

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jason Wardell, PA,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-09-772

Decision No. CR2095

Date: March 19, 2010

DECISION

I deny the motion of the Centers for Medicare & Medicaid Services (CMS) to dismiss the hearing request of Petitioner, Jason Wardell, P.A. On the merits I grant summary disposition in favor of CMS, deciding that CMS's contractor, Pinnacle Business Solutions, Inc. (Pinnacle), and CMS correctly determined that the effective date of Petitioner's participation in the Medicare program is March 24, 2009.

I. Background

Petitioner is a physician's assistant. He filed a hearing request to challenge the determination that the effective date of his enrollment in Medicare was March 24, 2009. Petitioner contends that he should be reimbursed for Medicare claims for Medicare covered items or services that he provided dating back to December 15, 2008.

CMS filed a pre-hearing exchange consisting of a brief, three proposed exhibits (CMS Ex. 1 – CMS Ex. 3), and a motion to dismiss. Petitioner filed a pre-hearing exchange consisting of a brief, a proposed exhibit (I identify the exhibit and its attachments as P. Ex. 1) and his opposition to CMS's motion to dismiss. I receive all of the parties' proposed exhibits into the record.

II. Issues, findings of fact and conclusions of law

A. Issues

The issues in this case are whether:

1. Petitioner is entitled to a hearing on the merits; and
2. Pinnacle and CMS correctly determined the effective date of Petitioner's participation in Medicare to be March 24, 2009.

B. Findings of fact and conclusions of law

I make the following findings of fact and conclusions of law.

1. Petitioner is entitled to a hearing on the merits.

CMS's motion to dismiss is identical to motions that it has filed in many of these cases involving the issue of effective date of a provider's participation in Medicare. The gravamen of CMS's motion is that the regulations that govern a provider's enrollment in Medicare at 42 C.F.R. Part 424 do not allow a provider a hearing to challenge his or her effective date of enrollment. According to CMS, these regulations allow only a challenge to a denial of enrollment or a revocation of enrollment and not to a determination as to effective date of enrollment.

I have addressed this issue on numerous occasions and, on each of them, have denied CMS's motion to dismiss. The problem with CMS's argument is that there is a regulation, 42 C.F.R. § 498.3(b)(15), which plainly gives a provider a right to a hearing to challenge the effective date of his or her enrollment. The regulation states that initial determinations that confer hearing rights include:

The effective date of a Medicare provider agreement or supplier approval.

CMS would have me ignore the plain meaning of the regulation. It contends that this regulation predates the Part 424 regulations and was intended to confer hearing rights only in situations not covered under Part 424. That argument is unpersuasive. The regulation is plain and unambiguous.

Having said that, however, it is important to comprehend exactly what may be challenged. The sole substantive issue that I may hear and decide in this case is whether Pinnacle and CMS properly determined Petitioner's effective date of Medicare to be March 24, 2009. Petitioner has raised an additional issue which I do not have authority to hear and decide because it is not a challenge to the effective date of his enrollment.

It is undisputed that Petitioner is a practitioner who was inactive in the Medicare program for a time due to his military commitment and to his assignment to Iraq. When Petitioner returned to civilian life he was apparently advised that his provider enrollment had expired due to inactivity and that he would have to submit a new enrollment application. It is the effective date that was assigned as a consequence of the new application that is at issue here.

Not at issue before me is whether Petitioner was entitled to reimbursement pursuant to a previous enrollment. Petitioner now contends that he was advised that he, in fact, had an active enrollment that was effective through March 21, 2009 and that claims he submitted should have been reimbursed on the authority of that previous enrollment. He asserts that denials of those claims are improper.

I simply lack jurisdiction to hear that issue. That issue is not an effective date of enrollment issue nor is it an issue having to do with denial or revocation of enrollment. There is no authority in governing regulations that allows me to decide the question of whether claims should be reimbursed pursuant to an extant enrollment. That is a reimbursement issue. Petitioner may have hearing rights on that reimbursement issue but not before me. Consequently, I dismiss Petitioner's hearing request insofar as it applies to his assertions that claims that he filed under a previous enrollment were improperly denied.

2. Pinnacle and CMS correctly determined Petitioner's effective date of enrollment to be March 24, 2009.

The facts of this case are undisputed. On January 26, 2009, Petitioner filed a Medicare enrollment application with Pinnacle. CMS Ex. 1. On February 7, 2009, Pinnacle returned the application to Petitioner. It advised Petitioner that his application had been submitted prematurely. *Id.* at 2. The problem identified by Pinnacle is that it received the application more than 30 days prior to the effective date of participation listed on the application. *Id.* The application listed April 1, 2009 as the effective date of Petitioner's enrollment. *Id.* at 23.

Petitioner re-filed his application on April 21, 2009 and Pinnacle received it on April 24, 2009. CMS Ex. 2, at 4. On June 12, 2009, Pinnacle notified Petitioner that his enrollment application had been approved, with a Provider Transaction Access Number (PTAN) effective date of March 24, 2009. *Id.* at 2. This meant that claims generated by Petitioner beginning but not prior to March 24, 2009 would be reimbursed pursuant to Petitioner's PTAN.

These undisputed facts plainly establish that Pinnacle correctly established an effective date of enrollment for Petitioner of March 24, 2009. As a matter of law, Pinnacle could not permit Petitioner to claim reimbursement for items or services that he provided earlier than that date.

Regulations provide that the effective date of enrollment of a physician or practitioner such as Petitioner shall be the later of the following:

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). Additionally, a provider may not claim reimbursement for items or services that were provided more than 30 days from the effective date of his or her enrollment. 42 C.F.R. § 424.521(a)(1).

Petitioner filed an application for enrollment on April 24, 2009 that was subsequently approved by Pinnacle effective that date. By operation of 42 C.F.R. § 424.520(d), April 24, 2009 was the earliest date on which the enrollment application could be approved. And, by operation of 42 C.F.R. § 424.521(a)(1), claims for items or services provided by Petitioner could only be reimbursed for those items or services provided by him on March 24, 2009 or thereafter. Pinnacle thus correctly gave Petitioner an “effective date” of enrollment of March 24, 2009.¹

Petitioner disputes none of the above-described facts. Nor does he assert that CMS’s interpretation and application of 42 C.F.R. §§ 424.520(d) and 424.521(a)(1) to the facts are incorrect. Essentially, Petitioner makes an equitable argument, asserting that he applied for enrollment only after months of evidently frustrating discussions with (apparently) Pinnacle about his enrollment status. In effect, Petitioner asserts that a bureaucratic snafu may have delayed his ultimate enrollment and caused him to receive an effective date that was later than he might otherwise have obtained.

¹ Technically, there is an error in Pinnacle’s approval of Petitioner’s application for enrollment but it is harmless and has no effect on the outcome of this case. By regulation, the “effective date” of Petitioner’s enrollment is April 24, 2009, the date that he filed the application that Pinnacle subsequently approved. The *earliest reimbursement date* for items or services generated by Petitioner is March 24, 2009. In approving Petitioner’s application, Pinnacle erroneously referred to March 24 as the “effective date” of his enrollment when it should have said that the effective date was April 24 and the earliest reimbursement date was March 24. However, this error is harmless because Pinnacle and CMS have made it clear that Petitioner is ineligible for reimbursement for claims that were generated prior to March 24.

I do not address the merits of these assertions because they are irrelevant. The effective date of a provider's Medicare enrollment is governed by regulations that brook no exceptions and the undisputed facts of this case show that these regulations were applied correctly here.²

Petitioner also argues that his claims should be reimbursed under a different PTAN than the one he received from Pinnacle that is the subject of this case. As I discuss at Finding 1, I have no authority to hear that issue.

_____/s/
Steven T. Kessel
Administrative Law Judge

² I note, however, that Petitioner has provided no explanation for his waiting more than two months after Pinnacle returned his first application before filing a second one. Presumably, had Petitioner re-filed sooner, he would have received an effective enrollment date that is earlier than March 24, 2009.