

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Westchester Surgical Associates, PLLC,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3884

Decision No. CR4503

Date: January 12, 2016

**DECISION**

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, National Government Services (NGS), determined that the effective date for the reassignment of Medicare benefits from Kalyani Bhuta, M.D. (Dr. Bhuta), to the newly formed group practice of Westchester Surgical Associates, PLLC (Westchester or Petitioner) was January 14, 2015. On reconsideration, NGS upheld its prior determination regarding the effective date for the reassignment of Dr. Bhuta's Medicare benefits to Westchester. Westchester requested a hearing to obtain a reassignment effective date of October 1, 2014, which was the date Dr. Bhuta began providing services in association with Westchester. However, because the earliest date on which Westchester could be considered eligible to participate in the Medicare program is January 14, 2015, Dr. Bhuta's reassignment of benefits cannot be earlier than January 14, 2015. Therefore, I affirm NGS's determination that the effective date for the reassignment of Dr. Bhuta's Medicare benefits to Westchester is January 14, 2015.

**I. Background and Procedural History**

Dr. Bhuta and Dr. Heena Rajdeo were physicians enrolled in the Medicare program. They had previously been associated with a hospital group practice, but, on October 1,

2014, they opened Westchester together as a group practice. Hearing Request at 1; CMS Ex. 1, Part II at 6-7. Drs. Bhuta and Rajdeo hired Laura Dewender, a certified credentialing specialist, to assist with the Medicare applications for each physician and to assist with enrolling Westchester in Medicare. Hearing Request at 1.

As part of the transition of Drs. Bhuta and Rajdeo to a new practice, they filed a number of forms, all of which NGS received on November 10, 2014:

- a) CMS-855B (Medicare Enrollment Application – Clinics/Group Practices and Certain Other Suppliers) to enroll Westchester in the Medicare program for the first time (CMS Exhibit (Ex.) 1);
- b) CMS-855R (Medicare Enrollment Application – Reassignment of Medicare Benefits) to reassign the Medicare benefits assigned to Dr. Bhuta by her patients to Westchester (CMS Ex. 2);
- c) CMS-855I (Medicare Enrollment Application – Physicians and Non-Physician Practitioners) to report to CMS a change in Dr. Bhuta’s contact information and that she was now affiliated with Westchester (CMS Ex. 5);<sup>1</sup>
- d) CMS-855R (Medicare Enrollment Application – Reassignment of Medicare Benefits) to reassign the Medicare benefits assigned to Dr. Rajdeo by her patients to Westchester (CMS Ex. 3); and
- e) CMS-855I (Medicare Enrollment Application – Physicians and Non-Physician Practitioners) to report to CMS a change in Dr. Rajdeo’s contact information and that she was now affiliated with Westchester (CMS Ex. 4).

These filings were meant to enroll Westchester in the Medicare program, and inform CMS that Drs. Bhuta and Rajdeo were both affiliated with and reassigning their Medicare benefits to Westchester. *See* CMS Ex. 37 ¶¶ 2-4. Significantly, Drs. Bhuta and Rajdeo wanted the reassignment of their benefits to be effective on October 1, 2014, the date they first began seeing patients at Westchester. CMS Ex. 2 at 6; CMS Ex. 3 at 6.

By letter dated December 10, 2014, NGS notified Westchester that it needed additional information in order to process its CMS-855B enrollment application and Westchester had to submit the required information within 30 calendar days of December 10, 2014, or else NGS might reject the application. CMS Ex. 6. NGS sent this notice by email; however, NGS’s email notice went into Ms. Dewender’s email spam folder, which Ms. Dewender did not check until being prompted to do so by an NGS employee at a later date. CMS Ex. 7 at 1; CMS Ex. 14; CMS Ex. 37 ¶ 6; Petitioner Exhibit (P. Ex.) 2 at 1-2. Westchester, therefore, did not timely respond to the December 10 letter and, on February

---

<sup>1</sup> The instructions for CMS-855I state that the form is to be used for enrollment and it is also to be used by those currently enrolled who need to make changes to enrollment information. The instructions state that a form CMS-855R must also be filed for a reassignment of benefits. CMS Ex. 4 at 3; CMS Ex. 5 at 4.

12, 2015, NGS rejected Westchester's CMS-855B enrollment application. CMS Ex. 8; CMS Ex. 37 ¶ 9. Consequently, NGS also rejected Drs. Bhuta's and Rajdeo's CMS-855R reassignment of benefits applications based on its rejection of Westchester's enrollment application. CMS Ex. 9; CMS Ex. 10; CMS Ex. 37 ¶ 11. NGS processed and approved Drs. Bhuta's and Rajdeo's CMS-855I change of information applications. CMS Ex. 11; CMS Ex. 12; CMS Ex. 37 ¶ 13-14.

Westchester submitted a new CMS-855B enrollment application, and Drs. Bhuta and Rajdeo submitted a joint CMS-855R reassignment application, which NGS received on February 13, 2015. CMS Ex. 13; CMS Ex. 14; CMS Ex. 15; CMS Ex. 37 ¶¶ 17, 24. NGS approved Westchester's enrollment application and set the effective date of enrollment in the Medicare program as February 13, 2015, with a retrospective billing date of January 14, 2015. CMS Ex. 22; CMS Ex. 37 at 6 n.1. NGS also approved the reassignment application for Dr. Bhuta, which NGS also made effective January 14, 2015. CMS Ex. 21; CMS Ex. 37 ¶ 23. Further, NGS approved the reassignment application for Dr. Rajdeo, which NGS made effective October 1, 2014. CMS Ex. 26; CMS Ex. 37 ¶ 26.

In a May 14, 2015 letter, Westchester requested that NGS reconsider the January 14, 2015 effective date for the reassignment of Dr. Bhuta's Medicare benefits to Westchester. Westchester requested an October 1, 2014 effective date because that is the date Dr. Bhuta started to see patients at Westchester and NGS had assigned Dr. Rajdeo an October 1, 2014 effective date of reassignment. CMS Ex. 30; CMS Ex. 33; CMS Ex. 37 ¶ 30. However, in a June 15, 2015 reconsidered determination, NGS upheld the January 14, 2015 effective date for the reassignment of benefits to Westchester, stating that Dr. Rajdeo's effective date for reassignment had been an error. CMS Ex. 35. NGS later issued a revised determination in which it amended the effective date for the reassignment of Dr. Rajdeo's benefits to January 14, 2015. CMS Ex. 36.

Petitioner timely requested a hearing before an Administrative Law Judge (ALJ). On September 3, 2015, I issued an Acknowledgment and Pre-hearing Order (Pre-Hearing Order), which established a prehearing submission schedule. In response, CMS filed a motion for summary judgment with a brief in support of the motion (CMS Br.) and 37 exhibits (CMS Exs. 1-37) as its pre-hearing exchange. Petitioner filed a pre-hearing exchange, consisting of several documents, which were all marked as P. Ex. 2.

On November 24, 2015, CMS moved to dismiss Petitioner's hearing request due to abandonment. Petitioner opposed CMS's motion to dismiss because it had filed P. Ex. 2 as its pre-hearing exchange. Petitioner also moved for summary judgment. On December 3, 2015, I issued an order denying CMS's motion to dismiss as well as both parties' motions for summary judgment.

## II. Decision on the Written Record

Petitioner did not object to CMS's proposed exhibits. Therefore, I admit CMS Exs. 1-37 into the record.

CMS did not file a timely objection to Petitioner's proposed exhibit, P. Ex. 2. *See* Pre-Hearing Order ¶ 7; Civil Remedies Division Procedures § 14(e). Therefore, I admit P. Ex. 2 into the record.

CMS offered the written direct testimony for one witness (CMS Ex. 37); however, Petitioner did not request to cross-examine that witness. Petitioner submitted a notarized statement from Laura Dewender P. Ex. 2 at 1-3; however, CMS did not timely request to cross-examine Ms. Dewender. *See* Pre-Hearing Order ¶ 9; Civil Remedies Division Procedures § 16(b) (an ALJ may require parties to affirmatively state they intend to cross-examine a witness). Because there are no witnesses for whom cross-examination was timely requested, I issue this decision based on the written record. Pre-Hearing Order ¶ 13; Civil Remedies Division Procedures § 19(d).

## III. Issue and Jurisdiction

In its hearing request, Petitioner appears to seek review of NGS's decision concerning the effective date for Westchester's enrollment in the Medicare program and for Drs. Bhuta's and Rajdeo's reassignments of Medicare benefits to Westchester. Westchester seeks an October 1, 2014 effective date. Hearing Request at 1. However, Petitioner only requested reconsideration of NGS's determination regarding the effective date for Dr. Bhuta's reassignment of benefits. CMS Exs. 30, 33. Petitioner did not request reconsideration of the effective date for Westchester's enrollment or Dr. Rajdeo's reassignment of benefits. CMS Ex. 37 ¶¶ 22, 34. Consequently, NGS only issued a reconsidered determination concerning the effective date for Dr. Bhuta's reassignment of Medicare benefits. CMS Ex. 35. Because there is a reconsidered determination only in relation to the effective date of Dr. Bhuta's reassignment of Medicare benefits, that is the only matter over which I have jurisdiction. *Karthik Ramaswamy*, DAB No. 2563, at 7 (2014) (en banc), *aff'd*, *Ramaswamy v. Burwell*, 83 F. Supp. 3d 846 (E.D. MO 2015).

Therefore, the only issue in this case is whether CMS had a legitimate basis for establishing January 14, 2015, as the effective date for Dr. Bhuta's reassignment of Medicare benefits to Westchester.

#### IV. Findings of Fact, Conclusions of Law, and Analysis<sup>2</sup>

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. 42 U.S.C. §§ 1302, 1395cc(j). A provider or supplier seeking billing privileges under the Medicare program must “submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program.” 42 C.F.R. § 424.510(a). CMS then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retrospective billing under 42 C.F.R. § 424.521.

For Medicare Part B claims, a beneficiary may assign his or her benefits to an enrolled physician or non-physician supplier providing services to that beneficiary. 42 U.S.C. § 1395u(b)(3)(B)(ii). In certain circumstances, a supplier who has received an assignment of benefits may reassign those benefits to an employer, or to an individual or entity with which the supplier has a contractual arrangement. 42 U.S.C. § 1395u(b)(6); 42 C.F.R. § 424.80(b)(1)-(2). CMS instructs its employees that reassignment of benefits may only occur between enrolled suppliers and that “[t]he effective date of reassignment is the date on which the individual began or will begin rendering services with the reassignee.” Medicare Program Integrity Manual (MPIM) § 15.5.20.<sup>3</sup>

1. ***NGS enrolled Westchester in the Medicare program on February 13, 2015, with retrospective Medicare billing privileges effective January 14, 2015; therefore, the effective date for Dr. Bhuta’s reassignment of Medicare benefits to Westchester is January 14, 2015, the earliest date on which Westchester could be considered enrolled in the Medicare program.***

Westchester is a “physician or nonphysician practitioner organization” that sought enrollment in the Medicare program as an organizational entity. 42 C.F.R. § 424.502; CMS Ex 1 at 7. Prior to the filing of Westchester’s applications to enroll in the Medicare program, Dr. Bhuta was an enrolled supplier in the Medicare program. 42 C.F.R. § 424.502 (defining “supplier” to include physicians); see CMS Ex. 4 at 5.

---

<sup>2</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

<sup>3</sup> See MPIM § 15.5.20, titled “Processing Form CMS-855R Applications” (rev. 416, eff. Feb. 27, 2012). The current online version of the MPIM can be found at <https://www.cms.gov/regulations-and-guidance/guidance/manuals/internet-only-manuals-ioms-items/cms019033.html> (last visited December 30, 2015).

Reassignment of Medicare benefits is allowed to an “entity” such as Westchester as long as the entity is enrolled in the Medicare program. 42 C.F.R. § 424.80(b)(2). Section 15.1.1 of the MPIM defines reassignment as the situation when “an individual physician, non-physician practitioner, or other supplier grants another Medicare-enrolled provider or supplier the right to receive payment for the physician’s, non-physician practitioner’s or other supplier’s services.” If an individual physician is already enrolled in Medicare and wants to reassign his payments to an entity that is already enrolled in Medicare, a CMS-855R application is all that is required for the reassignment. If the entity to which the physician wants to reassign his benefits is not enrolled in Medicare, then that entity must complete a CMS-855B application. A Medicare contractor, such as NGS, cannot approve the reassignment until the entity is enrolled. 42 C.F.R. § 424.502; MPIM §§ 15.1.2, 15.5.4.3B, 15.5.20 (“[b]oth the individual practitioner and the eligible supplier must be currently enrolled (or concurrently enrolling . . . ) in the Medicare program before the reassignment can take place”); *see also* CMS Ex. 2 at 5; CMS Ex. 3 at 5 (The CMS-855R completed by Petitioner also advises applicants that “[b]oth the individual practitioner and the eligible supplier must be currently enrolled (or concurrently enrolling . . . ) in the Medicare program before the reassignment can take place.”).

In the present case, Dr. Bhuta was enrolled in the Medicare program before October 1, 2014, the date on which Petitioner seeks the reassignment of benefits from Dr. Bhuta to commence. However, Westchester was not enrolled in the Medicare program until February 13, 2015,<sup>4</sup> and was only granted retrospective Medicare billing privileges from January 14, 2015.<sup>5</sup> CMS Ex. 22; CMS Ex. 37 at 6 n.1. Because Westchester did not request reconsideration of its enrollment effective date (CMS Ex. 37 ¶ 22), the enrollment effective date, and consequently, the retrospective billing effective date, are binding. 42 C.F.R. § 498.20(b)(1).

Although Westchester and Dr. Bhuta first submitted CMS-855B and CMS-855R applications to NGS in November 2014, those applications are not before me because NGS rejected them. CMS may reject a Medicare enrollment application if the applicant does not furnish complete information and supporting documentation within 30 days from the date the contractor requests the information. 42 C.F.R. § 424.525(a)(1). When CMS rejects an enrollment application, the applicant does not have a right to administrative review of the rejection. 42 C.F.R. § 424.525(d). Moreover, once CMS

---

<sup>4</sup> Petitioner filed an enrollment application on February 13, 2015, which was processed to completion. CMS Ex. 13. Therefore, the effective date for its enrollment in Medicare is February 13, 2015. 42 C.F.R. § 424.520(d); 73 Fed. Reg. 69,725, 69,769 (Nov. 19, 2008).

<sup>5</sup> In general, CMS may only grant up to a 30-day retrospective billing period to a newly enrolled physician or physician practice. 42 C.F.R. § 424.521(a)(1).

rejects an enrollment application, the filing date of the rejected application does not play a role in determining the effective date for enrollment based on a subsequent application. When CMS processes a subsequent application to completion, it is the filing date of that subsequent application that controls the effective date of enrollment. *Ramaswamy*, DAB No. 2563 at 6; 71 Fed. Reg. 20,754, 20,759 (April 21, 2006).

The present case is similar to *Middlesex Rheumatology and Crispin Abarientos, M.D.*, DAB CR3660 (2015). In *Middlesex*, the ALJ relied on MPIM § 15.5.20 for the proposition that reassignment can only occur between two enrolled entities. The ALJ applied the effective date provisions from the enrollment regulations because the reassignee was not previously enrolled in the Medicare program and the earliest effective date for the reassignment was the effective date of enrollment for the non-enrolled entity. The ALJ noted that relevant CMS policy on reassignment provides that the effective date of reassignment of an already enrolled supplier is determined only by the date that the supplier began or will begin providing services with the reassignee, but reassignment could only be made to an enrolled entity. *Id.* at 11 citing to MPIM § 15.5.20 (“[t]he effective date of reassignment is the date on which the individual began or will begin rendering services with the reassignee.”).

The regulations and CMS policy in the MPIM do not permit a reassignment of Medicare benefits to an entity that is not enrolled in Medicare. Therefore, Dr. Bhuta’s reassignment to Westchester could not be effective before the effective date of Westchester’s enrollment and billing privileges. Although Dr. Bhuta began rendering services with Westchester on October 1, 2014, Westchester could not accept any assignment of benefits as it was not yet enrolled in the Medicare program.

I conclude that NGS correctly determined that January 14, 2015, was the earliest effective date for Dr. Bhuta’s reassignment of benefits to Westchester because January 14, 2015, is the earliest date on which Westchester could be considered eligible to participate in the Medicare program.

## ***2. Petitioner’s equitable and estoppel arguments cannot be considered.***

Petitioner advances several reasons why I should grant a reassignment effective date from Dr. Bhuta to Westchester earlier than January 14, 2014. Petitioner claims that it is “a small two physician practice” and not knowledgeable in Medicare credentialing. Hearing Request at 3. Petitioner explains that numerous calls were made to NGS for assistance, but NGS did not provide guidance, and errors made by NGS staff resulted in additional delays in processing its applications. Hearing Request at 2-3; P. Ex. 2 at 2. Further, Petitioner asserts that had it received better communications from NGS, it would have submitted the requested information timely. Hearing Request at 3; P. Ex. 2 at 2. Petitioner also claims that during the enrollment process, Dr. Bhuta provided services to

Medicare and Medicaid beneficiaries for three-and-a-half months at a cost of more than \$65,000 to Petitioner, for which it will not receive compensation. Hearing Request at 4.

I do not have authority to grant the equitable relief Petitioner seeks in the form of an earlier effective date of reassignment. *US Ultrasound*, DAB No. 2302 at 8 (2010) (“Neither the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements.”). Therefore, Petitioner’s equitable estoppel argument must be rejected.

Petitioner also claims that it never received the notice from NGS advising it that NGS required additional information in order to process its applications. According to Petitioner, the email notice NGS sent went unnoticed into Ms. Dewender’s email spam folder. Hearing Request at 2; P. Ex. 2 at 1-2. However, the record before me shows that for both the CMS-855R and CMS-855B applications, Petitioner identified Ms. Dewender as the person to be contacted should questions arise during the processing of the applications. Petitioner also provided Ms. Dewender’s email address as a means of contacting Ms. Dewender. CMS Ex. 1 at 11; CMS Ex. 2 at 9; CMS Ex. 5 at 26; CMS Ex. 13 at 12; CMS Ex. 15 at 9.

Under CMS’s internal procedures, NGS properly exercised discretion to use email as a means of contacting Ms. Dewender in regards to Petitioner’s enrollment applications. See MPIM §15.5.13 (“unless the provider requests that the contractor communicate with only a specific individual (e.g., an authorized official) or via specific means (e.g., only via the correspondence address e-mail) – the contractor has the discretion to use the contact persons listed in section 13 of the Form CMS-855 for all written and oral communications (e.g., mail, e-mail, telephone) related to the provider’s Medicare enrollment.”). Because the regulations do not specify a method of communication that NGS must use to contact providers and suppliers in order to request additional information (*see* 42 C.F.R. § 424.525(a)), CMS’s internal procedures do not conflict with the regulations and NGS properly sent its request by email to Petitioner.

## **V. Conclusion**

For the reasons explained above, I affirm CMS’s determination that the effective date of reassignment of Medicare benefits from Dr. Bhuta to Westchester is January 14, 2015.

/s/

---

Scott Anderson  
Administrative Law Judge