

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

John C. Evans, CRNA,
(NPI: 1144320144),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-671

Decision No. CR2571

Date: July 24, 2012

DECISION

This matter is before me on the Motion for Summary Disposition filed by the Centers for Medicare & Medicaid Services (CMS) on June 18, 2012. For the reason briefly set out below, I GRANT the CMS Motion and the denial of Petitioner John C. Evans, CNRA's Medicare application is affirmed.

Petitioner John C. Evans is a Certified Registered Nurse Anesthetist (CRNA), and the basic issue to be resolved in this appeal is whether Petitioner's application to participate in the Medicare program as a supplier, and to reassign his Medicare payments for those services to his place of employment at the time, the Clay County Medical Center in Clay Center, Kansas, was properly denied by CMS's contractor and fiscal intermediary, Wisconsin Physicians Service (WPS).

WPS received Petitioner's application in the form of a document known as a CMS 855R on or about November 3, 2011. WPS replied to Petitioner on November 16, 2011 with a request for additional information on his professional credentials, a completed form CMS 855I more appropriate to the situation, and a re-completed CMS 855R. The deadline for Petitioner's response — a deadline established by regulation at 42 C.F.R. § 424.530(a)(1)

— and the consequence of Petitioner’s failure to do so, were set out explicitly in the WPS letter.

Petitioner did nothing in response. On January 3, 2012, WPS denied Petitioner’s application on the basis that it remained incomplete. Then, on January 13, 2012, Petitioner sought reconsideration of that denial and proffered some of the documentation WPS had requested in November. Petitioner’s response still fell short of the required documentation: his response was incomplete as to at least two material items. WPS upheld its earlier denial of Petitioner’s application on March 26, 2012. On April 30, 2012, Petitioner filed his Request for Hearing.

My Acknowledgment and Initial Docketing Order of May 17, 2012 required the parties to file certain categories of dispositive motions within 30 days, and CMS filed its Motion for Summary Disposition and supporting exhibits on June 18, 2012. My Order reminded the parties of the terms of 42 C.F.R. § 498.17: dispositive motions must be answered within 20 days, and a party’s failure to respond leaves any such motion unopposed, conceded, and subject to granting without further proceedings. Petitioner did nothing in response to the CMS Motion until July 20, 2012, and then only after being reminded of its need to do so by this office. Petitioner’s response was submitted by Mr. Jim Brinkman, the Chief Financial Officer of the Clay County Medical Center.

The problem with Petitioner’s response, which took the form of an email message, is that it fails utterly to address or attempt to refute any of the factual assertions that appear in CMS’s pleading and exhibits. It should be noted that the CMS pleadings and exhibits established at least a *prima facie* absence of any genuine issues of facts material to this appeal, and suggested that if those facts remained uncontroverted CMS would be entitled to judgment in its favor as a matter of law. Because the facts remain uncontradicted, I have relied on the CMS exhibits in setting out the factual and procedural history of this case.

Now, had Mr. Brinkman’s response on Petitioner’s behalf challenged any of CMS’s material factual assertions, or raised a significant legal argument, it might have defeated the CMS Motion, but it did neither. Instead Mr. Brinkman chose to express dissatisfaction with the Medicare enrollment process generally — “It has been primarily the government programs that have been the most difficult to work with on a reasonable basis” — to disclaim responsibility for the incomplete application — “There is no responsibility or courtesy to respond to the error that could be noticed per the verbiage in the letter” — and to concede that with respect to the CMS Motion “I had not responded within the 20 day notice because I didn’t have the time.” Mr. Brinkman’s final expression in response to the CMS Motion is this: “If our effort is not sufficient, then go ahead and accept the summary judgment. We’ll eat the thousands of dollars of services that have been performed by Mr. Evans to help someone live a little better.”

Those expressions are insufficient to defeat CMS's Motion, which is at least *prima facie* well-supported. Accordingly, CMS's Motion for Summary Disposition must be, and it is, GRANTED. The denial of Petitioner John C. Evans, CNRA's Medicare application is affirmed.

/s/

Richard J. Smith
Administrative Law Judge