in with our previous letter of request." On December 12, 2013, CMS filed its Motion for Summary Judgment (CMS Motion), supporting brief (CMS Br.), and three proposed exhibits (CMS Exs. 1-3). CMS argued that the material facts regarding the effective date of NP Tice's reassignment of benefits were not in dispute and that the effective date given was correct as a matter of law. CMS Br. at 9-13. CMS did not raise the issue of whether Petitioner had a right to a hearing before an administrative law judge (ALJ) or whether Petitioner in fact had effectively requested a hearing on behalf of NP Tice. Petitioner did not respond to the CMS Motion or object to CMS's proposed exhibits. CMS Exs. 1-3 are therefore admitted into the record.

II. Discussion

A. Applicable Law

The Social Security Act (Act) requires the Secretary of Health and Human Services (the Secretary) to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review in the event of denial or non-renewal. Act § 1866(j) (42 U.S.C. § 1395cc(j)). The Secretary has promulgated various enrollment requirements at 42 C.F.R. pt. 424, subpt. P, and hearing and review procedures at 42 C.F.R. pt. 498.

CMS or one of its contractors make an "initial determination" with respect to a provider's or supplier's enrollment and billing privileges in the Medicare program. Initial determinations are listed at 42 C.F.R. § 498.3(b) and include the effective date of a Medicare provider agreement or supplier approval. 42 C.F.R. § 498.3(b)(15). Pursuant to 42 C.F.R. § 498.5(*l*)(1), a provider or supplier dissatisfied with an initial determination may request reconsideration. A request for reconsideration must be filed with CMS, either directly by the provider or supplier through the provider's or supplier's designated representative, within 60 days of receipt of the notice of the initial determination. 42 C.F.R. § 498.22(b). The date of receipt is presumed to be five days after the date on the notice from CMS, unless there is a showing that it was received earlier or later. *Id.* § 498.22(b)(3). If a provider or supplier does not request reconsideration of an initial determination, then that initial determination is "binding." 42 C.F.R. § 498.20(b). The Novitas notice of initial determination dated June 20, 2013, adequately advised Petitioner of its right to request reconsideration. CMS Ex. 3, at 64. If a provider or supplier requests reconsideration and is subsequently dissatisfied with the reconsidered determination, it is then entitled to a hearing before an ALJ. 42 C.F.R. § 498.5(*l*)(2); *Hiva Vakil, M.D.*, DAB No. 2460, at 1-2 (2012).

B. Issue

The threshold issue is whether Petitioner has a right to a hearing before an ALJ.

C. Findings of Fact and Conclusions of Law

1. **Novitas has not issued a reconsidered determination addressing the effective date of Petitioner's Medicare enrollment.**

2. **Petitioner does not have the right to a hearing before an ALJ.**

3. **Pursuant to 42 C.F.R. § 498.70(b), dismissal of a hearing request is authorized when the requesting party has no right to a hearing.**

On June 20, 2013, Novitas issued an initial determination that granted Petitioner's enrollment in the Medicare program effective March 23, 2013. CMS Ex. 3, at 61-65. The initial determination also notified Petitioner that NP Tice's billing privileges were reassigned to Petitioner, effective March 23, 2013. NP Tice also received a separate initial determination notifying her of the reassignment of her Medicare benefits to Petitioner. CMS Ex. 1, at 31-34. In response to a reconsideration request received by Novitas on July 12, 2013, the contractor issued a reconsidered determination, addressed only to NP Tice, which denied her an earlier effective date for the reassignment of her billing privileges to Petitioner. CMS Ex. 1, at 1. The reconsidered determination sent to NP Tice did not address, either directly or indirectly, the effective date of Petitioner's Medicare enrollment and billing privileges or indicate that the effective date of Petitioner's enrollment was considered by the reconsideration hearing officer. CMS Ex. 1, at 1-3.

The evidence shows that Novitas made an initial determination on June 20, 2013, establishing the effective date of Petitioner's Medicare enrollment. The record does not show that Petitioner requested reconsideration of the effective date of its enrollment or billing privileges. Even if Petitioner had offered some evidence that it requested reconsideration, the right to a hearing is triggered by the issuance of a reconsideration decision not the request. 42 C.F.R. § 498.5(*l*)(2); *Vakil*, DAB No. 2460, at 5 ("[T]he 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 ALJ.").

The reconsidered determination that Petitioner included with its request for a hearing was addressed to NP Tice, included only her PTAN (285500YRWB) and NPI (1255617971), and specifically stated that "Shelia Sancillo Tice, NP" had "not provided evidence to show full compliance with the standards for which you were denied." CMS Ex. 1, at 1-2. Petitioner's clinic was only referred to in the reconsidered determination as the supplier to which NP Tice reassigned her benefit payments. CMS Ex. 1, at 1-2. Petitioner's NPI and PTAN were not listed in the denial of reconsideration sent to NP Tice and Petitioner's effective date of enrollment was not discussed.

The undisputed evidence is clear. Novitas issued two initial determinations on June 10, 2013: one for Petitioner's Medicare enrollment and billing privileges (CMS Ex. 3, at 61); a second for NP Tice's reassignment of benefits to Petitioner (CMS Ex. 1, at 31). Each initial determination included its own instructions on when and how to request reconsideration if the affected party did not agree with the initial determination. *Compare* CMS Ex. 1, at 33 ("[i]f you are a . . . nurse practitioner . . . and disagree with the effective date determination in this letter, you may request reconsideration before a contractor hearing officer.") *with* CMS Ex. 3, at 64 ("[i]f you disagree with the effective date determination in this letter, you may request reconsideration before a contractor hearing officer."). There is only one letter from Novitas in evidence showing that a reconsideration determination was made and that is related to NP Tice's enrollment

effective date. CMS Ex. 1, at 1-3. The most reasonable inferences to be drawn from this evidence are that Petitioner did not request reconsideration regarding the effective date of its enrollment and billing privileges and Novitas never issued a reconsidered determination regarding Petitioner.

For an affected party to have a right to a hearing before an ALJ, CMS or its contractor must first issue a reconsidered determination pursuant to 42 C.F.R. § 498.25. 42 C.F.R. § 498.5(*l*)(1)-(2); *Denise A. Hardy, D.P.M.*, DAB No. 2464, at 5 (2012) ("By filing a request for a hearing without having first obtained a reconsidered determination, Petitioner did not comply with the procedures set forth in the applicable regulations . . . and is therefore not entitled to a hearing before an ALJ."). Petitioner did not request and Novitas did not issue a reconsidered determination addressing the effective date of Petitioner Medicare enrollment and billing privileges. Accordingly, Petitioner has no right to a hearing before an ALJ and dismissal is appropriate pursuant to 42 C.F.R. § 498.70(b). Accordingly, Petitioner's request for hearing is dismissed.

III. Conclusion

For the foregoing reasons, I conclude that Petitioner does not have a right to a hearing and Petitioner's hearing request is dismissed pursuant to 42 C.F.R. § 498.70(b).

/s/
Keith W. Sickendick
Administrative Law Judge