

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
Cumberland County Hospital System,)	
Inc., d/b/a, Cape Fear Valley)	Date: June 1, 2009
Health System, (CCN: 34-0028))	
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-202
)	Decision No. CR1957
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION

For the reasons set forth below, I conclude that Petitioner, Cumberland County Hospital System, d/b/a Cape Fear Valley Health System, is not entitled to Administrative Law Judge (ALJ) review of a determination made by the Centers for Medicare & Medicaid Services (CMS) following an October 16, 2008 survey. I therefore dismiss its hearing request pursuant to 42 C.F.R. § 498.70(b).

Discussion

Petitioner has no right to a hearing because CMS rescinded termination of its provider agreement.¹

Petitioner operates Cape Fear Valley Health System, an acute care hospital with its principal place of business in Fayetteville, Cumberland County, North Carolina. Based on a survey completed October 16, 2008, by the North Carolina Department of Health and Human Services, Division of Health Service Regulation (State Agency), CMS determined that the hospital was not in substantial compliance with Medicare conditions of participation and that its deficiencies posed immediate jeopardy to patient health and safety. After a follow-up survey, completed

¹ I make this one finding of fact/ conclusion of law.

November 6, 2008, CMS determined that the hospital's substantial non-compliance continued, although its deficiencies no longer posed immediate jeopardy to resident health and safety.

In a letter dated November 19, 2008, CMS advised Petitioner that its Medicare participation would terminate effective January 14, 2009. CMS Ex. 1. Thereafter, Petitioner timely requested an ALJ hearing, pursuant to 42 C.F.R. § 498.40 *et seq.*

CMS subsequently determined that the hospital had returned to substantial compliance, and, by letter dated January 27, 2009, advised Petitioner that it was rescinding the termination action, although the State Agency would continue to monitor the hospital with respect to some outstanding life-safety code waivers. CMS now moves to dismiss Petitioner's hearing request. Petitioner responds that it "would be agreeable to an order dismissing this matter," provided it contains certain of CMS's affirmative representations. P. Response at 2-3.

A Medicare provider's hearing rights are established by federal regulations at 42 C.F.R. Part 498. A provider, such as a hospital, dissatisfied with an initial determination may request an ALJ hearing. 42 C.F.R. §§ 498.5, 489.53(e). However, administrative actions that are not initial determinations are not subject to appeal. 42 C.F.R. § 498.3(a). The regulations specify which actions are "initial determinations" and set forth examples of actions that are not. The termination of a provider agreement is an initial determination, subject to review. 42 C.F.R. § 498.3(b)(8). The finding that a provider, which has been found in compliance with conditions of participation, nevertheless has deficiencies, is not an initial determination and is not subject to review. 42 C.F.R. § 498.3(d)(1). Because the termination here has been rescinded, no initial determination remains. Petitioner no longer has a right to a hearing, and this matter must be dismissed. 42 C.F.R. § 498.70(b).

/s/

Carolyn Cozad Hughes
Administrative Law Judge