Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Steven Randolph, M.D.,
(NPI: 1710901442),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1019

ALJ Ruling No. 2014-5

Date: October 25, 2013

DISMISSAL

Petitioner, Steven Randolph, challenges the effective date of his participation in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) moves to dismiss his appeal. CMS argues that Petitioner has no right to a hearing before an administrative law judge (ALJ), because he has not obtained a reconsidered determination.

For the reasons set forth below, I grant CMS's motion and dismiss this case pursuant to 42 C.F.R. § 498.70(b).

Background

Petitioner is an emergency room physician and member of the Oakbend Medical Group. In applications (CMS-855R) dated October 9, 2012 and December 27, 2012, he applied for enrollment in the Medicare program and asked that his benefits be reassigned to the group practice. CMS Exs. 1-2. Apparently, other members of the practice filed similar applications at about the same time.

In a letter dated February 7, 2013, the Medicare contractor, Novitas Solutions, Inc., advised Petitioner that his enrollment application had been approved with an effective date of September 15, 2012. The notice advised him that, if he disagreed with the established effective date, he could request reconsideration before a contractor hearing officer. It warned that "[f]ailure to timely request a reconsideration is deemed a waiver of all rights to further administrative review." CMS Ex. 3. Petitioner did not request reconsideration.

Apparently, one of Petitioner's medical group colleagues, Ian Smalling, NP, had earlier received a similar letter approving his Medicare application. He disagreed with the effective date and requested reconsideration on January 15, 2013, which was well before the contractor issued its initial determination on Petitioner's application. CMS Ex. 4. Petitioner (along with other members of the medical practice) attempted to join Mr. Smalling's reconsideration request. However, Petitioner could not then validly request reconsideration, because the contractor had not issued an initial determination. *See* 42 C.F.R. §§ 498.5(d)(1); 498.5(l)(1); 498.22, and discussion below.

In a letter dated May 17, 2013, the contractor's hearing specialist issued its reconsidered determination in Mr. Smalling's case. CMS Ex. 5. Although the letter refers to similar initial determinations issued to other members of the practice, including Petitioner, it states that "a formal decision is not rendered in this letter for [those] providers." CMS Ex. 5 at 1.

In a letter dated June 20, 2013, Petitioner requested an ALJ hearing to challenge the effective date of his enrollment. CMS now moves to dismiss that hearing request.

Discussion

To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. To enroll in Medicare, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1); 424.515(a). When CMS determines that a supplier meets the applicable enrollment requirements, it grants him Medicare billing privileges. For physicians, the effective date for billing privileges "is the *later* of the date of filing" a subsequently approved enrollment application or "the date an enrolled physician . . . first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d) (emphasis added).

CMS's determination as to the effective date of enrollment is an "initial determination" that is subject to review under the procedures set forth in 42 C.F.R. Part 498. 42 C.F.R. §§ 498.3(1), (b)(15). An initial determination is binding unless reconsidered or otherwise reversed or modified. 42 C.F.R. § 498.20(b).

A supplier or prospective supplier dissatisfied with an initial determination may request reconsideration by filing a written request within 60 days from receipt of the notice of the initial determination. 42 C.F.R. §§ 498.5(d)(1); 498.5(l)(1); 498.22. If CMS (or its contractor) receives a properly-filed request for reconsideration, it makes a reconsidered determination affirming or modifying the initial determination. 42 C.F.R. § 498.24(c). A supplier or prospective supplier dissatisfied with a reconsidered determination is entitled to a hearing before an ALJ. 42 C.F.R. §§ 498.5(d)(2); 498.5(l)(2). The regulations do not provide for a hearing in the absence of a reconsidered determination. *Denise A. Hardy, D.P.M.*, DAB No. 2464 at 4-5 (2012); *Hiva Vakil*, DAB No. 2460 at 4-5 (2012).

Petitioner criticizes the Medicare contractor for not including his claim in the Smalling determination. I find this wholly without merit (and not reviewable by me). A Medicare contractor is certainly free to consider individual applications individually.

Petitioner also claims that "[a]t no point were Petitioners informed by Novitas that they needed to file separate and individual requests for reconsideration. . . ." P. Resp. and Opp. to CMS's Motion to Dismiss at 2. This is not accurate. The contractor's February 7 notice letter advised Petitioner that, unless he requested reconsideration of that determination, he waived all rights to further administrative review.

Finally, Petitioner argues that "[w]hile Novitas was aware of the consolidated request for reconsideration, Novitas failed to send proper notice to [Petitioner's counsel] of the different letters and notices addressed to the rest of the providers." P. Supp. Resp. and Opp. at 2. Petitioner's counsel argues that if he received notice (which his client actually did, *see* CMS Ex. 3, at 1), he would have filed a separate reconsideration request on Petitioner's behalf. That argument is not properly before me, but should have been made to Novitas, pursuant to 42 C.F.R. § 498.22(d), which permits CMS or its contractor to extend the time for filing a reconsideration request.

I am authorized to dismiss a hearing request if the party requesting review does not have a right to a hearing. 42 C.F.R. § 498.70(b).

Conclusion

Because neither CMS nor its contractor issued a reconsidered determination in this case, Petitioner does not have a right to an ALJ hearing. I therefore dismiss his hearing request pursuant to 42 C.F.R. 498.70(b).

/s/
Carolyn Cozad Hughes
Administrative Law Judge