Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Janalea Thomas, PA,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-486

Decision No. CR2917

Date: September 5, 2013

DECISION

This case is before me on the Centers for Medicare & Medicaid Services' (CMS) motion for summary judgment. Having reviewed the pleadings and exhibits carefully, I find that no genuine issue of material fact remains in dispute and conclude that CMS's position is correct as a matter of law. I therefore grant CMS's motion and affirm CMS's determination to approve Petitioner's effective date of participation in the Medicare program as September 27, 2012, with a retrospective billing date of August 28, 2012.

I. Background

Petitioner is a physician's assistant in Florida. Petitioner's Exhibit (P. Ex.) 1, at 6, 9; CMS Ex. 1, at 9; CMS Ex. 3, at 10. On April 3, 2012, First Coast Service Options (First Coast), a Medicare administrative contractor, received a CMS 855I Medicare enrollment application (for "physicians and non-physician practitioners") from Petitioner. CMS Ex. 1. By letter dated April 10, 2012, First Coast informed Petitioner that it had identified "missing, incomplete, or inaccurate information needed to complete the process of [Petitioner's] application." CMS Ex. 2, at 1. First Coast warned Petitioner that, consistent with 42 C.F.R. § 424.525, First Coast might reject her application if she did not furnish complete information within 30 days from April 10, 2012. First Coast then identified the missing information:

Section 2A: Identifying Personal Information
License Number
State where issued
Effective Date (mm/dd/yyyy)
Expiration/Renewal Date (mm/dd/yyyy)

Section 15: Certification Statement
Name (full name)
Original Signature
Date of the application

Attachments:
Copy(s) of all professional school degrees or certificates, or evidence of qualifying course work.

CMS Ex. 2, at 1.

On May 7, 2012, First Coast's Provider Enrollment Tracking System (PETS) (which logs and tracks all documents and phone calls submitted or made to the First Coast provider enrollment department) shows that First Coast received sections 2A and 15 of Petitioner's CMS 855I, which is dated April 23, 2012. CMS Ex. 2, at 5-7; CMS Ex. 8, ¶¶ 7, 11. By letter dated May 11, 2012, First Coast informed Petitioner that it was closing her application because First Coast had not timely received "[c]opy(s) of all professional school degrees or certificates, or evidence of qualifying course work." CMS Ex. 2, at 8. The May 11, 2012 letter was addressed to the contact person and address listed on Petitioner's CMS 855I, N. Babb. CMS Exs. 1, at 23; 2, at 8; 8, ¶ 12.

On September 27, 2012, Petitioner submitted another CMS 855I. CMS Ex. 3. By letter dated October 12, 2012, First Coast informed Petitioner that her application had been processed and Petitioner had been assigned PTAN E2862W, associated with NPI 1396977419. Petitioner was also informed that the "effective date" of her billing privileges was August 28, 2012.[1] CMS Ex. 4.

First Coast received Petitioner's request for reconsideration of her effective date on November 13, 2012. Petitioner stated as the reason she disagreed with First Coast's determination that: "This was given an effective date of 8/28/2012; but our original

[1] In its October 12, 2012 letter, First Coast stated that August 28, 2012, was the "effective date" of Petitioner's enrollment. However, as discussed below, September 27, 2012, is the effective date of Petitioner's enrollment and August 28, 2012 is the start date of Petitioner's retrospective billing period.

application process was started on 3.30.12 under CCN: 921209484617-001. Please reconsider the effective date of this PTAN." CMS Ex. 5.

By letter dated January 29, 2013 First Coast upheld its effective date determination. First Coast informed Petitioner that:

> On April 03, 2012, a CMS 855-I was received to reassign[2] Janalea Thomas PA to the group Lisa D Zack MD PA. Additional information was requested on April 10, 2012; while development was received on May 07, 2012, it was incomplete and the application was subsequently rejected on May 11, 2012. A new CMS - 855I application was not received until September 27, 2012, under CCN 921227184425. The application was approved and, in accordance with CFR 424.521(a)(1), an effective date of August 28, 2012 was issued.
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> Previously submitted applications that were rejected or returned cannot be taken into account when establishing an effective date. Therefore, the effective date of the reassignment was based on the receipt date of the first processable application, CCN 921227184425. In accordance with CFR 424.521(a)(1), the correct effective date was issued and will remain August 28, 2012.

CMS Ex. 6, at 3.

Petitioner requested a hearing before an administrative law judge by letter dated February 20, 2013. Petitioner argues that she did not receive any correspondence from First Coast after April 10, 2012, implying that she did not receive First Coast's May 11, 2012 letter. Petitioner asserts that:

> The information that was requested by May 10th was mailed to you on April 24, 2012, long before that due date. First Coast Service Options claims they never received the information yet in the letter we received on January 29th, 2013 you actually refer to the application received on April 3 and additional "development" received on May 7th, 2012. You failed to notify us if there was anything else you required. Only after we called several times (numerous attempts were made and we were unable to get through), we were told the information was never received. We then submitted another application dated 9/24/2013.

[2] The form CMS 855R is the Medicare enrollment application for the reassignment of Medicare benefits. The form CMS 855I is the Medicare enrollment application for physicians and non-physician practitioners. Petitioner filed a CMS 855I. Neither party addresses whether Petitioner filed a CMS 855R to reassign her benefits. However, whether or not Petitioner sought to reassign her benefits is not material to my decision in this case.

Petitioner asserts that she is entitled to an effective date of March 30, 2012, because she rendered services to Medicare beneficiaries after that date.

The case was assigned to me for hearing and decision on March 6, 2013, and I issued my "Acknowledgment and Initial Docketing Order" on that date. In response to my March 6 Order, CMS filed a motion for summary judgment (CMS Br.) and eight exhibits (CMS Exs. 1-8) on April 5, 2013. On June 4, 2013, Petitioner filed her response to CMS's motion for summary judgment (P. Br.) and four exhibits (P. Exs. 1-4).[3] In response to my request, CMS filed a reply (CMS Reply) on August 16, 2013. Petitioner filed a sur-reply (P. Sur-Reply) on August 28, 2013, accompanied by one exhibit (P. Ex. 5). In the absence of objection, I admit into evidence CMS Exs. 1-8 and P. Exs. 1-5.

II. Legal Authority

The Social Security Act (Act) authorizes the Secretary of Health and Human Services to promulgate regulations governing the enrollment process for providers and suppliers. Act §§ 1102, 1866(j) [42 U.S.C. §§ 1302, 1395cc(j)]. Under the Secretary's regulations, a provider or supplier that 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).

The regulations specify that "a provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor," and that the application include "complete . . . responses to all information requested within each section as applicable to the provider or supplier type." 42 C.F.R. § 424.510(d)(1)-(2). Signatures are required on enrollment applications. 42 C.F.R. § 424.10(d)(3)(i)(A), (C).

As a physician assistant, Petitioner is a Medicare "supplier"[4] to the Medicare program. 42 C.F.R. § 498.2. Physician assistants must meet certain requirements to enroll in

[3] Petitioner failed to file a timely response to either my March 6 Order or to CMS's motion. I issued an Order to Show Cause on May 28, 2013, giving Petitioner until June 14, 2013, to explain her failure to file, and warning her that if she did not do so I would dismiss the case for abandonment. On June 4, 2013, Petitioner filed a response to my Order to Show Cause. Petitioner's response asserts the delay was due to problems Petitioner experienced using the DAB E-File system. I accept Petitioner's explanation as good cause for her untimely filing.

[4] Petitioner is considered a "supplier" for purposes of the Act and the regulations. *See* 42 U.S.C. §§ 1395x(d), 1395x(u); *see also* 42 C.F.R. § 498.2. A "supplier" furnishes services under Medicare and the term applies to physicians or other practitioners that are

Medicare, including graduating from an accredited physician assistant educational program; passing the national certification examination for physician assistants; and licensing by their state to practice as a physician assistant. 42 C.F.R. § 424.74(c); Medicare Program Integrity Manual (MPIM), Publication 100-08, Chapter 15 § 15.4.4.11.

The "effective date for billing or enrollment for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations 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 or nonphysician practitioner first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d); *see also* 73 Fed. Reg. 69,726, 69,768-69, 69,773 (Nov. 19, 2008).

The regulations provide that physician and nonphysician practitioners and organizations "may retrospectively bill for services when a physician or nonphysician practitioner or a physician or nonphysician organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to – (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or (2) 90 days" (in circumstances not applicable here). 42 C.F.R. § 424.521(a).

Section 17 of the CMS-855I form provides that a Medicare contractor such as First Coast "may request, at any time during the enrollment process, documentation to support or validate information reported on the application. In addition, the Medicare fee-for-service contractor may also request documents from [an applicant], other than those identified in this section . . . as are necessary to bill Medicare." CMS Ex. 1, at 27; CMS Ex. 6, at 27.

CMS may reject an enrollment application if a prospective supplier fails to furnish complete information on the enrollment application within 30 days from the date the contractor requests the missing information or fails to furnish all required supporting documentation within 30 calendar days of submitting the enrollment application. 42 C.F.R. § 424.525(a). A rejected enrollment application means that the supplier's enrollment application was not processed due to incomplete information, or the failure to receive additional or corrected information in a timely manner. 42 C.F.R. § 424.502. To enroll in Medicare and obtain Medicare billing privileges after notification of a rejected enrollment application, a supplier must complete and submit a new enrollment application and all supporting documentation for CMS review and approval. 42 C.F.R.

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not included within the definition of the phrase "provider of services." 42 U.S.C. § 1395x(d).

§ 424.525(c). A supplier does not have the right to appeal a rejected application. 42 C.F.R. §424.525(d).

In this case, CMS has requested that I grant summary judgment in its favor.

The Board states the standard for summary judgment:

> Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law . . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact -- a fact that, if proven, would affect the outcome of he case under governing law . . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

Senior Rehab. & Skilled Nursing Ctr., DAB No. 2300, at 3 (2010) (citations omitted). The role of an administrative law judge (ALJ) in deciding a summary judgment motion differs from the ALJ's role in resolving a case after hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Village at Notre Dame*, DAB No. 2291, at 4-5 (2009).

This case is appropriate for summary judgment. There is no genuine dispute as to any material fact and I have drawn all inferences in favor of Petitioner, the non-movant. This decision turns upon the interpretation of regulatory provisions and interpretive agency rulings and their application to the undisputed material facts.

III. Issue

The sole issue before me is whether Petitioner is entitled to a Medicare enrollment effective date prior to September 27, 2012 (the date First Coast received a CMS 855I enrollment application on behalf of Petitioner that was processed to approval).

IV. Discussion

1. Summary judgment is appropriate.[5]

2. CMS received Petitioner's complete CMS 855I enrollment application on

[5] My findings of fact and conclusions of law are set forth in bold and italic font.

September 27, 2012.

3. September 27, 2012, is the effective date of Petitioner's Medicare enrollment.

4. August 28, 2012, is the start date of Petitioner's retrospective billing period.

In her June 4, 2013 response, Petitioner argues that she submitted all the information requested by CMS's April 10, 2012 letter in her submission of April 23, 2012, including copies of Petitioner's: physician's assistant degree; AAPA membership receipt; NCCA wallet card; Florida PA license; and section A and 15 of the CMS 855I re-signed and dated. Petitioner stresses that she took a few days to "locate her college transcripts, or this missing information would have been sent in immediately!" P. Response at 2. Petitioner argues that she did not receive any other communication from First Coast after submitting these documents on April 23, 2012. Petitioner argues:

> Our office opens ALL mail daily and logs all correspondence. If we had received the letter from CMS dated May 11, 2012 it would have been entered into our mail log and we would have responded immediately and/or submitted a new application. Janalea Thomas, PA-C would not have continued to see patients knowing she was doing so without compensation. Janalea Thomas only works one day per week and the Medicare claims submitted from March 30, 2012 through August 28, 2012 constitute approximately 80% of her income.

P. Response at 2. Petitioner requests that she be granted an effective date of March 30, 2012.[6]

Petitioner's arguments may, at first blush, appear to raise an issue of material fact. However, whether or not Petitioner submitted all the information required by First Coast's April 10, 2012 letter requesting additional information is not relevant to my decision because I do not have the authority to consider its sufficiency. The fact is that First Coast rejected the CMS 855I enrollment application Petitioner filed on April 3, 2013. CMS Ex. 2, at 1, 8; CMS Ex. 8, at 13 (First Coast warned Petitioner that her application could be rejected and then closed the application based on Petitioner's failure to submit "[c]opy(s) of all professional school degrees or certificates or evidence of qualifying course work as requested by First Coast."). Petitioner has no right to appeal from a rejected application and thus I have no authority to consider her arguments regarding a rejected application.[7] 42 C.F.R. § 424.525(d). A supplier's remedy after an

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[6] Even if I were able to modify the effective date of Petitioner's Medicare enrollment, I could not modify it to March 30, 2012. First Coast did not receive Petitioner's CMS 855I enrollment application until April 3, 2012.

[7] CMS, at its discretion, may extend the 30-day period for a prospective provider or supplier to file requested information if it determines that the prospective provider or

enrollment application is rejected is to submit a new enrollment application and all supporting documentation, which is what Petitioner did here. 42 C.F.R. § 424.525(c).

Under 42 C.F.R. § 424.520(d), Petitioner's effective date is determined by the date of filing of a Medicare enrollment application *that is subsequently approved by a Medicare contractor* (italics added). First Coast did not approve the CMS 855I enrollment application Petitioner submitted on April 3, 2012. The first CMS 855I enrollment application Petitioner submitted that was processed to approval was the CMS 855I enrollment application First Coast received on September 27, 2012. Thus, the effective date of Petitioner's enrollment must be September 27, 2012. Pursuant to 42 C.F.R. § 424.521(a), and as determined by First Coast, Petitioner's retrospective billing date is August 28, 2012.

V. Conclusion

I find that no genuine issue of material fact is in dispute. I find and conclude that CMS's position is correct as a matter of law. I therefore grant CMS's motion and affirm CMS's determination to approve Petitioner's effective date of participation in the Medicare program as September 27, 2012, with a retrospective billing date of August 28, 2012.

/s/
Richard J. Smith
Administrative Law Judge

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supplier is "actively working" to resolve any outstanding issues. 42 C.F.R. § 424.525(b). However, only CMS has the discretion to extend this 30-day period, not an administrative law judge. Apparently, CMS did not choose to exercise its discretion in this case.