

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Mebin Thomas, PA  
(NPI: 1598082737)

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-587

Decision No. CR2578

Date: July 27, 2012

**DECISION DISMISSING APPEAL FOR CAUSE**

The request for hearing of Petitioner, Mebin Thomas, PA, is dismissed pursuant to 42 C.F.R. § 498.70(b).

**I. Procedural History**

On July 5, 2011, Petitioner submitted his initial CMS-855I application to CMS's contractor, TrailBlazer Health Services. CMS Ex. 1, at 1. TrailBlazer denied the application because the medical group that employed Petitioner, Davenport Medical Center, was not active in the Medicare system. CMS Ex. 2, at 4. After Davenport Medical Center submitted its application and was enrolled in the Medicare program, Petitioner submitted a second CMS-855I application on December 6, 2011. CMS Ex. 3, at 1. Trailblazer accepted Petitioner's second CMS-855I application and enrolled Petitioner into the Medicare program with an effective date of December 6, 2011 and retroactive billing privileges from November 7, 2011. CMS Ex. 4, at 2. Petitioner received notice of his effective enrollment date on January 9, 2012. CMS Ex. 4, at 1.

On February 6, 2012, Trailblazer received a request for reconsideration from Petitioner regarding its determination of his effective date. CMS Ex. 5, CMS Ex. 6. Trailblazer denied this request because the signatory on the reconsideration request, Tracy Wohlgemuth, was not Petitioner's authorized representative. CMS Ex. 6; CMS Ex. 7, at 4. Trailblazer received a second reconsideration request signed by Petitioner on March 19, 2012, 70 days after Petitioner received notice of his effective date. CMS Ex. 8; CMS Ex. 9. Therefore, TrailBlazer denied Petitioner's second reconsideration request as untimely. CMS Ex. 9.

On April 16, 2012, my office received a request for hearing dated April 8, 2012. The case was assigned to me for hearing and decision, and I issued an Acknowledgment and Prehearing Order on April 18, 2012. The request for hearing purported to request a hearing on behalf of Mebin Thomas, PA. The hearing request was not signed by Petitioner, but by Tracy Wohlgemuth. Accordingly, I directed that Petitioner file a notice, signed by him, appointing Ms. Wohlgemuth as his representative in this matter, which he did.

On May 18, 2012, CMS filed a motion for summary judgment, with supporting brief and CMS Exs. 1 through 9. I treat the CMS motion for summary judgment as a motion to dismiss. Petitioner filed an undated two- page response that was received on June 25, 2012. CMS filed a reply brief on July 2, 2012. In the absence of any objection, I admit CMS Exs. 1 through 9.

## **II. Applicable Law**

When a prospective provider or supplier receives an initial determination from CMS that affects his or her ability to participate in the Medicare program, the provider or supplier may request reconsideration of that decision. 42 C.F.R. § 498.5(d) and (l). The request for reconsideration must be filed with CMS, either directly by the provider or through the provider's designated representative, within 60 days of receipt of the notice of the initial determination. 42 C.F.R. § 498.22(b). The date of receipt is presumed to be five days after the date on the notice from CMS, unless there is a showing that it was received earlier or later. 42 C.F.R. § 498.22(b).

## **III. Findings of Fact and Conclusions of Law**

My conclusions of law are set forth followed by the pertinent findings of fact and analysis.

**A. Petitioner has no right to a hearing before an ALJ because there has been no reconsideration determination.**

**B. Dismissal is required as Petitioner has no right to a hearing.**

The issue raised by Petitioner's request for hearing does not involve his eligibility to enroll in Medicare. Rather, Petitioner was dissatisfied solely with TrailBlazer's determination that the effective date of his enrollment is November 7, 2011. Petitioner was informed of his enrollment and effective date by letter dated January 9, 2012, which was faxed to his representative on the same date. CMS Ex. 4. The letter fully informed Petitioner of his right to reconsideration; it clearly stated that the reconsideration request must be received within 60 days of the postmark date of the notice letter; and that the reconsideration request must be signed and dated by the physician or any responsible authorized official who was included on the original CMS-855I application. The notice also informed Petitioner that failure to timely request reconsideration would be treated as a waiver of all rights to further administrative review.

The regulations require that a supplier, such as Petitioner, request reconsideration if the supplier is dissatisfied with a CMS initial determination. The determination of the effective date of enrollment in Medicare is an initial determination. 42 C.F.R. § 498.3(b)(15). If dissatisfied with the decision on reconsideration, the supplier has a right to review by an ALJ. The regulation, 42 C.F.R. § 498.5(d) and (l), establish Petitioner's right to reconsideration and review by an ALJ:

*Appeal rights of prospective suppliers.* (1) Any prospective supplier dissatisfied with an initial determination or a revised initial determination that its services do not meet the conditions for coverage may request reconsideration in accordance with § 498.22(a).

(2) Any prospective supplier dissatisfied with a reconsidered determination under paragraph (d)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

(1) *Appeal rights related to provider enrollment.* (1) Any prospective provider, an existing provider, prospective supplier or existing supplier dissatisfied with an initial determination or revised initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration in accordance with § 498.22(a).

(2) CMS, a CMS contractor, any prospective provider, an existing provider, prospective supplier, or existing supplier dissatisfied with a reconsidered determination under paragraph (l)(1) of this section, or a revised reconsidered determination under § 498.30, is entitled to a hearing before an ALJ.

Petitioner does not have a right to an ALJ hearing in this case. Petitioner failed to timely request reconsideration regarding the effective date of his participation in Medicare, and no reconsideration decision was issued by CMS or its contractor. I have no authority to consider whether or not the request for reconsideration to TrailBlazer was timely or to grant specific relief in the form of an order to CMS or its contractor to conduct reconsideration. Because there was no reconsideration decision, Petitioner has no right to a hearing by an ALJ. Dismissal is required. 42 C.F.R. § 498.70(b).

### **III. Conclusion**

For the foregoing reasons, Petitioner's request for hearing is dismissed. I may vacate a dismissal if either party files such a request within 60 days of receipt of this dismissal and states good cause for such action. 42 C.F.R. § 498.72.

\_\_\_\_\_  
/s/  
Keith W. Sickendick  
Administrative Law Judge