

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jiyon “Jennifer” Kim, PA-C and Patty Ng, a.k.a. Patty Chun, PA-C,

Petitioners

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-364

Decision No. CR2431

Date: September 16, 2011

DECISION REMANDING CASE AND DISMISSING HEARING REQUEST

The Centers for Medicare and Medicaid Services (CMS) moved for summary judgment and argued that its contractor, National Government Services (NGS), correctly determined that the effective date for Medicare billing privileges for Petitioners, Jiyon “Jennifer” Kim, PA-C, and Patty Ng, a.k.a. Patty Chun, PA-C, was November 5, 2009. Petitioners subsequently filed a response to the CMS Motion for Summary Judgment. Upon my review of the CMS Motion for Summary Judgment, I determined that I required further clarification for the record before I could issue a decision in this matter. Thus, I issued an Order to Develop the Record and requested that CMS specifically brief its position on issues relating to the process of deactivation and its interrelationship with Petitioners’ effective date determination.

CMS responded to my Order on August 3, 2011 and stated, “under the circumstances, and without addressing the compelling questions of regulatory interpretation posed . . . CMS has instructed [NGS] to update its records so that Petitioners’ claims in the 2009 gap periods can be paid when resubmitted.” Petitioners responded to the CMS email and stated that Petitioners had received an email on August 8, 2011 from the NGS provider enrollment department. This email contained a letter from NGS showing revised effective dates for both Petitioners. P. Response. According to the letter, CMS revised

Ms. Chun's effective date to July 19, 2009, and CMS revised Ms. Kim's effective date to March 22, 2009. As a result, Petitioners stated "[t]he revised dates shown on Medicare's letter provide for uninterrupted Medicare participation for both PA's." *Id.* Petitioners also requested "the court to confirm that CMS/NGS will pay all 2009 gap period claims, including any which might not be specifically . . . included in this case and that the payment of claims will not be subject to CMS/NGS timely filing deadlines." *Id.* Petitioners also asked "the court to give us a remedy . . . should CMS/NGS fail to make full payment in a timely manner . . ." *Id.*

In summary, CMS deactivated the Medicare enrollment and billing privileges of the Petitioners in 2009 for not billing Medicare for over 12 months. Petitioners' Hearing Request (HR) states that both Petitioners had been deactivated by Medicare for non-claim submission due to formatting errors made by Petitioners' software company from March 2008 through November 2009. HR. Petitioners' claim that the software company did not set up "supervisory billing" and all of Petitioners medical claims were submitted electronically to Medicare reflecting Dr. Noam Glaser as the rendering provider instead of Petitioners, who are both physicians assistants. *Id.* Thus, all of the services rendered by Petitioners were reimbursed at 100% of the physician fee schedule instead of 85%. *Id.* Petitioners claim that, upon learning of their deactivations, they took the appropriate steps in resolving the issue and immediately reported the errors to Medicare and requested that Petitioners be reenrolled. *Id.* Petitioners claim they issued voluntary refunds to Medicare for the overpaid amounts but that Medicare requested a full refund of the original amounts paid because Petitioners were not enrolled in Medicare at the time of services provided. *Id.*

NGS subsequently required Petitioners to complete new enrollment applications to recertify their Medicare enrollment information. Petitioners submitted enrollment applications for reactivation of their Medicare billing privileges on December 2, 2009. CMS Ex. 3, CMS Ex. 4. NGS subsequently approved Petitioners' applications and assigned Petitioners an effective date for Medicare billing privileges of November 5, 2009. CMS Ex. 5, CMS Ex. 6. Petitioners appealed CMS's effective date determinations to the Civil Remedies Division of the Departmental Appeals Board on March 25, 2011, and this case was assigned to me for hearing and decision. In the Hearing Request, Petitioners stated, "[w]e ask that you take into consideration the events that surround this matter, and ask that the credentialing date for both PA's be retroactive back to the date that they were first enrolled." HR at 2.

On September 6, 2011, I conducted a telephone conference to discuss CMS's position regarding the merits of Petitioners' Hearing Request. At the teleconference, the parties agreed that the deactivation dates for Ms. Kim were from March 21, 2009 to November 5, 2009, and the deactivation dates from Ms. Chun were from July 18, 2009 to November 5, 2009. CMS agreed that Ms. Kim's revised effective date is March 22, 2009, and Ms Chun's revised effective date is July 19, 2009. CMS also agreed to allow Petitioners to

