

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Yorkshire Health Care Center,)	Date: June 9, 1997
)	
Petitioner,)	
)	
- v. -)	Docket Nos. C-97-026
)	Decision No. CR477
Health Care Financing)	
Administration.)	
)	
)	

DECISION

During the prehearing conference in the above-captioned case, it came to my attention that Petitioner was seeking a hearing to challenge the merits of certain survey findings even though the Health Care Financing Administration (HCFA) has taken no enforcement actions against Petitioner based on those survey findings. In earlier issued decisions, I had concluded on the basis of 42 C.F.R. § 498.3(b)(12) and (d)(1) that HCFA's findings of deficiencies are not reviewable by an administrative law judge unless they resulted also in HCFA's decision to impose at least one of the enforcement remedies specified in 42 C.F.R. § 488.406. E.g., Arcadia Acres, Inc., DAB CR424 (1996), aff'd DAB 1607 (1997); Country Club Center, II, DAB CR433 (1996), aff'd DAB 1614 (1997). I discussed also in those decisions my conclusion that, because HCFA has the right to revise and rescind its own determinations, providers do not retain any right to a hearing when HCFA has rescinded its previously made decisions to impose enforcement remedies. Id.

I advised the parties of my earlier decisions and directed Petitioner to show cause in writing why this action should not be dismissed.

In accordance with the schedule I had established, the parties have filed their briefs and their supporting documents.¹ The parties' submissions establish the following facts material to the disposition of this case:

1. By letter dated January 4, 1996, HCFA notified Petitioner that, based on the results of surveys conducted in August and October of 1995, HCFA would impose the enforcement remedy of denying payments for all new Medicare and Medicaid admissions (DPNA) effective on January 24, 1996, and would terminate Petitioner's participation in the Medicare and Medicaid programs on February 17, 1996. P. Ex. 6.
2. By letter dated February 20, 1996, HCFA notified Petitioner that, because a revisit survey conducted on January 18, 1996 had found Petitioner in compliance with federal participation requirements, the enforcement remedies of DPNA and termination would not be imposed against Petitioner. HCFA Ex. 3.
3. By letter dated July 30, 1996, HCFA reconfirmed for Petitioner that no remedies had been enforced against Petitioner on the basis of the surveys conducted in August and October, 1995. P. Ex. 7.
4. Petitioner filed a request for hearing dated August 28, 1996 in order to challenge the findings of deficiencies made during the surveys conducted in August 1995, October 1995, and on January 18, 1996. P. Ex. 8.
5. There is no evidence showing that any enforcement remedy listed in 42 C.F.R. § 488.406 has in fact been taken by HCFA against Petitioner on the basis of those survey findings Petitioner is seeking to challenge.

Based on the foregoing facts and for the reasons I discussed in Arcadia and Country Club, I conclude that Petitioner does not have a right to a hearing under 42 C.F.R. Part 498.

Accordingly, I dismiss Petitioner's hearing request pursuant to 42 C.F.R. § 498.70(b).

/s/
Mimi Hwang Leahy
Administrative Law Judge

¹ Petitioner submitted eight exhibits (P. Ex.) with its brief. HCFA submitted six exhibits (HCFA Ex.) with its brief. Neither party has objected to my receiving into evidence the exhibits offered by the other party. Therefore, I receive into evidence P. Exs. 1 - 8 and HCFA Exs. 1 - 6.