

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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| In the Case of: |) | |
| |) | |
| Grace Care Center |) | Date: September 14, 2007 |
| (CCN: 45-5901), |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| - v. - |) | Docket No. C-07-363 |
| |) | Decision No. CR1647 |
| Centers for Medicare & |) | |
| Medicaid Services. |) | |
| _____ |) | |

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Grace Care Center, because it has no right to a hearing.

I. Background

Petitioner is a skilled nursing facility located in Wichita Falls, Texas. It participates in the Medicare program. Its participation in Medicare is governed by sections 1866 and 1819 of the Social Security Act and by implementing regulations at 42 C.F.R. Parts 483 and 488. Also, its right to a hearing in this case is governed by regulations at 42 C.F.R. Part 498.

On January 18 and February 15, 2007, Petitioner was surveyed for compliance with Medicare participation requirements (January and February surveys). Based on the results of that survey the Centers for Medicare & Medicaid Services (CMS) determined that Petitioner no longer met participation requirements. It determined to impose remedies against Petitioner consisting of civil money penalties in the following amounts: two per-instance civil money penalties of \$2,000 each to remedy deficiencies identified at

the January survey; and a single per-instance civil money penalty of \$7,500 to remedy deficiencies identified at the February survey. Petitioner requested a hearing to challenge the deficiency findings that were made at the two surveys and CMS's remedy determinations, and the case was assigned to me for a hearing and a decision.

However, on May 23, 2007, CMS notified Petitioner that it was rescinding the \$7,500 civil money penalty that it had determined to impose to remedy deficiencies identified at the February survey. On August 6, 2007, CMS advised Petitioner that it had rescinded the two \$2,000 per instance civil money penalties that it had determined to impose to remedy deficiencies identified at the January survey. As a consequence, CMS is no longer demanding that any remedies be imposed against Petitioner.

On August 20, 2007 CMS moved to dismiss Petitioner's hearing request. Petitioner did not file any opposition to the motion.

II. Discussion

It is axiomatic that no right to a hearing exists where there is no remedy determination to contest. *Arcadia Acres*, DAB No. 1607 (1997); *Rafael Convalescent Hospital*, DAB No. 1616 (1997). Where CMS determines to impose a remedy hearing rights are created. However, those rights are extinguished if CMS determines to rescind that remedy.

I must dismiss a hearing request where the party requesting a hearing has no right to one. 42 C.F.R. § 498.70(b). Petitioner no longer has a right to a hearing in this case because the unchallenged facts are that CMS rescinded its remedy determination. Consequently, I dismiss Petitioner's hearing request.

/s/
Steven T. Kessel
Administrative Law Judge