

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

John N. Jordan, M.D.,  
(PTAN: SC22178753)  
(NPI: 120824042),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-933

Decision No. CR3637

Date: February 10, 2015

**DECISION**

Petitioner, John N. Jordan, M.D., appealed the effective date determination that he was not eligible for enrollment in the Medicare program as a supplier earlier than October 11, 2013, and he could not submit retrospective claims for payment earlier than September 11, 2013. I find that Palmetto GBA (Palmetto), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), properly determined that the earliest approvable enrollment application that it received was on October 11, 2013, which necessarily determines Petitioner's effective date of enrollment as October 11, 2013, with a retrospective billing period starting September 11, 2013.

**I. Background**

The following facts are undisputed unless otherwise noted. Petitioner is a physician practicing in South Carolina. Petitioner desired to reassign his Medicare billing privileges with a new group practice, Agape Senior Primary Care (Agape). Agape represented Petitioner in these transactions with Palmetto. Agape claims it submitted reassignment enrollment applications, CMS Form 855R and CMS Form 855I, on behalf

of Petitioner to Palmetto on January 18, 2013. The following is a summary of the timeline of events:

- Petitioner was associated with Dunes Medical Center for Medicare billing purposes and wished to reassign his Medicare billing privileges to Agape.
- Agape's Provider Relations Coordinator (Coordinator) states that she mailed Petitioner's reassignment application forms 855I and 855R on January 18, 2013. P. Ex. 2 at ¶ 3.
- Petitioner began providing medical services at Agape on February 1, 2013.
- On March 8, 2013, Palmetto notified Petitioner that he needed to revalidate his Provider Transaction Access Number (PTAN) associated with Dunes Medical Center using an enrollment application. CMS Ex. 1.
- The Coordinator's first telephone contact with Palmetto was on August 14, 2013, approximately eight months after she claims she mailed Petitioner's reassignment applications. The Coordinator states that Palmetto's agent informed her that Palmetto received Petitioner's applications on March 13, 2013, and it was reviewing them. P. Ex. 2 at ¶ 4. CMS does not deny that this interaction occurred but asserts that the telephone call took place on August 19, 2013, and explains now that Palmetto's agent was referencing Petitioner's revalidation transaction with Dunes Medical Center and not the reassignment to Agape. CMS Ex. 15 at ¶¶ 11-17.
- The Coordinator's second telephone call to Palmetto was on August 26, 2013. During that call, Palmetto's agent advised her that Palmetto was researching Petitioner's applications. P. Ex. 2 at ¶ 5. Again, CMS explains now that the Palmetto agent was referencing Petitioner's revalidation transaction with Dunes Medical Center and not the reassignment transaction to Agape. CMS Ex. 15 at ¶¶ 18-19.
- The Coordinator's third telephone call to Palmetto was on September 11, 2013. Palmetto's agent advised her that Palmetto was still processing Petitioner's applications. Palmetto's agent gave the Coordinator reference number 9013254365000. P. Ex. 2 at ¶ 7. Again, CMS explains now that Palmetto's agent was referencing Petitioner's revalidation transaction regarding Dunes Medical Center and not the reassignment to Agape. CMS Ex. 15 at ¶ 28.
- The Coordinator's fourth telephone call to Palmetto was on September 25, 2013. Palmetto's agent told her that Palmetto never received Petitioner's reassignment applications and that she needed to resubmit the information. P. Ex. 2 at ¶ 8.
- The Coordinator submitted new applications for Petitioner's reassignment to Agape on October 9, 2013. P. Ex. 2 at ¶ 9.
- Palmetto received Petitioner's reassignment applications for Agape on October 11, 2013. CMS Ex. 6; CMS Ex. 7.

- By emails dated October 30, 2013, and December 16, 2013, Palmetto requested additional information, revisions, and supporting documentation regarding Petitioner's applications. CMS Exs. 8, 10.
- On January 14, 2014, Palmetto approved the reassignment applications to allow Agape to directly bill Medicare on Petitioner's behalf starting September 11, 2013. CMS Ex. 11.
- Petitioner requested reconsideration of Palmetto's effective date determination. Palmetto issued a reconsideration decision on February 10, 2014, concluding it had correctly determined that Petitioner could begin billing Medicare starting September 11, 2013, because Palmetto received Petitioner's approvable applications on October 11, 2013. CMS Ex. 13.

Petitioner filed a request for hearing (RFH) on April 10, 2014, and I was assigned this case. Following the issuance of my Acknowledgement and Pre-hearing Order (Order), CMS moved for summary judgment and filed a supporting brief (CMS Br.) with 16 proposed exhibits (CMS Exs. 1-16). My Order required the parties to provide prehearing exchanges, including a brief addressing all issues of law and fact and any motion for summary judgment the party might make. In accordance with my Order, I construe CMS's motion for summary judgment as its pre-hearing brief. CMS proposed two witnesses and provided written direct testimony for them. CMS Exs. 15, 16. Petitioner submitted a pre-hearing brief and opposition to CMS's motion for summary judgment (P. Br.) with three proposed exhibits (P. Exs. 1-3). Petitioner proposes the Coordinator as a witness and provided her written direct testimony as P. Ex. 2.

In the absence of any objection, I admit CMS Exs. 1-16 and P. Exs. 1-3 into the record. Neither party requested the opportunity to cross-examine any opposing witness; therefore, in accordance with my Order, a hearing in this matter is not necessary. Order at ¶10. I issue this decision on the full merits of the written record.

## **II. Discussion**

### **A. Issue**

Whether CMS or its contractor correctly established the effective date for Petitioner's enrollment in the Medicare program.

## B. Findings of Fact and Conclusions of Law

### *1. Palmetto received an approvable Medicare enrollment application from Petitioner on October 11, 2013, which necessarily determined Petitioner's effective date.*

The effective date for enrollment 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 or nonphysician practitioner first began furnishing services at a new practice location.” 42 C.F.R. § 424.520. The “date of filing” is the date that the Medicare contractor “receives” a signed enrollment application that the Medicare contractor is “able to process to approval.” 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008).

Palmetto's records show that Palmetto received Petitioner's reassignment applications on October 11, 2013, and CMS provides the applications' envelope displaying a postmark of October 9, 2013.<sup>1</sup> CMS Ex. 6 at 1. CMS provides an iFlow tracking document from its tracking system that shows Palmetto received no earlier application. CMS Ex. 2. Palmetto acknowledged receipt of the October 11, 2013 applications in an electronic transmission dated October 30, 2013. CMS Ex. 7. CMS explains that a comprehensive search of the national provider database confirms that Palmetto did not receive applications from Agape on behalf of Petitioner any earlier than October 11, 2013. *See* CMS Ex. 16 at ¶¶ 4, 8; *see also* CMS Ex. 15 at ¶ 35.

CMS provided me with two comprehensive and credible affidavits from Palmetto agents. The first affidavit is from a manager in the Provider Enrollment department at Palmetto (the Manager). CMS Ex. 16. The Manager states that all documents received are date stamped and scanned into the iFlow tracking system (CMS Exs. 2, 3) and that Palmetto conducted an exhaustive search for Petitioner's enrollment applications using Petitioner's name, social security number, National Provider Identifier (NPI), and the group identifier for Agape. Palmetto's search of its national database files reportedly could not find an enrollment application from Agape on behalf of the Petitioner before October 2013. CMS Ex. 16 at ¶¶ 4, 7, 8.

The Manager also explained that Palmetto sent Dune Medical Center, the group practice with which Petitioner was previously associated, a March 8, 2013 revalidation request regarding Petitioner. The Manager further explained that Palmetto generates Call Control

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<sup>1</sup> The enrollment application packet that Palmetto received on October 11, 2013 included: the envelope postmarked October 9, 2013; a cover letter from Agape dated January 18, 2013; a CMS Form 855I dated January 14, 2013; a CMS Form 855R dated January 18, 2013; a letter from Agape to Palmetto dated October 1, 2013; a CMS Form 855I dated October 1, 2013; and a CMS Form 855R dated October 1, 2013. CMS Ex. 6.

Numbers (CCNs) for every telephone call it received and that those numbers are not helpful to ascertain the receipt date of any provider enrollment application. CMS Ex. 16 at ¶¶ 11, 12. He also explained that Palmetto sends an email confirmation to a provider within 20 days of receiving an enrollment application, and Palmetto sent its only confirmation email to Agape on October 30, 2013. CMS Exs. 7; 16 at ¶ 13.

CMS proffered a second affidavit, from a supervisor in Palmetto's Provider Contact Center (the Supervisor). CMS Ex. 15. In her affidavit, the Supervisor explains that the Multi-Carrier System Desktop Tool (MCSDT) logs and tracks every telephone call. The Supervisor stated she conducted a thorough search of Palmetto's MCSDT for all calls received regarding Petitioner using Petitioner's five different PTANs, his NPI, and the group number for Agape. CMS Ex. 5; CMS Ex. 15 at ¶¶ 4, 8, 35. She explained that a CCN is generated each time a telephone call is logged, and that Customer Service Advocates (CSAs) answer call inquiries. A CCN does not document the receipt of any provider enrollment application. The only "item pending for" Petitioner in Palmetto's database prior to October 11, 2013, was a revalidation request for Petitioner's previous practice group, not a new enrollment for Agape. CMS Ex. 15 at ¶ 13. She also explained the iFlow system tracks every document that a Palmetto employee views. CMS Ex. 15 at ¶ 15.

The Supervisor specifically addressed Agape's telephone inquiries. CMS Ex. 15. She explained that there is no record of a telephone call from Agape on August 14, 2013, as Agape's Coordinator claims, but there is a record of a telephone call on August 19, 2013. The CSA who responded to that call commented that "Provider checking status of application that has been pending since 3/8/13" in the log. CMS Ex. 15 at ¶ 11. The Supervisor explained that the iFlow system showed that the CSA who answered the telephone call on August 19, 2013, viewed only the revalidation letter Palmetto sent to Petitioner on March 8, 2013 (associated with the Dune Medical revalidation process). CMS Ex. 15 at ¶ 15.

The Supervisor explained that the iFlow system shows that the CSA viewed the March 8, 2013 Dune revalidation letter during the course of the August 26, 2013 call. CMS Ex. 15, ¶ 19. Similarly, the Supervisor explained that the iFlow system showed that the CSA who answered a September 3, 2013 telephone call from Agape viewed the March 8, 2013 Dune revalidation letter. CMS Ex. 15 at ¶ 22.

The Supervisor further explained that Palmetto received two telephone calls from Agape on September 11, 2013. The CCN for the first call was 9013254365000. CMS Ex. 15 at ¶ 26. During the second telephone call on September 11, 2013, the CSA directed Agape to fax information concerning Petitioner's Dune revalidation request. CMS Ex. 15 at ¶ 28. The Supervisor reported that according to the iFlow system, Palmetto did not receive a provider enrollment application for Petitioner until October 11, 2013. CMS Ex. 15 at ¶¶ 14, 35.

The Supervisor stated that the CSA who responded to a September 25, 2013 telephone call reportedly told Agape that Palmetto had not received Petitioner's enrollment application. The CSA did view the March 8, 2013 revalidation request (pertaining to Dune Medical) on the iFlow system. CMS Ex. 15 at ¶¶ 29, 30. That CSA reportedly also informed Agape that Palmetto had received a different application for a different physician associated with Agape in March 2013. *See* CMS Ex. 14.

In sum, CMS concedes that Agape contacted Palmetto several times regarding the status of enrollment applications. However, the evidence specifically and persuasively suggests there were several misunderstandings and that the discussions Agape and Palmetto employees had related to Petitioner's revalidation with another group practice (Dune Medical) and not to Petitioner's reassignment to Agape.

***2. Petitioner is eligible for retrospective billing privileges starting September 11, 2013.***

I find the evidence demonstrates that Palmetto first received Petitioner's enrollment application on October 11, 2013. Palmetto ultimately approved that application and notified Petitioner of its October 11, 2013 effective date decision. CMS Ex. 11. A CMS contractor may permit retrospective billing for up to thirty days prior to the effective date of enrollment. 42 C.F.R. § 424.521(a).

Here, thirty days prior to the effective date of October 11, 2013, is September 11, 2013. Accordingly, Agape may bill Medicare retrospectively for reimbursement of covered services performed by Petitioner starting no earlier than September 11, 2013. Palmetto erroneously characterized September 11, 2013, as Petitioner's "effective date," rather than Petitioner's retrospective billing date. CMS Ex. 11. I treat Palmetto's action as if it intended to set September 11, 2013, as the earliest date for which Petitioner may submit retrospective claims, with the effective date of Petitioner's enrollment as October 11, 2013.

***3. Petitioner does not persuade me that Palmetto received earlier approvable reassignment applications from Agape before October 11, 2013.***

Petitioner argues his effective date should be February 1, 2013, the date Petitioner began to provide medical services for Agape because Agape actually filed applications on Petitioner's behalf on January 18, 2013. P. Br. at 3. Alternatively, Agape argues Petitioner's effective date should be February 11, 2013, because he claims Palmetto verbally acknowledged that it received Petitioner's enrollment applications on March 13, 2013. P. Br. at 3.

In support, Petitioner submits as exhibits Petitioner's enrollment application and cover letter dated January 18, 2013 (P. Ex. 1) and an enrollment application and cover letter dated October 1, 2013 (P. Ex. 3) in which the Agape Coordinator asserts that she mailed an earlier application on January 18, 2013. Petitioner also submits the Coordinator's affidavit (P. Ex. 2) explaining how the Coordinator mailed Petitioner's application on January 18, 2013. The Coordinator also references a CCN, 9013254365000, that Palmetto provided her.

I find the CCN number helps show that Agape did inquire about Petitioner's reassignment applications, but it does not refute CMS's explanation that Palmetto was referencing Petitioner's separate revalidation process regarding a different group practice during several of Agape's telephone inquiries. Therefore, the CCN does not show that Palmetto received Petitioner's applications before October 11, 2013.

In her affidavit, the Agape Coordinator explains very generally that she mailed Petitioner's completed enrollment applications on January 18, 2013. She does not state where or how she mailed the applications. She does not state whether she paid for certified mail delivery or whether she obtained any record of mailing it. She does not explain how, absent a receipt or other documentation, she remembers mailing specific forms on a specific date nearly 10 months prior to her making that recollection. *See* P. Exs. 2, 3. Ultimately, there is not sufficient evidence in the record to persuade me that Agape actually mailed enrollment applications for Petitioner on or around January 18, 2013. And even if Petitioner could prove that Agape mailed its applications on January 18, 2013, he has not come forward with sufficient evidence to prove the date on which Palmetto received the approvable applications, which would be instrumental in determining the filing date for effective date determinations.

Alternatively, Petitioner relies on the Coordinator's claim that she received verbal acknowledgment of receipt of Petitioner's applications on March 13, 2013, during her August 19, 2013 telephone inquiry to Palmetto. However, the MCSDT and iFlow records suggest that the CSA who answered the August 19, 2013 telephone call was referring to the March 8, 2013 revalidation request for one of Petitioner's already existing PTANs, the one associated with Dune Medical Center, an entirely separate transaction. Unfortunately, Agape did not realize during its first phone inquiry, on August 19, 2013, that Palmetto never received Petitioner's applications that Petitioner asserts it mailed in January 2013. What followed was a lot of ongoing confusion during the telephone communications between Agape and Palmetto regarding two separate and distinct transactions.

***4. I am not authorized to grant Petitioner's requests for equitable relief.***

Petitioner claims he received inaccurate information from Palmetto, which amounts to a claim of equitable estoppel. I am unable to grant the relief that Petitioner requests. It is well-established that: (1) estoppel cannot be the basis to require payment of funds from the federal fisc; (2) estoppel cannot lie against the government, if at all, absent a showing of affirmative misconduct, such as fraud; and (3) I am not authorized to order payment contrary to law based on equitable grounds. *See, e.g., Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51 (1984); *Oklahoma Heart Hosp.*, DAB No. 2183, at 16 (2008); *Wade Pediatrics*, DAB No. 2153, at 22 n.9 (2008), *aff'd*, 567 F.3d 1202 (10th Cir. 2009). Here, Petitioner does not allege any affirmative misconduct. Any misinformation was attributable to confusion regarding two distinct enrollment transactions, and I am unable to grant the earlier effective date that Petitioner requests.

**III. Conclusion**

Petitioner's earliest enrollment application, which Palmetto was able to subsequently approve, was received by Palmetto on October 11, 2013. Although Palmetto made references to earlier filed applications during the process, I find those references relating to a separate enrollment revalidation transaction concerning a different group practice. I affirm the CMS contractor's determination that Petitioner's enrollment in the Medicare program is effective October 11, 2013, with retrospective billing privileges starting September 11, 2013.

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/s/

Joseph Grow  
Administrative Law Judge