

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Salud Para La Gente: Seaside
Community Health Center,
(CCN: 75-1109),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3079

Decision No. CR4905

Date: August 3, 2017

DECISION

Petitioner, Salud Para La Gente: Seaside Community Health Center, is a federally qualified health center (FQHC), located in Seaside, California, that applied to enroll in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) granted Petitioner's enrollment application, effective December 8, 2014. Petitioner now challenges that effective date.

CMS moves for summary judgment. Because I find that the undisputed evidence establishes that CMS appropriately granted Petitioner's Medicare enrollment effective December 8, 2014, I grant CMS's motion.

Background

In a letter dated January 8, 2015, CMS advised Petitioner that it accepted the health center's agreement to participate in the Medicare program as an FQHC, effective December 8, 2014. CMS Exhibit (Ex.) 3. Petitioner sought reconsideration, asking that its effective date of enrollment be changed to February 28, 2013. CMS Ex. 1. In a reconsidered determination, dated April 30, 2015, CMS denied Petitioner an earlier effective date, concluding that the Medicare contractor (Noridian Healthcare Solutions) received its completed application (CMS Form 855A) on December 8, 2014, which is the

earliest date that the health center met all Medicare certification requirements. CMS Ex. 4.

Petitioner appealed. While its appeal was pending, it amended its proposed effective date to February 13, 2014. Petitioner's (P.) Br. at 5.

CMS moves for summary judgment, which Petitioner opposes.

With its prehearing brief and motion for summary judgment (CMS Br.), CMS submits four exhibits (CMS Exs. 1-4). Petitioner submits a brief in opposition to summary judgment (P. Br.) and eight exhibits (P. Exs. 1-8).

Discussion

CMS is entitled to summary judgment because the undisputed evidence establishes that it properly determined the effective date for Petitioner's Medicare enrollment. CMS accepted the FQHC's signed agreement on December 8, 2014, and, by regulation (42 C.F.R. § 489.13(a)(2)), that is the effective date.¹

Summary Judgment. To grant summary judgment, I must draw all reasonable inferences in the light most favorable to the non-moving party and find that the case presents no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 2-3 (2009); *Illinois Knights Templar Home*, DAB No. 2274 at 3-4 (2009), and cases cited therein.

Program requirements. To receive payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. To enroll in Medicare, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a). Enrolling as an FQHC, however, requires some additional preliminary steps.

The Social Security Act (Act) defines an FQHC as an entity that receives or is qualified to receive a Public Health Services grant or is operated by a tribe or tribal organization funded under the Indian Health Care Improvement Act. Act § 1861(aa)(4); 42 C.F.R. § 405.2401(b). The entity must show that it meets the statutory definition of an FQHC and that it complies with the requirements of 42 C.F.R. pt. 491 and 42 C.F.R. pt. 405, subpt. X (§§ 405.2400 – 405.2472). 42 C.F.R. §§ 405.2430; 405.2434(a). *The effective date of CMS's agreement with an FQHC is the date on which CMS accepts a signed agreement assuring that the FQHC meets all federal requirements.* 42 C.F.R. § 489.13(a)(2); *see* 42 C.F.R. § 405.2434(b).

¹ I make this one finding of fact/conclusion of law.

CMS will *not* accept that agreement until the Health Resources and Services Administration (HRSA) – an agency of the Department of Health and Human Services – verifies that the entity meets the requirements of the Public Health Service Act. 42 C.F.R. § 405.2430(b); *see* 42 C.F.R. § 405.2401(b).²

Petitioner’s agreement with CMS. Here, the parties agree that CMS accepted Petitioner’s signed agreement on December 8, 2014. In CMS’s view, this undisputed fact resolves the matter. By regulation, the date CMS accepts the agreement is Petitioner’s enrollment date. 42 C.F.R. § 489.13(a)(2).

Petitioner concedes that, after receiving HRSA approval, it sent its application to the wrong Medicare contractor and accepts responsibility for that error. However, it blames the federal agency for most of the delay in its enrollment. Petitioner points out that it could not even apply for enrollment until it received approval from HRSA, but, through no fault of its own, HRSA took too long to evaluate and approve its application. When HRSA finally acted, it recommended approval retroactive to February 28, 2013, presumably in recognition of its inexcusable delay. *See* P. Br. at 4. Petitioner charges that the federal government shutdown of 2013 further delayed its application.

Petitioner argues that, because the delay was caused by HRSA, CMS’s “sister agency,” CMS should be estopped from imposing the later effective date (December 8, 2014) and should adopt the effective date that HRSA recommended.

For purposes of summary judgment, I accept as true all of Petitioner’s factual allegations and, drawing all inferences in Petitioner’s favor, I accept that (aside from the relatively short delay caused by Petitioner’s sending the application to the wrong contractor) HRSA is responsible for the bulk of the delay. I am, however, bound by the effective date provisions of section 489.13 and have no authority to waive them, notwithstanding an applicant’s compelling equitable arguments. *Family Health Servs. of Darke Cnty., Inc.*, DAB No. 2269 at 19 (2009).

Conclusion

Because CMS accepted Petitioner’s signed agreement on December 8, 2014, CMS properly granted its Medicare enrollment effective that date. I therefore grant CMS’s motion for summary judgment.

_____/s/_____
 Carolyn Cozad Hughes
 Administrative Law Judge

² HRSA’s mission is to “improve health and achieve health equity through access to quality services, a skilled health workforce and innovative programs.” www.hrsa.gov.