

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Cich Chiropractic, P.A., LLC, and  
Curtis L. Cich, M.D.,

Petitioners

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-88

Decision No. CR2336

Date: March 9, 2011

**DECISION DISMISSING HEARING REQUEST**

The Centers for Medicare and Medicaid Services (CMS) moved to dismiss the hearing request of Petitioners, Curtis L. Cich and Cich Chiropractic, P.A., LLC, under 42 C.F.R. § 498.72(b), because the revocations that are the subject of this appeal have been rescinded, and the appeal is now moot. I grant CMS's Motion to Dismiss Petitioners' hearing request.

Dr. Cich is a chiropractor whose license was suspended for two years by the Minnesota Board of Chiropractic Examiners on March 27, 2008. On May 10, 2010, the Wisconsin Physicians Service (WPS), a Medicare contractor, sent a letter revoking the billing privileges for both Dr. Cich and Cich Chiropractic, P.A., Dr. Cich's solely owned practice, which employed other chiropractors. Petitioners timely requested a reconsideration decision. WPS issued an unfavorable reconsideration decision on September 8, 2010. Petitioners appealed the reconsideration decision to the Departmental Appeals Board on November 1, 2010. This case was assigned to me for hearing and decision on November 17, 2010. On December 17, 2010, WPS rescinded the revocations of the billing privileges of both Dr. Cich and Cich Chiropractic. CMS Ex. 9.

CMS filed a Motion to Dismiss along with nine exhibits on December 17, 2010. Petitioner responded by an electronic mail message dated February 22, 2011. CMS filed a reply brief accompanied by two attachments, labeled attachment (Att.) A and B, received on March 1, 2011. I admit all exhibits into the record.

Petitioners responded to CMS's Motion to Dismiss by stating that, although the revocation of their Medicare billing privileges were rescinded on December 17, 2010, another revocation was subsequently issued. Petitioner Dr. Cich states that "[o]n Feb. 15, 2011, I received a letter . . . informing me that my Medicare billing privileges were again revoked with the same issues only correcting the date to June 25, 2008. CMS has filed the Motion to Dismiss only for the express purpose of correcting a fatal error in their original decision." Petitioners argue that CMS's Motion to Dismiss should be granted only if WPS and CMS are prohibited from issuing subsequent revocations against Petitioner.

The February 15, 2011 revocation is materially different from the May 10, 2010 revocation in this case. CMS Ex. 6; CMS Att. A. The May 10, 2010 revocation letter revokes the billing privileges of both Dr. Cich and Cich Chiropractic effective March 27, 2008. However, the February 15, 2011 letter revokes only the billing privileges of Cich Chiropractic as of June 25, 2008. The May 10, 2010 revocation letter gives two reasons for the revocations: first, the failure to comply with enrollment requirements under 42 C.F.R. § 424.535(a)(1) because under 42 C.F.R. § 410.20 all services must be performed by a licensed physician; and second, the failure to report an adverse legal action regarding the March 27, 2008 suspension of Dr. Cich's medical license pursuant to 42 C.F.R. § 424.535(a)(9). CMS Ex. 6. However, the February 15, 2011 letter revokes only the billing privileges of Cich Chiropractic, not of Dr. Cich himself, based on the following three reasons: first, the failure to comply with enrollment requirements under 42 C.F.R. § 424.535(a)(1) because under 42 C.F.R. § 424.516 Cich Chiropractic was not in compliance with State statutes since Dr. Cich retained his ownership interest in the firm more than 90 days after his license was suspended; second, under 42 C.F.R. § 424.520(b), Cich Chiropractic did not comply with the reporting requirement of reporting changes of information within 90 days of the effective date of the change; and third, Cich Chiropractic failed to make a required disclosure under 42 C.F.R. § 420.206.

The second revocation of February 15, 2011 is a different initial determination, and Petitioner must pursue an appeal through the reconsideration process prior to a hearing before an ALJ. Petitioner may not circumvent the administrative appeals process by appealing the February 15, 2011 revocation directly to an ALJ without going through the reconsideration process, which will develop the administrative record. Therefore, I grant CMS's Motion to Dismiss pursuant to 42 C.F.R. § 498.70(b) because the revocations that are the subject of this appeal have been rescinded, and the appeal is now moot.

This dismissal will not affect any future request for hearing that Petitioner may have regarding the February 15, 2011 revocation. Petitioner should note, however, that a Petitioner must **request reconsideration before a contractor hearing officer in writing within 60 days of the postmark of the February 15, 2011 revocation letter.**

Thereafter, if Petitioner is not satisfied with the reconsideration decision, Petitioner may still timely request a hearing before an ALJ.

\_\_\_\_\_/s/  
Joseph Grow  
Administrative Law Judge