

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Frank E. Reyes, M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-594

Decision No. CR2445

Date: October 6, 2011

DECISION

I sustain the determination of the Centers for Medicare and Medicaid Services (CMS) to enroll Petitioner, Frank E. Reyes, M.D., as a Medicare provider with an effective participation date of January 24, 2011.

I. Background

Petitioner is a physician. He filed a hearing request in this case because he was dissatisfied with the effective date of participation in Medicare that was assigned to him by National Government Service (NGS), a Medicare contractor. The case was assigned to me for a hearing and a decision.

CMS filed a pre-hearing exchange that included a brief, a motion for summary judgment, and eleven proposed exhibits that it identified as CMS Exhibit (Ex.) 1 – CMS Ex. 11. On September 12, 2011, Petitioner responded to the CMS motion with a letter. I am accepting that letter as Petitioner's pre-hearing exchange.

I receive into the record of this case CMS Ex. 1 – CMS Ex. 11.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue in this case is whether NGS, acting on CMS's behalf, correctly assigned Petitioner an effective Medicare participation date of January 24, 2011.

B. Findings of Fact and Conclusions of Law

There are no disputed facts in this case. On October 22, 2010, Petitioner filed an application with NGS to participate in Medicare. CMS Ex. 1. Petitioner filed the application on a form known as a "Form CMS-855I." However, and as Petitioner concedes, his staff prepared the application on a form that was obsolete and that CMS and its contractors no longer accepted. Consequently, on December 20, 2010, NGS returned the application to Petitioner and requested that he file one on a current form. CMS Ex. 2.

On January 24, 2011, Petitioner resubmitted his application on a current Form CMS-855I. CMS Ex. 3. NGS accepted this application and assigned Petitioner an effective date of January 24, 2011. Medicare regulations allow a newly enrolled provider to file claims for services provided up to 30 days prior to the effective enrollment date. Thus, Petitioner was enabled to file Medicare reimbursement claims for services that he performed on December 26, 2010, and thereafter.

CMS is authorized by regulation to develop and promulgate applicable enrollment applications. A prospective provider or supplier in Medicare must submit an application on the approved CMS form. 42 C.F.R. § 424.510(a). CMS, or its contractors, are not required to accept applications that are not made on the approved form.

In this case, Petitioner originally submitted his application as a provider on a form that was obsolete. In September 2009, CMS released a revised Form CMS-855I. CMS Ex. 8. Contractors, including NGS, were instructed not to accept provider applications made on obsolete forms and submitted beginning December 1, 2009. CMS notified the provider community of the changed form and of its policy not to accept applications made on obsolete forms. CMS Ex. 9.

NGS thus had no choice but to return Petitioner's October 22, 2010 application to him inasmuch as he filed it on an obsolete form. The application that Petitioner submitted on January 24, 2011 was the first application that Petitioner submitted to NGS that was made on a current Form CMS-855I. NGS accepted that application and assigned Petitioner an effective participation date that is concurrent with the date that it received Petitioner's application. That date is the

earliest date that NGS and CMS could assign to Petitioner as an effective date of participation. 42 C.F.R. § 424.520(d).

As I have discussed, Petitioner acknowledges that he filed his October 22, 2010 application on an obsolete form. He does not assert that NGS or CMS were obligated to accept that form. Rather, Petitioner complains about the length of time – several weeks – that it took before NGS returned the October application to him. He also protests that the contractor should have acted more expeditiously to log his January 2011 application into its system. Petitioner contends that he filed his January application on January 3, 2011. However, NGS did not receive it until January 24, 2011. CMS Ex. 3 at 1. There is no evidence to show that NGS received the January application on an earlier date.

These are equitable and not legal arguments. I am without authority to order either NGS or CMS to act more expeditiously, even though I sympathize to some extent with Petitioner's complaint that the contractor acted very slowly in advising Petitioner that he had filed his October 22, 2010 application on an obsolete form. On the other hand, Petitioner would have avoided all of the problems that he encountered had he used the correct form initially.

/s/

Steven T. Kessel
Administrative Law Judge