

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Planned Parenthood of the North Country New York, Inc.,
(NPI: 1407907215; PTAN: J100292026),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-1022

ALJ Ruling No. 2018-4

Date: November 27, 2017

DISMISSAL

This matter is before me on the Centers for Medicare & Medicaid Services' (CMS's) Motion to Dismiss. In letters dated August 21, 2017, and October 6, 2017, Petitioner, Planned Parenthood of the North Country New York, Inc., (Petitioner or Planned Parenthood) asked that its case not be dismissed. For the reasons explained below, I grant CMS's Motion to Dismiss. The initial determination by National Government Services (NGS), a CMS administrative contractor, establishing the effective date of Petitioner's Medicare enrollment and billing privileges, became administratively final when Petitioner did not timely request reconsideration of that determination. Because Petitioner did not timely request a reconsidered determination, it forfeited the right to reconsideration by NGS and to a hearing by an administrative law judge.

I. Background

NGS deactivated Planned Parenthood's Medicare Provider Transaction Access Number (PTAN) effective July 8, 2015, because Planned Parenthood did not respond to NGS's January 2, 2015 revalidation request. CMS Exhibit (Ex.) 1 at 7. Thereafter, Planned Parenthood submitted a revalidation application to NGS. CMS Ex. 2. NGS issued an

initial determination, dated May 2, 2016, establishing that Planned Parenthood's revalidation of its Medicare enrollment and billing privileges was effective January 5, 2016. CMS Ex. 6 at 1-2. NGS issued a corrected initial determination by letter dated July 5, 2016. CMS Ex. 6 at 3-5. Both the May 2 and the July 5 letters informed Planned Parenthood that it must request reconsideration within 60 days after receiving the initial determination. In a letter dated October 13, 2016, and received by NGS on October 17, 2016, Planned Parenthood asked NGS to change the effective date of its enrollment revalidation. CMS Ex. 7 at 1-2. NGS did not act on the October 13 letter because the letter was not signed by Planned Parenthood's authorized delegated official. CMS Ex. 7 at 3-4. Thereafter, Planned Parenthood submitted a second letter, dated December 6, 2016, signed by its delegated official. CMS Ex. 7 at 5-6. In a letter dated January 24, 2017, NGS dismissed Planned Parenthood's reconsideration request because NGS did not receive the request within 60 days after the date NGS presumed Planned Parenthood received the initial determination. CMS Ex. 7 at 7.

By letter dated July 14, 2017, Petitioner requested a hearing before an administrative law judge and the case was assigned to me.

II. Discussion

I dismiss this case because Petitioner did not timely request a reconsidered determination and the contractor never issued one. Without a reconsidered determination, Petitioner does not have a right to an administrative law judge hearing. 42 C.F.R. § 498.5(I)(2).

The effective date of a supplier's Medicare enrollment and billing privileges is an "initial determination" that is subject to the review procedures set forth in 42 C.F.R. Part 498. 42 C.F.R. §§ 498.3(a)(1), (b)(15). Under the review procedures in Part 498, a provider or supplier "dissatisfied with an initial determination or revised initial determination related to the denial or revocation of Medicare billing privileges may request reconsideration in accordance with § 498.22(a)." 42 C.F.R. § 498.5(I)(1). Section 498.22(a) states that CMS or one of its contractors "reconsiders an initial determination that affects a prospective provider or supplier . . . if the affected party files a written request in accordance with paragraphs (b) and (c) of this section." Section 498.22(b) provides, in relevant part, that the affected party may request reconsideration if the party files the request "[w]ithin 60 days from receipt of the notice of initial determination, unless the time is extended in accordance with paragraph (d) of this section." 42 C.F.R. § 498.22(b)(3). Section 498.22(d)(1) states that a party "unable to file the request within the 60 days . . . may file a written request with CMS, stating the reasons why the request was not filed timely." CMS will extend the 60-day deadline for filing a request for reconsideration "if the affected party shows good cause for missing the deadline." 42 C.F.R. § 498.22(d)(2). If the affected party does not request reconsideration of an initial determination, then the initial determination is binding. 42 C.F.R. § 498.20(b).

Here, NGS issued its corrected initial determination on July 5, 2016. The record does not reveal the date Planned Parenthood received the July 5 initial determination. I therefore presume Planned Parenthood received the July 5 initial determination five days after the date of the initial determination; that is, on July 10, 2016. *See* 42 C.F.R. § 498.22(b)(3). Planned Parenthood did not request reconsideration until October 13, 2016, at the earliest (and that request was not signed by a delegated official on Planned Parenthood's behalf). *See* CMS Ex. 7 at 1-2. I take administrative notice that October 13, 2016 is 95 days after July 10, 2016 (the presumed date of receipt). Planned Parenthood submitted a second reconsideration request, dated December 6, 2016, signed by the appropriate official. CMS Ex. 7 at 5-6. I take administrative notice that December 6, 2016 is 149 days after July 10, 2016. By letter dated January 24, 2017, NGS dismissed Planned Parenthood's request for reconsideration pursuant to 42 C.F.R. § 498.22 because the request was filed untimely. CMS Ex. 7 at 7.

Planned Parenthood does not dispute that it received the corrected initial determination on or about July 10, 2016, or that it filed the reconsideration request untimely. *See* Petitioner's (P.) Response (Resp.); P. Reply.¹ Nor does Planned Parenthood claim that it had good cause for the untimely filing. *Id.* Indeed, Planned Parenthood acknowledges that "deadlines were exceeded" due to "misunderstandings and misinterpretations of the requirements." P. Reply. Nevertheless, Planned Parenthood appeals to equity, asserting that it provided services to Medicare beneficiaries in good faith and should be reimbursed for those services. *Id.* In essence, Planned Parenthood argues that it would be unfair to deprive Planned Parenthood of a hearing because a hearing to change the effective date of its enrollment is its only avenue to obtain payment for the Medicare services it rendered during the period it was deactivated. Planned Parenthood's submissions could also be read to contend that NGS should not have deactivated Planned Parenthood's Medicare enrollment on or about July 8, 2015, because Planned Parenthood never received notice of the need to revalidate its group Provider Transaction Access Number (PTAN). *See* P. Resp. at 2. Planned Parenthood's arguments are not responsive to the question of whether I have jurisdiction to hear this appeal. Moreover, even if the arguments were relevant to the jurisdictional question, they are without merit.

First, assuming for the sake of argument that NGS had acted improperly in deactivating Planned Parenthood's Medicare billing privileges, Medicare suppliers that are deactivated do not have a right to an administrative law judge hearing to challenge their deactivation. Rather, the only avenue of review for a supplier whose billing privileges are deactivated is to file a rebuttal statement with CMS or its contractor. *See* 42 C.F.R. § 424.545(b). Second, to the extent Planned Parenthood is arguing that it is unjust or inequitable for it to have provided services to Medicare beneficiaries for which it will not be paid, I am not

¹ I refer to Planned Parenthood's letter dated August 21, 2017 (item 5 in DAB E-File), as P. Resp., and to its letter dated October 6, 2017 (item 8 in DAB E-File), as P. Reply.

authorized to review the actions of CMS or its contractors based on principles of equity. *See Letantia Bussell, M.D.*, DAB No. 2196 at 13 (2008). Rather, I may only determine whether CMS or its contractor had a legal basis for taking the challenged action. *Id.*

However, in the present case, my authority is even more circumscribed. I have no authority to reverse NGS's dismissal of Planned Parenthood's reconsideration request, even were I to conclude (which I do not) that the action was improper under the regulations. This is because the contractor's dismissal of Planned Parenthood's reconsideration request as untimely is not a "reconsidered determination" as described by the regulations. Without a reconsidered determination by the contractor, the initial determination is "binding" and, therefore, administratively final.² 42 C.F.R. § 498.20(b). Moreover, the regulations plainly require that CMS or one of its contractors must issue a "reconsidered determination" before the affected party is entitled to request a hearing before an administrative law judge. 42 C.F.R. § 498.5(l)(2); *see Haissam Elzaim, M.D.*, DAB No. 2501 (2013); *Hiva Vakil, M.D.*, DAB No. 2460 (2012); *Denise A. Hardy, D.P.M.*, DAB No. 2464 (2012). Because there is no reconsidered determination, it follows that there is no right to administrative review of the contractor's determination that the reconsideration request was untimely. *See Karthik Ramaswamy, M.D.*, DAB No. 2563 (2014) (en banc), *aff'd, Ramaswamy v. Burwell*, 83 F. Supp. 3d 846 (E.D. Mo. 2015). This is true even where a party contends that the timeliness determination was factually or legally erroneous. *Id.* at 7-8.

Without a reconsidered determination, NGS's initial determination setting the effective date of Planned Parenthood's revalidated Medicare enrollment and billing privileges as January 5, 2016, is the final administrative determination in this matter and Planned Parenthood has no right to an administrative law judge hearing. *See Hiva Vakil, M.D.*, DAB No. 2460 at 5, n.4.

III. Conclusion

Planned Parenthood does not have a right to a hearing before an administrative law judge in this matter. The contractor's determination as to the effective date of Planned Parenthood's Medicare enrollment and billing privileges is final, not subject to review, and remains in force exactly as stated by the contractor in the initial determination.

² Furthermore, NGS's letter dismissing Planned Parenthood's reconsideration request as untimely did not suggest that Planned Parenthood had the right to request review by an administrative law judge. CMS Ex. 7 at 7-8.

Therefore, pursuant to 42 C.F.R. § 498.70(b), I order that Petitioner's hearing request be dismissed.

 /s/
Leslie A. Weyn
Administrative Law Judge