Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Armin Aalami Harandi, M.D.,
(NPI: 1700010287)

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-1125

Decision No. CR2682

Date: January 4, 2013

DECISION

Otsego Memorial Hospital Medical Group Physician Services (OMH) on behalf of Petitioner Armin Aalami Harandi, M.D. appeals the effective date assigned to his enrollment as a Medicare provider with OMH. For the reasons explained below, I grant the Centers for Medicare and Medicaid Services' (CMS's) Motion for Summary Disposition and uphold the March 15, 2012 effective date.

I. Background

On July 16, 2012, Petitioner filed a hearing request, challenging the effective date determination made by Wisconsin Physicians Services (WPS), a Medicare contractor. CMS submitted a Motion for Summary Disposition and a brief in support of its motion (CMS Br.), along with seven exhibits identified as CMS Exs. 1-7. Petitioner filed his opposition to the CMS Motion (P. Br.), to which he attached one exhibit (P. Ex. 1). In the absence of objection, I admit CMS Exs. 1-7 and P. Ex. 1 into the record.

II. Applicable Law

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. Act §§ 1102, 1866(j); (42 U.S.C. §§ 1302, 1395cc(j)). Under the Secretary's regulations, a provider or supplier that seeks billing privileges under Medicare 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).

Also, a "provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor," and the application must include "complete . . . responses to all information requested within each section as applicable to the provider or supplier type." 42 C.F.R. § 424.510(d)(1)-(2).

The effective date of enrollment for physicians and nonphysician practitioners is set as follows:

> The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of the date of filing of 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).

III. Issue

The issue in this case is whether CMS's contractor and CMS properly determined Petitioner's effective date of Medicare enrollment.

IV. Analysis

My findings of fact and conclusions of law are set forth in italics and bold in the discussion captions of this decision.

A. This case is appropriate for summary judgment.

CMS argues that it is entitled to summary disposition in the nature of summary judgment. The Departmental Appeals Board (Board) stated the standard for summary judgment:

> Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

Senior Rehabilitation & Skilled Nursing Center, DAB No. 2300, at 3 (2010) (citations omitted).

The Board has further explained that the role of an Administrative Law Judge (ALJ) in deciding a summary judgment motion differs from its role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Village at Notre Dame, Inc*., DAB No. 2291, at 5 (2009).

I have accepted all of Petitioner's factual assertions as true and drawn all reasonable inferences in Petitioner's favor. Therefore, I accept Petitioner's claim that Petitioner mailed a Medicare enrollment application around October 19, 2011. Hearing Request (HR); P. Br. at 1. I further accept Petitioner's concession that this application was not submitted by certified mail and was not received by WPS. HR; P. Br. at 1. Finally, I accept Petitioner's assertion that a new Medicare enrollment application was submitted in March of 2012, after Petitioner spoke with a WPS representative and learned the documents sent around October 19, 2011 had not been received. HR; P. Br. at 1. For the purposes of summary judgment, I accept Petitioner's description of these events as true. However, this depiction remains unsupportive of a favorable outcome for Petitioner. Petitioner has not disputed any fact material to my resolution of the case. Accordingly, I agree with CMS that summary judgment is appropriate in this case.

B. CMS correctly determined the effective date of Petitioner's Medicare enrollment.

Petitioner is an orthopedic surgeon employed by OMH, a medical practice located in Gaylord, Michigan. On October 17, 2011, Petitioner signed a Medicare enrollment application (Form CMS-855R) for participation as an OMH group member, and he began seeing Medicare beneficiaries. P. Br at 2; P. Ex. 1. Petitioner claims that after the enrollment application was signed by the authorized official, Tom Lemon, CEO of OMH, this document was mailed on October 19, 2011 to WPS, the CMS contractor. P. Br. at 1.

Petitioner did not send this Medicare enrollment application by certified registered mail and cannot provide proof showing that Petitioner mailed a completed, approvable enrollment application to WPS on October 19, 2011. Petitioner argues there is no "CMS requirement to mail enrollment applications using certified registered mail" and Petitioner "mailed the enrollment documents to CMS in good faith, and relied on the U.S. Mail and the CMS credentialing process." P. Br. at 1-2.

On February 9, 2012, Petitioner called WPS to check the status of the application. P. Br. at 2. A WPS representative returned the call and informed Petitioner that the enrollment application could not be found. P. Br. at 2. Petitioner began preparing another application for submission following this conversation. P. Br. at 2.

Subsequently, on February 20, 2012, Petitioner signed a Medicare enrollment application (Form CMS-855R and the Certification Statement from the Form CMS-855I) and noted on this application that he reassigned his benefits to OMH effective October 15, 2011. CMS Ex. 1, at 10. The authorized official for OMH signed this application on March 8, 2012 and it was then mailed to WPS. CMS Ex. 1, at 16. WPS received the enrollment application on March 15, 2012. CMS Ex. 1, at 1-2, 10, 22, 26-27, 33. By letter dated May 23, 2012, WPS notified Petitioner that his application was approved and his enrollment would be effective March 15, 2012.[1] CMS Ex. 3.

The determination of the effective date of Medicare enrollment is governed by 42 C.F.R. § 424.520. Section 424.520(d) provides that the effective date for enrollment for nonphysicians, among others, is "the later of the date of filing of 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." The "date of filing" is the date that the Medicare contractor "receives" a signed provider enrollment application that the Medicare contractor is able to process to approval. 73 *Fed. Reg.* 69,725, 69,769 (Nov. 19, 2008). It is well settled that the date of filing is the date the Medicare contractor receives an approvable application. *Caroline Lott Douglas, PA*, DAB CR2406 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401 (2011); *Jennifer Tarr, M.D.*, DAB CR2299 (2010); *Michael Majette, D.C.*, DAB CR2142 (2010); *Roland J. Pua, M.D.*, DAB CR2163 (2010).

[1] After WPS received Petitioner's application on March 15, 2012, it sent a letter dated March 31, 2012, requesting additional information. This information was provided to WPS in April and May of 2012, and Petitioner's enrollment was approved by letter dated May 23, 2012, effective March 15, 2012. The effective date of February 14, 2012, listed in this letter was in error as the contractor determination was that the effective date of Petitioner's Medicare enrollment was March 15, 2012, the date Petitioner's enrollment application was received by WPS. However, Petitioner was authorized to file claims for services retrospective to February 14, 2012. *See* CMS Br. at 4; CMS Ex. 3; CMS Ex. 5.

Petitioner essentially requests that I hold the date that he asserts he first submitted an application to be controlling; even though there is no evidence that this application was received by WPS. Even though Petitioner wishes to have his billing privileges adjusted to the date that Petitioner alleges he initially sent an application, Petitioner has pointed to no authority that would allow this departure from settled principles. Petitioner presents no evidence that would support his assertion that he mailed an enrollment application on October 19, 2011. Moreover, the regulations are clear that an application must be *received* and subsequently *approved* by a Medicare contractor before an effective date can be established. It is undisputed that the contractor did not receive an application from Petitioner until March 15, 2012. Therefore, the correct effective date of Petitioner's enrollment remains March 15, 2012. 42 C.F.R. § 424.520(d).

Petitioner's argument is essentially that the effective date should be adjusted because the CMS contractor lost the application Petitioner maintains that he sent in October of 2011. However, this is not a basis to adjust Petitioner's enrollment date. Petitioner's argument amounts to a claim of equitable estoppel. It is well-established by federal case law, and in Board precedent, that: (1) estoppel cannot be the basis to require payment of funds from the federal government; (2) estoppel can lie against the government, if at all, only on a showing of affirmative misconduct, such as fraud; and (3) I am not authorized to order payment contrary to law based on equitable grounds. *See, e.g., Oklahoma Heart Hospital*, 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); *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51 (1984). Petitioner alleges no affirmative misconduct against the government, and it is simply the case that the regulations governing this situation were promulgated with the understanding that these stricter requirements for enrolling and maintaining enrollment would have possible effects on providers and suppliers. Yet the stricter Medicare enrollment requirements — such as those that guide this decision — were understood as a necessary means to further program integrity. *See* 73 Fed. Reg. 69725, 69768 (November 19, 2008).

V. Conclusion

For the reasons explained above, and based on the undisputed fact that WPS did not receive a completed enrollment application from Petitioner until March 15, 2012, I conclude that Petitioner's effective date of enrollment was correctly assessed at March 15, 2012.

/s/
Richard J. Smith
Administrative Law Judge