

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Bruceville Terrace,  
(CCN: 555344),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-91

ALJ Ruling No. 2016- 8

Date: February 1, 2016

**DISMISSAL**

For the reasons set forth below, I conclude that Petitioner, Bruceville Terrace, is not entitled to Administrative Law Judge (ALJ) review. I therefore dismiss its hearing request pursuant to 42 C.F.R. § 498.70(b).

**Discussion**

*Petitioner has no right to a hearing because CMS did not impose a remedy.<sup>1</sup>*

Petitioner is a skilled nursing facility located in Sacramento, California, that participates in the Medicare program as a provider of services. On August 31, 2015, the California Department of Public Health (State Agency) completed an abbreviated survey of the facility and found that it was not in substantial compliance with federal requirements. By letter dated September 4, 2015, the State Agency (as authorized by CMS) advised Petitioner that, based on the survey

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<sup>1</sup> I make this one finding of fact/conclusion of law.

findings, it would recommend that civil money penalties be imposed unless the facility achieved substantial compliance by October 1, 2015. CMS Ex. 1.

On September 21, 2015, the State Agency notified Petitioner that it had corrected its deficiencies as of September 17, 2015, so no penalties were imposed. CMS Ex. 2.

Nevertheless, on October 12, 2015, Petitioner requested a hearing to challenge the survey findings.

On December 18, 2015, CMS moved to dismiss Petitioner's hearing request. Petitioner has not responded and the time for responding has passed.

The hearing rights of a long-term care facility are established by federal regulations at 42 C.F.R. Part 498. A provider dissatisfied with an initial determination is entitled to further review, but administrative actions that are not initial determinations are not subject to appeal. 42 C.F.R. § 498.3(a), (d). The regulations specify which actions are "initial determinations" and set forth examples of actions that are not. A finding of noncompliance that results in the imposition of a remedy specified in 42 C.F.R. § 488.406, "except the State monitoring remedy," is an initial determination for which a facility may request an ALJ hearing. 42 C.F.R. § 498.3(b)(13) (emphasis added). But a facility has no right to a hearing unless CMS imposes one of the specified remedies. *Lutheran Home - Caledonia*, DAB No. 1753 (2000); *Schowalter Villa*, DAB No. 1688 (1999); *Arcadia Acres, Inc.*, DAB No. 1607 (1997). The remedy, not the citation of a deficiency, triggers the right to a hearing. *Schowalter Villa*; *Arcadia Acres, Inc.* Where CMS withdraws the remedies or otherwise declines to impose one, Petitioner has no hearing right. *See, Fountain Lake Health & Rehabilitation, Inc.*, DAB No. 1985 (2005).

Because CMS has imposed no remedies, Petitioner has no right to an ALJ hearing, and this matter must be dismissed. 42 C.F.R. § 498.70(b). I therefore grant CMS's motion.

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/s/  
Carolyn Cozad Hughes  
Administrative Law Judge