

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Lawrence H. Iteld, MD, LLC,
(NPI: 1093143125),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-951

Decision No. CR3773

Date: April 15, 2015

DECISION

I enter summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) sustaining the determination to establish May 21, 2014 as the effective date of participation in Medicare of Petitioner, Lawrence H. Iteld, M.D., LLC.

I. Background

Petitioner requested a hearing to challenge a reconsideration determination that affirmed the effective date determination. CMS moved for summary judgment and, with its motion, it filed four exhibits that are identified as CMS Ex. 1 – CMS Ex. 4. Petitioner opposed the motion and filed no exhibits. I receive CMS Ex. 1 – CMS Ex. 4 into evidence.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether Petitioner is entitled to an earlier effective date of Medicare participation than May 21, 2014.

B. Findings of Fact and Conclusions of Law

CMS argues that I should dismiss this case because Petitioner filed an untimely request for reconsideration. It is true that his request was untimely. Petitioner had 60 days to request reconsideration from the date that he received CMS's initial determination. He did not file a reconsideration request for approximately five months from the date of his receipt of the initial determination. However, the Medicare contractor proceeded to accept the reconsideration request and to issue a reconsidered determination on the merits. CMS Ex. 3. I have no reason to preclude Petitioner from a hearing on the merits inasmuch as the contractor waived the timeliness of the filing requirement.

As to the merits, there are no disputed material facts. Petitioner is a physician. On December 17, 2013, he opened a solo practice, operating as a limited liability company. On May 21, 2014, Petitioner applied to participate in Medicare under the name of his limited liability company. CMS Ex. 4. A Medicare contractor accepted his application and awarded Petitioner an effective date of enrollment of May 21, 2014. As provided under the regulations, the contractor allowed Petitioner to claim reimbursement for services provided up to 30 days prior to the effective date of his enrollment. The effect of this determination was that Petitioner could claim reimbursement for the Medicare services that were provided by his limited liability company beginning April 21, 2014, but not earlier than that.

The effective date of a supplier's enrollment in Medicare is governed by 42 C.F.R. § 424.520(d). This regulation provides that the effective date of a supplier's participation in Medicare is the *later* of the following dates: the date of filing of an approved Medicare enrollment application or the date that the supplier actually began providing services at a new practice location. Under the regulation the earliest date that Petitioner could qualify to participate would be the date that he filed his application for enrollment and that date, May 21, 2014, is the date that the contractor awarded to Petitioner. As a matter of law, Petitioner could not receive an earlier effective date of participation. The regulations also give a contractor authority to allow a supplier to claim reimbursement for services provided up to 30 days prior to the effective date of the supplier's enrollment. 42 C.F.R. § 424.521(a)(1). The contractor did so in this case and thus, Petitioner could claim reimbursement for services provided as of April 21, 2014. That date is the earliest date under the regulations for which Petitioner could claim reimbursement for the services provided by his limited liability company.

Petitioner argues that in a telephone conversation a representative of the Medicare contractor told him that he could claim reimbursement for services that he provided as early as December 2013 even though he had not completed his enrollment application. He asserts that he should be able to rely on what he characterizes as an oral representation. He argues additionally that the enrollment process and the forms and

