

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Karthik Ramaswamy, M.D.,

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-13-124

Decision No. CR2771

Date: May 1, 2013

DECISION

Wisconsin Physicians Service (WPS), an administrative contractor acting on behalf of the Centers for Medicare and Medicaid Services (CMS), determined that Petitioner was not eligible for enrollment in the Medicare program earlier than May 21, 2012, and that Petitioner could not submit claims for payment of services performed or delivered earlier than April 21, 2012. Petitioner appealed. For the reasons stated below, I affirm WPS's determination.

I. Case Background and Procedural History

On May 4, 2011, Petitioner mailed to WPS an initial Medicare enrollment application (Form CMS-855I) and a reassignment of benefits application (Form CMS-855R) seeking to reassign his Medicare payments to Physicians Groups, LC. CMS Exs. 6, 7. WPS received the applications on May 9, 2011. CMS Ex. 6, at 1; CMS Ex. 7, at 1. On May 24, 2011, WPS requested additional information to process Petitioner's applications. CMS Ex. 8. By letter dated June 29, 2011, WPS denied Petitioner's application because Petitioner had not supplied the information requested. CMS Ex. 9.

On May 15, 2012, Petitioner mailed to WPS a second Medicare enrollment application (Form CMS-855I), and a Medicare reassignment of benefits application (Form CMS-

855R) again seeking to reassign his Medicare payments to Physicians Groups, LC. CMS Ex. 2, at 1. These applications are the subject of the present appeal. WPS received these applications on May 21, 2012. CMS Ex. 1, at 1; CMS Ex. 2, at 1. On July 9, 2012, WPS approved Petitioner's Medicare enrollment application with an effective date of May 21, 2012, and a retrospective billing date of April 21, 2012. CMS Ex. 3, at 1.

By letter dated September 6, 2012, Petitioner requested reconsideration of his effective date. CMS Ex. 4. In an October 20, 2012 reconsideration determination, WPS explained that Petitioner's application was received on May 21, 2012, and that 30 days prior to receipt was April 21, 2012; WPS concluded that "the effective billing date will remain April 21, 2012." CMS Ex. 5, at 2.

By letter dated November 14, 2012, Petitioner timely filed a request for a hearing with the Departmental Appeals Board, Civil Remedies Division. Following the issuance of my November 21, 2012 Acknowledgment and Pre-hearing Order (Order), CMS filed a motion for summary disposition, a pre-hearing brief and memorandum in support of its motion for summary disposition (CMS Br.), and 11 proposed exhibits (CMS Exs. 1-11). CMS did not list any specific proposed witnesses but indicated as witnesses "any and all witnesses called by Petitioner." Petitioner, through counsel, filed a cross motion for summary disposition, a pre-hearing brief and memorandum in support of its motion for summary disposition (P. Br.), and 12 proposed exhibits (P. Exs. 1-12). Petitioner submitted an affidavit from Sarah Camp (P. Ex. 5) and lists Sarah Camp as its only proposed witness. Because neither party has objected to any of the proposed exhibits, I admit all of them into the record.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8, 9, 10; *Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses). CMS did not offer any witnesses that Petitioner could request to cross-examine. Petitioner offered the affidavit of one witness; however, CMS did not affirmatively request an opportunity to cross-examine that individual in accordance with the terms of the Order. Order ¶ 9. CMS has waived its right to cross-examine Ms. Camp because CMS failed to submit a specific written request in the timeframe permitted. Consequently, I will not hold an in-person hearing in this matter. See *Kate E. Paylo, D.O.*, DAB CR2232, at 9 (2010). Accordingly, the record is closed and I will decide this matter based on the written record. Order ¶ 11.

II. Discussion

A. Issue

Whether CMS had a legitimate basis for finding that May 21, 2012, was the effective date for Petitioner's Medicare enrollment and that Petitioner could retrospectively bill for services rendered to Medicare beneficiaries on or after April 21, 2012.

B. Findings of Fact, Conclusions of Law, and Analysis¹

The Social Security Act authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers in the Medicare program.² 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier who seeks billing privileges under Medicare must "submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program." 42 C.F.R. § 424.510(a).

1. WPS received Petitioner's completed applications (Forms CMS-855I and CMS-855R) on May 21, 2012.

Physicians Groups, LC and Petitioner completed and signed Forms CMS-855I and CMS-855R on May 15, 2012. CMS Ex. 1, at 12. WPS acknowledged receiving these application forms on May 21, 2012. CMS Ex. 1, at 1; CMS Ex. 2, at 1. Sarah Camp testified that she submitted the applications on Petitioner's behalf on May 18, 2012. P. Ex. 5, at 2. Therefore, the evidence of record supports the conclusion that WPS received Petitioner's enrollment and reassignment applications on May 21, 2012.

2. WPS properly concluded that Petitioner's enrollment and reassignment of Medicare benefits was effective on May 21, 2012, with a retrospective billing period commencing on April 21, 2012.

WPS determined that the effective billing date or retrospective billing period of Petitioner's benefits was April 21, 2012. CMS Ex. 3, at 1. WPS indicated that "[t]his effective billing date is based on 30 days prior to the filing date." CMS Ex. 3, at 1; *see also* CMS Ex. 5, at 1-2.

¹ My findings of fact and conclusions of law are set forth in italics and bold font.

² A "supplier" furnishes services under Medicare, and the term supplier applies to physicians and other nonphysician practitioners and facilities that are not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d).

The Secretary's regulations provide that the effective date of enrollment of physicians is "the later of the **date of filing** of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician . . . first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d) (emphasis added). The "date of filing" is the date that the Medicare contractor "receives" a signed provider/supplier enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008); *see also Caroline Lott Douglas, PA*, DAB CR2406, at 5-7 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401, at 5 (2011). Because WPS received a complete, approvable application from Petitioner on May 21, 2012, WPS properly determined this date as Petitioner's effective date.

The regulations applicable to this case permit limited retrospective billing for physician services provided to Medicare beneficiaries for up to 30 days before the effective date of enrollment. 42 C.F.R. § 424.521(a). Thus, WPS correctly determined, based on a May 21, 2012 date of filing, that the enrollment effective date is May 21, 2012, and Petitioner could retrospectively bill for services provided to beneficiaries beginning on April 21, 2012.

3. The initial determination surrounding Petitioner's May 4, 2011 applications (Form CMS-855I and Form CMS-855R) is administratively final and does not provide a basis for altering Petitioner's effective date of enrollment.

Petitioner does not dispute that 42 C.F.R. § 424.520(d) means that the effective date for a Medicare enrollment application is the date of filing. P. Br. at 1. However, Petitioner asserts that he submitted a earlier completed Form CMS-855I and Form CMS-855R on May 4, 2011. P. Br. at 2. Petitioner argues that the earlier submission date should result in an earlier enrollment effective date because he promptly submitted the missing information requested in WPS's May 24, 2011 letter.

Petitioner provided the following chronology in support of his case. On May 4, 2011, Petitioner mailed to WPS a Medicare enrollment application (Form CMS-855I) and a reassignment of benefits application (Form CMS-855R) seeking to reassign his Medicare billing privileges to Physicians Groups, LC. P. Ex. 1; CMS Exs. 6, 7. Petitioner asserts that the applications were received on May 7, 2011. P. Ex. 1. On May 24, 2011, a WPS analyst sent a letter by email to Sarah Camp at Physicians Groups, requesting additional information to process Petitioner's applications. P. Ex. 4, at 3; CMS Ex. 8. The letter indicated that WPS could deny the applications if the additional information was not received within 30 days of May 24, 2011. P. Ex. 4, at 1; CMS Ex. 8, at 3. Ms. Camp testified that she responded to WPS's request by submitting via facsimile materials responding to WPS's request and a Certification Statement (Form CMS-855I Section 15) signed by Petitioner. P. Ex. 5, at 1; P. Ex. 6. A facsimile transmission report shows that a facsimile was sent on May 24, 2011 to WPS and was received by WPS. CMS asserts

that WPS has no record of receiving the requested information on May 24, 2011, or at any time prior to June 29, 2011. CMS Br. at 5. Ms. Camp states that she called WPS on October 17, 2011, and again on December 14, 2011, and was informed each time that the enrollment application was “in process.” She asserts that she attempted to contact WPS on January 17, 2012, and on March 19, 2012, left messages, but WPS did not return her telephone calls. On March 28, 2012, Ms. Camp called WPS and was verbally informed that Petitioner’s application had been denied by letter dated June 29, 2011, because Petitioner had not supplied the requested information within 30 days of the May 24, 2011 request. Ms. Camp asserts that neither she nor anyone else in her organization received written notice of the denial. Ms. Camp requested written notification of the purported denial and received it via facsimile on April 3, 2012. P. Ex. 5, at 5.

Petitioner submitted a corrective action plan and an initial request for reconsideration of the June 29, 2011 denial determination on May 1, 2012. CMS Ex. 10. Petitioner asserted that he had furnished the requested information in a timely manner and that he had not received a copy of the June 29, 2011 denial letter until April 3, 2012. CMS Ex. 11, at 1-3. WPS dismissed Petitioner’s request for reconsideration on May 18, 2012 because it had not been timely submitted and Petitioner had not shown good cause for the late filing. CMS Ex. 11.

A provider or supplier may request reconsideration by filing a request for reconsideration within 60 days from receipt of the notice of initial determination, unless CMS or its agent determines there is “good cause” for extending the deadline. 42 C.F.R. §§ 498.5(1)(1), 498.22. A supplier “dissatisfied with a reconsidered determination . . . is entitled to a hearing before an ALJ.” 42 C.F.R. § 498.5(1)(2). If a supplier does not request and receive reconsideration of an initial determination, then the initial determination is “binding.” 42 C.F.R. § 498.20(b). Only reconsidered determinations related to the denial or revocation of billing privileges are eligible for ALJ review and I do not have authority to inquire into a Medicare contractor’s determination whether there is good cause for the late filing of a request for reconsideration. *Better Health Ambulance*, DAB No. 2475, at 4 (2012); *Denise A. Hardy, D.P.M.*, DAB No. 2464, at 4 (2012); *Hiva Vakil, MD.*, DAB No. 2460, at 5 (2012) (noting that “the regulations plainly require that CMS or one of its contractors issue a ‘reconsidered determination’ before the affected party is entitled to request a hearing before an ALJ”). Here, WPS never issued a reconsidered determination concerning the May 4, 2011 applications. Instead, it dismissed Petitioner’s request for reconsideration as untimely. In the absence of a reconsidered determination from WPS, the initial denial determination became binding and, therefore, administratively final. *See* 42 C.F.R. § 498.20(b). As a result, my review is limited to the applications filed in May 2012, and Petitioner’s earlier applications are not relevant to the decision in this case.

III. Conclusion

WPS's determination that Petitioner's effective date of enrollment is May 21, 2012, with a 30-day retrospective billing period commencing on April 21, 2012, is affirmed.

/s/
Scott Anderson
Administrative Law Judge