

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Integrated Homecare Services Chicago Corporation,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1058

ALJ Ruling No. 2014-23

Date: January 30, 2014

ORDER DENYING MOTION TO VACATE DECISION

On January 10, 2014, I issued a decision affirming a reconsidered determination by Palmetto GBA National Supplier Clearinghouse (NSC), a contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), to revoke the Medicare billing privileges of Petitioner, Integrated Homecare Services Chicago Corporation (Supplier No. 5126960002). *See Integrated Homecare Servs. Chicago Corp.*, DAB CR3070 (2014).¹ Petitioner subsequently filed a motion to vacate my decision because NSC issued a revised determination that was fully favorable to Petitioner. I deny Petitioner's motion because I do not have the authority to vacate my decision and, in any event, my decision does not adversely affect NSC's revised determination to reinstate Petitioner's Medicare billing privileges.

¹ Administrative decisions cited in this decision are accessible on the internet at: <http://www.hhs.gov/dab/decisions/index.html>. A link to this Order will also be posted to that website.

I. Background

Petitioner is enrolled in the Medicare program as a supplier of durable medical equipment, orthotics, prosthetics, and supplies (DMEPOS). In December 2012, Petitioner informed NSC that it was changing its address effective January 1, 2013; however, Petitioner ultimately did not move to the new location until March 2013. In February 2013, an NSC inspector attempted to conduct a site visit of Petitioner's new location only to find that the site was under construction. As a result, NSC issued an initial determination on March 25, 2013, revoking Petitioner's Medicare billing privileges effective February 20, 2013. Petitioner requested reconsideration. On May 23, 2013, NSC issued a reconsidered determination upholding the revocation. Petitioner timely filed a request for hearing before an administrative law judge. *Integrated Homecare Servs.*, DAB CR3070, at 1-2.

In compliance with my Acknowledgment and Pre-hearing Order, the parties submitted their pre-hearing exchanges. CMS also moved for summary judgment. I granted summary judgment and affirmed NSC's reconsidered determination based on Petitioner's failure to be operational at the location on record with NSC at the time of the February 2013 attempted site visit. At the end of the decision, I stated the following:

In the present matter, Petitioner has shown that this case appears unique in that Petitioner's violation arises from trying to diligently (too diligently as it turns out) ensure that CMS and NSC were given notice of the change in office address. However, despite the facts of this situation, NSC and CMS have maintained that Petitioner's billing privileges should be revoked and a two-year reenrollment bar established. In the interests of justice, CMS should consider exercising its discretion to reopen this matter under 42 C.F.R. § 498.30 to review whether it should have revoked Petitioner's Medicare billing privileges or whether a shorter reenrollment bar is warranted in this case under the standard set forth in 42 C.F.R. § 424.535(c).

Integrated Homecare Services, DAB CR3070, at 4-9.

On January 15, 2014, Petitioner, through counsel, filed a Motion to Vacate the ALJ Decision of January 10, 2014, based on a revised determination issued by NSC reinstating Petitioner's Medicare billing privileges. CMS filed a reply in which it did not oppose the motion.

II. Discussion

In the motion to vacate, Petitioner asserts that NSC issued the revised determination reinstating Medicare billing privileges on November 20, 2013; however, Petitioner only received the determination after I issued my decision. Petitioner indicates that NSC mailed the revised determination in November 2013 to an old address for Petitioner and then reissued the determination on January 13, 2014, presumably to Petitioner's current address. CMS counsel states in reply that NSC did not inform CMS counsel of the revised determination. Petitioner's position is that the revised determination was issued prior to my January 10, 2013, thus rendering Petitioner's request for hearing moot before I issued my decision. As a result, Petitioner believes that I should vacate my decision.

Petitioner attached a copy of the revised determination to its motion. The letter is dated November 20, 2013, but also is stamped "January 13 2014." The entire letter reads:

On August 6, 2013, [NSC] received notification regarding your request for an appeal before an Administrative Law Judge. Accordingly, the NSC submitted your file for additional review. Your case has been reviewed and CMS has determined you are in compliance with the Medicare Supplier Standards. Your billing privileges have been reinstated, effective February 20, 2013. The Durable Medical Equipment Medicare Administrative Contractors have been notified of this action. If you have any questions concerning this notice, please contact us at (866) 238-9652.

Although NSC did not expressly call this letter a revised determination, I consider it to be a revised determination issued under 42 C.F.R. § 498.32 because it materially alters the reconsidered determination in this case. However, simply because NSC issued a revised determination does not mean that I should take any further action in this case. Further, the regulations do not provide me with the authority to grant Petitioner the relief he seeks, which is vacature of my decision.

The regulations provide administrative law judges with the authority to vacate a dismissal of a request for hearing. 42 C.F.R. §§ 498.71(b); 498.72. However, dismissal orders are different from decisions, *compare* 42 C.F.R. §§ 498.68-72 with 42 C.F.R. § 498.74, and both are separately listed as appealable actions. *See* 42 C.F.R. §§ 498.80-83. The regulations do not indicate that an administrative law judge may vacate a decision.

The regulations allow an administrative law judge to reopen and revise a decision. 42 C.F.R. § 498.100-103. I have considered whether Petitioner's motion should

be viewed as a motion to reopen my decision. However, because Petitioner's motion is solely based on NSC's decision to reopen its previous determination and issue a revised determination, and not on the merits of my decision, I conclude that this is not a basis for me to reopen my decision and revise it.

In the present matter, NSC issued an initial determination and then a reconsidered determination. 42 C.F.R. §§ 498.20, 498.24. In provider and supplier enrollment cases, a provider or supplier who is not satisfied with a reconsidered determination may request a hearing before an administrative law judge within 60 days of receipt of the notice of the reconsidered determination. 42 C.F.R. §§ 498.5(1)(2), 498.40(a)(2). It is significant that an administrative law judge's review is predicated upon the reconsidered determination. *NORPRO Orthotics & Prosthetics, Inc.*, DAB CR3081, at 7 (2014) (citing *Hiva Vakil, M.D.*, DAB No. 2460, at 4-5 (2012)). Similarly, after a revised determination is issued, a provider or supplier must request a hearing in order to obtain administrative law judge review of that revised determination. See 42 C.F.R. § 498.5(1)(2), 498.32(b)(1), 498.40(a)(2).

Petitioner filed a request for hearing of the reconsidered determination but not for the revised determination. Therefore, my decision was based on a review of the reconsidered determination. Had NSC properly notified the parties that it issued a revised determination in November 2013, I would have granted a motion to dismiss the request for hearing, indicating that Petitioner could request a hearing if it wanted an administrative law judge to review the revised determination. However, after rendering a decision, I can no longer dismiss the request for hearing of the reconsidered determination. Further, nothing in the regulations expressly states that I lose jurisdiction to review a reconsidered determination because a revised determination has been issued. Therefore, while my decision was never to have any actual impact on the parties following the issuance of the revised determination, it was not improperly issued.

The revised determination reinstated Petitioner's Medicare billing privileges retroactively to February 20, 2013. NSC issued this determination within 12 months after the date of the initial determination. 42 C.F.R. § 498.30. The revised determination appears to be fully favorable to Petitioner and will become binding unless Petitioner files a request for hearing before an administrative law judge or NSC issues another revised determination. 42 C.F.R. § 498.32(b). Therefore, no further action on my part is warranted or authorized by the regulations.

Before concluding, NSC's role in this case bears comment. According to the revised determination, NSC commenced a review of this case when it learned that Petitioner filed a request for an administrative law judge hearing. Although I believe that NSC's revised determination has brought a just result, NSC took a

substantial amount of time to conduct its review and, after deciding to issue a revised determination, failed to properly inform counsel for CMS or Petitioner. As a result, this tribunal has needlessly expended resources adjudicating this case and Petitioner has likely incurred unnecessary litigation expenses.

III. Conclusion

For the reasons stated above, Petitioner's motion to vacate my January 10, 2013 decision is denied. Based on NSC's November 20, 2013 revised determination, Petitioner's Medicare billing privileges have been retroactively reinstated back to February 20, 2013. The revised determination is binding unless Petitioner files a request for an administrative law judge hearing or NSC further revises the revised determination. 42 C.F.R. § 498.32(b).

/s/

Scott Anderson
Administrative Law Judge