

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Rakesh B. Patel Physician PC,  
(PTAN: A100111630)  
(NPI: 1114345055),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1165

Decision No. CR4026

Date: July 8, 2015

**DECISION**

Petitioner Rakesh B. Patel Physician PC, a solo practice owned by Dr. Rakesh B. Patel, filed a hearing request to challenge the effective dates assigned to Petitioner and Dr. Patel for Medicare enrollment and billing privileges. For the reasons discussed below, I affirm the determination that Petitioner's and Dr. Patel's effective dates are July 17, 2014, and leave unchanged the determination that Petitioner and Dr. Patel may retrospectively bill Medicare for services provided from June 16, 2014.

**I. Background**

The following facts are undisputed unless otherwise noted. Dr. Patel is a physician who practices in New York and has been enrolled as a supplier in the Medicare program for several years. Dr. Patel began operating Petitioner on March 1, 2014. P. Ex. 5 at ¶ 1; CMS Ex. 1 at 13, 15.

Relevant here, Dr. Patel and Petitioner filed four different enrollment applications between March 13 and July 17, 2014. Those applications were handled as follows:

- **March 13, 2014 application:** National Government Services (NGS), a contractor for the Centers for Medicare & Medicaid Services (CMS), received an application from Dr. Patel on March 13, 2014. P. Ex. 1 at 1-4. It is unclear whether Dr. Patel submitted the application to reassign his billing privileges from his former employer (a group practice) to himself individually or to Petitioner. By email dated July 9, 2014, NGS notified Dr. Patel that there was a withdrawal of the application while in progress. P. Ex. 4.
- **April 7, 2014 application:** NGS received an enrollment application from Petitioner on April 7, 2014. P. Ex. 2. By letter dated June 6, 2014, NGS requested additional information and supporting documentation for the application. CMS Ex. 1 at 26-29. NGS further explained that the application might be rejected or denied if Petitioner failed to furnish the requested information within 30 calendar days from the date of the letter. *Id.* at 26. By letter dated July 14, 2014, NGS informed Petitioner that the application was rejected for failing to furnish complete information, including all supporting documentation, within 30 days of NGS's request. *Id.* at 22.
- **July 17, 2014 applications:** NGS received two applications on July 17, 2014: one seeking to enroll Petitioner in Medicare; the other seeking to reassign Dr. Patel's billing privileges to Petitioner. CMS Ex. 1 at 11-21. NGS approved the applications and set June 16, 2014 as the "effective date" for Petitioner's billing privileges and the reassignment of Dr. Patel's billing privileges to Petitioner.<sup>1</sup> *See id.* at 4-7.

Dr. Patel requested reconsideration of the effective dates assigned to him and Petitioner, arguing that he had initially applied in March 2014 but his application was mistakenly terminated. CMS Ex. 1 at 9. NGS issued an unfavorable reconsideration determination denying the request.<sup>2</sup> *Id.* at 1-2.

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<sup>1</sup> NGS erroneously characterized the beginning date of the retrospective billing period granted to Petitioner and Dr. Patel as their "effective date." I treat NGS's action as if it intended to set June 16, 2014 as the earliest date for which Petitioner and Dr. Patel may submit retrospective claims, with the effective date of Petitioner's enrollment and reassignment of Dr. Patel's billing privileges as July 17, 2014.

<sup>2</sup> In its reconsideration determination, NGS erroneously stated that Petitioner and Dr. Patel had been assigned "effective dates" of June 1, 2014. CMS Ex. 1 at 1. The parties agree that NGS set June 16, 2014 as the earliest date for which Petitioner and Dr. Patel may submit retrospective claims. *See* CMS Br. at 2, 7; P. Br. at 1, 3, 5.

Petitioner subsequently filed a request for hearing (RFH) on behalf of itself and Dr. Patel, and I was assigned this case. Following the issuance of my Acknowledgment and Pre-Hearing Order (Order), CMS filed a pre-hearing brief (CMS Br.) that incorporated a motion for summary judgment and included one proposed exhibit (CMS Ex. 1). CMS did not propose any witnesses. Petitioner submitted a pre-hearing brief and opposition to CMS's motion for summary judgment (P. Br.) with six proposed exhibits (P. Exs. 1-6). Petitioner proposed Dr. Patel and his office manager as proposed witnesses and provided their written direct testimony as P. Exs. 5 and 6, respectively. CMS then proffered a reply brief (CMS R. Br.) and moved for leave to submit it.

In the absence of any objection, I admit CMS Ex. 1 and P. Exs. 1-6 into the record. I also grant CMS's motion for leave to submit a reply brief, finding that there is good cause for submitting the reply. *See* Civ. Remedies Division Proc. 8(b). CMS did not request the opportunity to cross-examine Petitioner's proposed witnesses. Therefore, in accordance with my Order, a hearing in this matter is not necessary. Order at ¶ 10. I issue this decision on the full merits of the written record.

## **II. Discussion**

### **A. Issue**

Whether CMS or its contractor correctly established the effective dates for Petitioner's and Dr. Patel's Medicare enrollment and billing privileges.

### **B. Findings of Fact and Conclusions of Law**

- 1. July 17, 2014 is Petitioner's and Dr. Patel's effective date because that is the date NGS received Medicare enrollment applications from Petitioner and Dr. Patel that NGS subsequently approved.***

The effective date for enrollment and billing privileges for physicians and physician practitioner organizations is "the later of the date of filing a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d). The "date of filing" is the date that the Medicare contractor "receives" a signed enrollment application that the contractor is "able to process to approval." 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008).

In this case, the record reflects that Dr. Patel began furnishing services at Petitioner's location on March 1, 2014. P. Ex. 5 at ¶ 1; CMS Ex. 1 at 13, 15. The record further reflects that on July 17, 2014 NGS first received enrollment applications from Petitioner and Dr. Patel that NGS subsequently approved. Although NGS received other enrollment applications from Dr. Patel and Petitioner on March 13 and April 7, 2014, respectively,

NGS did not approve either application. Thus, in accordance with section 424.520(d), NGS correctly established July 17, 2014 as Petitioner's and Dr. Patel's effective date.

A CMS contractor may permit retrospective billing for up to 30 days prior to the effective date of enrollment. 42 C.F.R. § 424.521(a)(1). (The regulations also provide for a longer retrospective billing period in certain disaster situations not applicable to this case. *Id.* § 424.521(a)(2).) Here, based on the effective date of July 17, 2014, NGS established that the retrospective billing period for Petitioner and Dr. Patel commenced on June 16, 2014. In fact, 30 days prior to July 17, 2014 is June 17, 2014. If CMS wants to correct this error, it has the means to do so. *See* 42 C.F.R. § 498.30-32.

***2. I do not have authority to consider the enrollment applications submitted by Petitioner and Dr. Patel prior to July 17, 2014 or to grant Petitioner's request for equitable relief.***

Petitioner argues that it and Dr. Patel should receive earlier effective dates because Dr. Patel first submitted an enrollment application on March 13, 2014 and Petitioner first submitted an enrollment application on April 7, 2014. Petitioner asserts that neither Dr. Patel nor any member of his staff withdrew his March 13 application and that NGS improperly rejected Petitioner's April 7 application because Petitioner submitted all of the requested information to NGS prior to the 30-day deadline. P. Br. at 6-7.

I do not have the authority to consider the applications submitted by Petitioner and Dr. Patel prior to July 17, 2014 that NGS did not process to completion. Under 42 C.F.R. § 424.525(d), enrollment applications that are rejected are not afforded appeal rights.

Petitioner also contends that it and Dr. Patel are entitled to earlier effective dates under the doctrine of estoppel because NGS erroneously withdrew Dr. Patel's March 13 application when no request to withdraw had been made and then instructed Dr. Patel to submit a new application rather than correcting its error. P. Br. at 8. I am unable to grant the relief that Petitioner seeks.

It is well-established that: (1) estoppel cannot be the basis to require payment of funds from the federal fisc; (2) estoppel cannot lie against the government, if at all, absent a showing of affirmative misconduct; and (3) I am not authorized to order payment contrary to law based on equitable grounds. *See, e.g., Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51 (1984); *Oklahoma Heart Hosp.*, DAB No. 2183, at 16 (2008); *Wade Pediatrics*, DAB No. 2153, at 22 n.9 (2008), *aff'd*, 567 F.3d 1202 (10th Cir. 2009). Here, Petitioner contends that NGS's actions constitute affirmative misconduct, but I find otherwise. Although the courts have never provided a conclusive definition of "affirmative misconduct," a showing of affirmative misconduct appears to require more than an innocent mistake and something closer to deliberate misrepresentation, which

Petitioner has not established here. *See Kan. Dep't of Soc. & Rehab. Servs.*, DAB No. QC61 (1994) (citing *INS v. Hibi*, 441 U.S. 5 (1973) (per curiam); *Schweiker v. Hansen*, 450 U.S. 785 (1981); *INS v. Miranda*, 459 U.S. 12 (1982)). Thus, I am unable to grant the earlier effective dates Petitioner requests.

### **III. Conclusion**

For the reasons above, I affirm the determination that July 17, 2014 is the effective date for Petitioner's and Dr. Patel's Medicare enrollment and billing privileges.

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/s/  
Joseph Grow  
Administrative Law Judge