

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Carrie Cera-Hill, M.D.
(PTAN: 263954YMG3),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-812

Decision No. CR3274

Date: June 27, 2014

DECISION

I deny the motion of the Centers for Medicare & Medicaid Services (CMS) to dismiss the hearing request of Petitioner, Carrie Cera-Hill, M.D. Petitioner filed her request timely. I grant CMS's motion for summary judgment on the merits. Petitioner has established no ground for me to change the effective date of her participation in Medicare to August 29, 2012.

I. Background and Ruling on Motion to Dismiss

In this case Petitioner seeks to challenge the effective date of her enrollment as a Medicare supplier. CMS filed motions to dismiss Petitioner's hearing request and, in the alternative, for summary judgment on the merits. It accompanied its motions with a brief and 14 proposed exhibits that it identified as CMS Ex. 1 – CMS Ex. 14. Petitioner did not reply to CMS's motions but she advised me that she was relying on her hearing request plus the supporting documentation that she filed with her hearing request. I receive CMS Ex. 1 – CMS Ex. 14 into the record. I am identifying Petitioner's hearing

request and all of her supporting documents (which appear to duplicate some of CMS's exhibits) as a single exhibit, for purposes of the record, P. Ex. 1. I receive all of the parties' exhibits into the record.

CMS argues that Petitioner did not file her hearing request timely – within 60 days of her receiving notice of reconsideration in this case – and has not shown good cause for her failure to do so. However, I find that Petitioner in fact did submit a timely hearing request.

Petitioner filed applications for Medicare enrollment and reassignment of her benefits on November 26, 2012. On April 17, 2013, a Medicare contractor notified Petitioner that her applications had been approved and that the effective date of her participation in Medicare would be October 28, 2012. CMS Ex. 6 at 3.

Petitioner was dissatisfied with this effective date determination and requested reconsideration. On May 26, 2013, the contractor sent a notice to Petitioner's employer, Advanced Dermatology, in Aurora, Colorado, informing Petitioner that the request for reconsideration was denied. CMS Ex. 10 at 4.¹ The letter advised Petitioner that she had a right to request a hearing before an administrative law judge but that this right must be exercised within 60 calendar days of Petitioner's receipt of the notification. *Id.*

Subsequently, the Practice Manager of Petitioner's employer asked that the notice of the reconsideration determination be sent to another address in Centennial, Colorado. In response to that request the contractor re-sent its denial notice to the Centennial, Colorado address, but dated January 9, 2014. CMS Ex. 14 at 1-2. Petitioner then filed her hearing request on March 11, 2014.

The hearing request was filed within 60 days (presumed to be within 65 days of the mailing date) of the copy of the reconsideration determination that the contractor sent to Petitioner's Centennial Colorado address. The earlier notice of reconsideration was sent to an address in Aurora, Colorado. However, all of the previous communications between the contractor and Petitioner were sent to the Centennial, Colorado address and in fact, that is the address from which Petitioner corresponded with the contractor. CMS has offered no explanation for sending the reconsideration notice initially to a different address and offered no facts to show that Petitioner would have received the notice at that address. Indeed, the record is devoid of any explanation for the contractor's sending the notice to Aurora, Colorado. In light of that, I find that the notice that was sent to

¹ For reasons that are not clear Petitioner filed an additional reconsideration request on August 5, 2013. On November 4, 2013, the contractor advised Petitioner that it had already processed Petitioner's prior reconsideration request and that it had issued a determination, referring specifically to the May 26, 2013 denial letter. CMS Ex. 13.

Petitioner's Centennial, Colorado mailing address was the first effective notice of reconsideration sent to Petitioner and her hearing request was timely based on the mailing date of that notice.

I therefore turn to the merits of the case.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue in this case is whether Petitioner is entitled to an earlier effective date of Medicare participation than that determined by CMS via its contractor.

B. Findings of Fact and Conclusions of Law

Regulations governing a practitioner's participation in Medicare state that the effective date of the practitioner's participation is the *later* of the following two dates: the date of filing of a Medicare enrollment application that is subsequently approved or the date that the practitioner begins furnishing services at a new practice location. 42 C.F.R. § 424.520(d). Petitioner filed her application to participate on November 26, 2012. Under the foregoing regulation that is the earliest effective date that she may participate.²

Petitioner makes the equitable argument that the "late" filing of her application to participate was due to clerical error by her employer's office staff and she, in effect, requests that I waive the regulatory provision governing effective date of participation. P. Ex. 1. I have no authority to do that. The regulations do not grant me discretion to waive the effective date requirement.

/s/
Steve T. Kessel
Administrative Law Judge

² The contractor incorrectly told Petitioner that her "effective date" of participation was October 28, 2012, 30 days prior to the date she filed her application. This is based on a misreading of the regulations by the contractor, something that contractors apparently do routinely when advising practitioners of their effective dates of participation. However, the error in this case is harmless because the contractor may – as it did here – allow a participant to file claims for services rendered up to 30 days prior to the participant's effective date of participation. That, effectively, is what the contractor did here.