

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

David Rotton, DO,
(NPI: 1548218803),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-198

Decision No. CR2099

Date: March 29, 2010

DECISION

I remand this case to the Centers for Medicare & Medicaid Services (CMS) and its contractor, Trailblazer Health Enterprises, LLC (Trailblazer), so that they may make a new determination as to the effective date of Petitioner's participation in Medicare.

I. Background

Petitioner, David Rotton, DO, is a physician. He filed a hearing request to challenge the determination by CMS through its contractor, Trailblazer, that his effective date of participation in Medicare is April 30, 2009. The case was assigned to me for a hearing and a decision. CMS moved that I dismiss Petitioner's hearing request, and I denied that motion. The parties then filed pre-hearing exchanges.

CMS filed ten proposed exhibits with its hearing exchange that it designated as CMS Ex. 1 – CMS Ex. 10. Petitioner filed a single exhibit which he designated as P. Ex. 1. I receive the parties' proposed exhibits into evidence.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether CMS, through its contractor, Trailblazer, correctly determined Petitioner's effective date of participation in Medicare to be April 30, 2009.

B. Findings of fact and conclusions of law

My findings of fact and conclusions of law in this case are as follows. CMS bases its effective date determination in this case on facts which, it contends, establish that Petitioner did not file an acceptable application to participate in Medicare until May 22, 2009. CMS Ex. 3; CMS Ex. 4. It argues that the effective date of a physician's participation in Medicare can be no earlier than the date when that physician files an application that is subsequently approved by a Medicare contractor, Trailblazer in this case. 42 C.F.R. § 424.520(d). According to CMS, Petitioner received the earliest effective participation date that is allowed by regulation because he did not file an acceptable application until May 22, 2009.¹

In fact, Petitioner filed an earlier application for enrollment on August 12, 2008, which Trailblazer appears to have lost and which it did not process. CMS asserts that Trailblazer has no record of having received this application. However, Petitioner has produced a completed copy of it and I find Petitioner's assertion that he sent the application to Trailblazer on August 12, 2008 to be credible. P. Ex. 1.

There remains the question of whether the August 12, 2008 application met all applicable criteria for acceptability. If it is an acceptable application then Trailblazer should award Petitioner an effective date of participation based on that application and not on a subsequent application.

¹ Petitioner was awarded an "effective date" of participation of April 30, 2009 which is nearly a full month *earlier* than the earliest effective date that is permitted by 42 C.F.R. § 424.520(d) and based on his May 22, 2009 application. Apparently, Trailblazer confused the concept of "effective date" with the related concept of "earliest date of payment." Under ordinary circumstances a newly enrolled physician may not claim reimbursement for claims that are generated more than 30 days prior to his or her effective date of enrollment. 42 C.F.R. § 424.521. Trailblazer appears to have attempted to effectuate this latter regulation in Petitioner's case by giving him an "effective date" of enrollment that Trailblazer intended to be the earliest date when it would pay claims submitted by Petitioner or on his behalf.

I remand this case to CMS and to Trailblazer in order that a determination may be made as to whether the August 12, 2008 application is acceptable. If it is determined that the application is acceptable then, presumably, Petitioner will receive an effective participation date based on that application. If, on the other hand, the application is determined not to be acceptable, then Petitioner may seek reconsideration of that determination and, if unsuccessful, a hearing. A new hearing in this case could conceivably address the issue of whether Trailblazer should have accepted the August 12, 2008 application. And, if the August 12, 2008 application is found to be unacceptable there would remain open the question of whether Petitioner should have received an effective date that is earlier than April 30, 2009, based on the arguments he made in this case concerning the May 22, 2009 application.

/s/
Steven T. Kessel
Administrative Law Judge