

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Bonnie Baehr, Au.D.,
(PTAN: CB229872)
(NPI: 1891911319)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3429

Decision No. CR4907

Date: August 3, 2017

DECISION

Petitioner, Bonnie Baehr, Au.D., is an audiologist practicing in Beverly Hills, California. After her Medicare billing privileges were deactivated, she applied to reenroll in the program. The Centers for Medicare & Medicaid Services (CMS) granted her enrollment application, effective March 9, 2015. Petitioner now challenges that effective date.

Because Petitioner filed her subsequently-approved enrollment application on March 9, 2015, I find that CMS properly established that as the effective date of her enrollment. I have no authority to review her deactivation. *William Goffney, Jr., M.D.*, DAB No. 2763 at 3-5 (2017).

Background

In a letter dated April 10, 2015, the Medicare contractor, Noridian Healthcare Solutions, advised Petitioner Baehr that it approved her Medicare enrollment, effective March 9, 2015. CMS Exhibit (Ex.) 4. Petitioner sought reconsideration, asking that her effective date of enrollment be changed to August 27, 2014, the date her enrollment was deactivated. CMS Ex. 5. In a reconsidered determination, dated May 29, 2015, the contractor denied Petitioner an earlier effective date. CMS Ex. 6.

Petitioner appealed. The parties have filed cross-motions for summary judgment. However, neither party proposes any witnesses, so an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 3, 5-6 (¶¶ 4(c)(iv), 8-10) (June 24, 2015). This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

With its brief (CMS Br.), CMS submits six exhibits (CMS Exs. 1-6). With her brief (P. Br.), Petitioner submits three exhibits (P. Exs. 1-3). In the absence of any objections, I admit into evidence CMS Exs. 1-6 and P. Exs. 1-3.

Discussion

Petitioner filed her subsequently-approved application on March 9, 2015, and her Medicare enrollment can be no earlier than that date. 42 C.F.R. § 424.520(d).¹

Enrollment. Petitioner participates in the Medicare program as a “supplier” of services. Social Security Act § 1861(d); 42 C.F.R. § 498.3. To receive Medicare payments for the services she furnishes to program beneficiaries, she must enroll in the program. 42 C.F.R. § 424.505. “Enrollment” is the process used by CMS and its contractors to: 1) identify the prospective supplier; 2) validate the supplier’s eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier’s owners and practice location; and 4) grant the supplier Medicare billing privileges. 42 C.F.R. § 424.502.

To enroll, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a). An enrollment application is either a CMS-approved paper application or an electronic process approved by the Office of Management and Budget. 42 C.F.R. § 424.502.² When CMS determines that a nonphysician practitioner (such as Petitioner) meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the practitioner can submit claims and receive payments from Medicare for covered services provided to program beneficiaries. The effective date for her billing privileges “is the *later* of the date of filing” a subsequently-approved enrollment application or “the date an enrolled . . . nonphysician practitioner first began furnishing services at a new practice location.” If she satisfies certain requirements, CMS will allow a supplier to bill retrospectively for up to 30 days prior to the effective date. 42 C.F.R. § 424.520(d) (emphasis added); 42 C.F.R. § 424.521(a)(1).

¹ I make this one finding of fact/conclusion of law.

² CMS’s electronic process is referred to as PECOS (Provider Enrollment, Chain, and Ownership System).

Deactivation. To maintain its billing privileges, a supplier must, at least every five years, resubmit and recertify the accuracy of its enrollment information, a process referred to as “revalidation.” 42 C.F.R. § 424.515. In addition to periodic revalidations, CMS may, at other times and for its own reasons, ask a supplier to recertify the accuracy of its enrollment information. 42 C.F.R. § 424.515(d). Within 60 days of receiving CMS’s notice to recertify, the supplier must submit an appropriate enrollment application with complete and accurate information and supporting documentation. 42 C.F.R. § 424.515(a)(2).

If, within 90 days from receipt of CMS’s notice, the supplier does not furnish complete and accurate information and all supporting documentation, or does not resubmit and certify the accuracy of its enrollment information, CMS may deactivate its billing privileges, and no Medicare payments will be made. 42 C.F.R. §§ 424.540(a)(3), 424.555(b). To reactivate its billing privileges, the supplier must complete and submit a new enrollment application. 42 C.F.R. § 424.540(b)(1).

Petitioner’s deactivation and reenrollment. In a notice dated April 9, 2014, the Medicare contractor, Noridian Healthcare Solutions, directed Petitioner to submit “**IMMEDIATELY**” an updated enrollment application or to “review, update and certify” her information by means of the PECOS system. CMS Ex. 1. When Petitioner did not respond, the contractor deactivated her billing privileges. By notice dated October 2, 2014, the contractor advised her that her billing privileges were deactivated because she did not respond to the April 9 revalidation request. In order to resume billing, the notice directed her “**IMMEDIATELY**” to submit an updated enrollment application or to “review, update and certify” her information by means of the PECOS system. CMS Ex. 2.

Petitioner did not immediately respond. More than five months later, on *March 9, 2015*, she electronically submitted (by means of the PECOS system) her enrollment application, CMS Form 855I, which the contractor subsequently approved. CMS Exs. 3, 4. Thus, pursuant to section 424.520(d), the date Petitioner filed her subsequently-approved enrollment application – March 9, 2015 – is the correct effective date of her enrollment.

Petitioner, however, argues that her reenrollment should be effective the date the contractor deactivated her Medicare billing privileges. She claims that she did not receive the contractor’s April 9, 2014 revalidation request nor the October 2, 2014 deactivation notice and, thus, was not aware of the deactivation. Petitioner speculates that the contractor sent the notices to an incorrect – or at least incomplete – address. She submits a copy of her 2013 tax form 1099, which she says was returned to the sender as “undeliverable.” P. Ex. 3. The form reached her offices after a correct label was placed over the incorrect address. In Petitioner’s view, this apparent error supports her view that the notices were never delivered to her offices.

I find this highly unlikely. First, the tax form she refers to came *from a different Medicare contractor*, Palmetto GBA, not Noridian. (I note that Palmetto apparently paid Petitioner nothing in 2013.) That Palmetto may have sent correspondence to an incomplete address is not evidence that Noridian did the same. The inside address on both Noridian notices is complete and correct, and nothing in this record suggests that it would have differed from the address on the envelopes.

Moreover, Petitioner acknowledges that, during the period of her deactivation, the contractor (Noridian) returned her bills (presumably to the correct address), explaining that she was not eligible to be paid on the dates of service. Petitioner herself apparently did not learn about the returned bills because her billing employee was ill and did not share that information with her. I find it far more likely that Petitioner's billing employee received the reactivation notice, did not respond to it, and (as with the returned bills) did not mention it to her employer.

In any event, the circumstances surrounding Petitioner's deactivation are not relevant to this decision. *Goffney*, DAB No. 2763 at 7 ("Only facts relevant to the effective date resulting from the . . . application were material to the ALJ decision). It is settled that, following deactivation, section 424.520(d) governs the effective date of reenrollment, which means that the date Petitioner filed her subsequently-approved application is the effective date of her reenrollment. *Id.*

Conclusion

Because Petitioner filed her subsequently-approved enrollment application on March 9, 2015, CMS properly granted her Medicare enrollment effective that date.

/s/
Carolyn Cozad Hughes
Administrative Law Judge