

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Layne R. Christensen, OD,
(PTAN: ZZZ04978Z),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-275

Decision No. CR4597

Date: May 2, 2016

DECISION

I sustain the determination of a Medicare contractor, as affirmed on reconsideration and ratified by the Centers for Medicare & Medicaid Services (CMS), to assign an effective date of August 4, 2015 for reactivation of Medicare billing privileges to Layne R. Christensen Optometric Corporation (“the Corporation”).

I. Background

Petitioner Layne R. Christensen, OD, filed a hearing request on behalf of the Corporation in order to challenge the effective date of reactivation of billing privileges assigned to it by a Medicare contractor. CMS filed a motion for summary judgment and, with its motion, it filed eight exhibits that are identified as CMS Ex. 1-CMS Ex. 8. Petitioner opposed the motion (P. Statement). Petitioner filed no exhibits. However, he attached to his statement opposing the motion an alleged chronology of events and communications between the Corporation and CMS. The alleged chronology is not offered under oath nor did Petitioner file any documents that corroborated it. I receive CMS Ex. 1-CMS Ex. 8 into evidence. I do not accept Petitioner’s alleged chronology as evidence because Petitioner neither offered it as testimony under oath nor did he offer documentary corroboration for it. I note that the pre-hearing order issued in this case explicitly

directed Petitioner to file any statement in the nature of testimony as either an affidavit or as a sworn written declaration.

Although CMS styled its motion as a motion for summary judgment it is unnecessary to decide here whether the criteria for summary judgment are met. Neither side offered testimony and, therefore, there would be no purpose in convening an in-person hearing. I decide this case based on the written record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether the Medicare contractor properly assigned an effective participation date of August 4, 2015 to the Corporation.

B. Findings of Fact and Conclusions of Law

This case is governed by a regulation, 42 C.F.R. § 424.540. In relevant part the regulation states:

- (a) *Reasons for deactivation.* CMS may deactivate the Medicare billing privileges of a provider or supplier for any of the following reasons: . . .
- (3) The provider or supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information.
- (b) *Reactivation of billing privileges.* (1) When deactivated for any reason other than nonsubmission of a claim, the provider or supplier must complete and submit a new enrollment application to reactivate its Medicare billing privileges or, when deemed appropriate, at a minimum, recertify that the enrollment information currently on file with Medicare is correct. . . .

The regulation plainly tells a provider or supplier that it will be deactivated by CMS if CMS directs it to submit an enrollment application and the provider or supplier fails to do so within 90 calendar days. Additionally, it puts the onus on the deactivated provider or supplier to submit a new Medicare enrollment application if it desires to reactivate its participation.

CMS has published guidance to its contractors concerning what effective participation date to assign to a supplier or provider that seeks to reactivate its participation. That date shall be the date when the contractor receives a re-enrollment application that it processes

to completion. Medicare Program Integrity Manual (MPIM), § 15.27.1.2. That guidance is consistent with regulatory requirements governing the effective date of participation of newly participating suppliers and providers. 42 C.F.R. § 424.520(d).

The contractor and CMS acted appropriately to assign an effective reactivation date to the Corporation consistent with the regulatory requirements and with the facts of this case. The evidence establishes that on November 3, 2014, the contractor sent to the Corporation a request for Medicare enrollment revalidation. CMS Ex. 1. Neither Petitioner, acting on behalf of the Corporation, nor the Corporation, responded to this request. Therefore, the contractor deactivated the Corporation's enrollment as of March 25, 2015. CMS Ex. 2.

On May 8, 2015, Petitioner filed a revalidation application for his *individual* enrollment. CMS Ex. 3. On June 23, 2015, the contractor rejected this application as an application to reactivate the Corporation's participation because it was not an application on the Corporation's behalf but rather an application by Petitioner for himself as an individual. In rejecting the application the contractor advised Petitioner and the Corporation that an appropriate application needed to be submitted on behalf of the Corporation. CMS Ex. 4.

On August 4, 2015, the contractor received an application to reactivate the Corporation's participation. CMS Ex. 5. The contractor subsequently approved this application with an effective date of August 4, 2015, the date when the application was received.

The evidence establishes that the *only* effective reactivation date that the contractor could have granted to the Corporation was August 4, 2015. The Corporation failed to respond to the contractor's original request that it submit an application for Medicare enrollment revalidation. The contractor then did exactly what the regulation directed it to do: it deactivated the Corporation's participation, thus suspending its Medicare billing privileges. The Corporation could not reactivate its enrollment until it submitted an application that the contractor could process and approve. Petitioner's submission of an application on his own behalf was unacceptable and rejected because it was not an application on behalf of the Corporation. That application wasn't filed with the contractor until August 4, 2015, and the contractor then assigned that date as an effective reactivation date to the Corporation.

Petitioner makes a series of arguments asserting that the contractor provided him and the Corporation with misleading information and requests, causing them to "jump through hoops" to accommodate the contractor's demands. P. Statement at 1. At bottom, according to Petitioner, the Corporation's failure to have its participation revalidated in 2014 was the contractor's fault. He contends, essentially, that he and the Corporation should be found blameless.

This argument doesn't comport with the evidence. First, Petitioner does not deny credibly receiving the contractor's November 3, 2014 request. He asserts that he and the Corporation's "first" notification from the contractor was a phone message on February 2, 2015. But, Petitioner hasn't explicitly denied receiving the November 3, 2014 request and he hasn't provided any proof of the alleged February 11, 2015 phone message.

Petitioner then recites all of the hurdles that he allegedly attempted to surmount between February 18, 2015 and May 12, 2015 in order to satisfy the contractor. Again, Petitioner has offered no corroboration of any sort to show that alleged communications between him or the Corporation and the contractor took place. He merely alleges that there were communications without providing proof that they occurred.

Thus, and notwithstanding Petitioner's assertions, there is no record of any communications between him or the Corporation and the contractor other than the evidence furnished by CMS. I find that evidence to be credible and I do not accept Petitioner's unsourced and uncorroborated assertions of additional communications.

Moreover, Petitioner's arguments would be unavailing even if the alleged communications had occurred. His assertions boil down to equitable claims that the contractor misled him and the Corporation or that he and the Corporation failed to receive credit from the contractor for the good faith efforts that they made to satisfy the contractor's demands. I have no authority to grant relief to Petitioner or the Corporation based on these equitable arguments. *US Ultrasound*, DAB No. 2302, at 8 (2010).

/s/
Steven T. Kessel
Administrative Law Judge