

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

San Pedro Health PLLC,
(PTAN: Z191872),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-17-348

Decision No. CR4882

Date: July 12, 2017

DECISION

I sustain the determination of a Medicare contractor, as subsequently affirmed on reconsideration, to reactivate the Medicare billing privileges of Petitioner, San Pedro Health, PLLC, effective August 8, 2016.

I. Background

The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment, asserting that there are no disputed issues of material fact. With its motion CMS filed 22 proposed exhibits, identified as CMS Ex. 1-CMS Ex. 22. Petitioner opposed the motion, filing four exhibits that are identified as P. Ex. 1-P. Ex. 4. These include the affidavit of Ms. Heidi Lewis, identified as P. Ex. 1.

It is unnecessary that I decide whether the criteria for summary judgment are met in this case although the facts are not in dispute. CMS did not file any witness testimony and it has not demanded to cross-examine Ms. Lewis. Consequently, this case is ripe for a decision based on the parties exchanges. I receive CMS Ex. 1-CMS Ex. 22 and P. Ex. 1-P. Ex. 4 into the record.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor appropriately assigned an effective date to Petitioner for reactivation of its billing privileges of August 8, 2016.

B. Findings of Fact and Conclusions of Law

The material facts of this case are undisputed. Petitioner filed an application with the contractor on September 11, 2015, to change information concerning its banking. There were problems with this application that were communicated by the contractor to Petitioner. CMS Ex. 4; CMS Ex. 5 at 1; CMS Ex. 6. Petitioner filed a second application on December 14, 2015, which the contractor also found to be incomplete. CMS Ex. 7. The contractor rejected Petitioner's application on January 18, 2016, because it was incomplete. CMS Ex. 8.

On February 22, 2016, the contractor deactivated Petitioner's Medicare billing privileges because Petitioner had not filed an approvable change of banking information form within 90 days of its original application. CMS Ex. 9 at 1, 9; CMS Ex. 10.

On May 9, 2016, Petitioner filed an application to reactivate its Medicare billing privileges. CMS Ex. 11. Once again, the contractor found the application to be incomplete and it informed Petitioner of that by letter dated May 17, 2016. CMS Ex. 12. Petitioner filed a revised application on May 19, 2016, but the contractor found this application also to be incomplete. On July 6, 2016, the contractor rejected Petitioner's application due to incompleteness. CMS Ex. 17.

Petitioner filed yet another application on August 8, 2016. CMS Ex. 18. The contractor ultimately accepted this application and reactivated Petitioner's billing privileges effective August 8, 2016. CMS Ex. 18; CMS Ex. 19.

The only question that I may adjudicate is whether the contractor appropriately assigned an effective reactivation of billing privileges date to Petitioner of August 8, 2016, based on Petitioner's August 8 application. I do not have authority to decide whether the contractor improperly rejected Petitioner's several applications prior to the August 8 application nor do I have authority to decide whether the contractor improperly determined to deactivate Petitioner's Medicare billing privileges. Neither a rejection of an application nor a deactivation is an "initial determination" that conveys hearing rights under applicable regulations. *See* 42 C.F.R. § 498.3(b); *Experts Are Us, Inc.*, DAB No. 2322, at 9 n.8 (2010); *Willie Goffney, Jr., MD*, DAB No. 2763 at 4 (2017).

If a contractor deactivates a Medicare provider or supplier's billing privileges for any reason other than non-submission of a claim that provider or supplier must, in order to have its billing privileges reactivated, file a new enrollment application or, at a minimum, recertify that the billing information currently on file with Medicare is correct. 42 C.F.R. § 424.540(b)(1). Petitioner was required to file a new application inasmuch as it sought to change its billing information on file with the contractor and because the contractor had rejected Petitioner's previous applications. When a supplier seeks reactivation, generally speaking, the *earliest* effective date that the contractor may assign to the supplier is the date that the supplier files an application that the contractor accepts. 42 C.F.R. § 424.520(d).

The application that Petitioner filed that the contractor subsequently accepted was the application that the contractor received on August 8, 2016. Consequently, the earliest effective date of reactivation of billing privileges that the contractor could assign to Petitioner was August 8, 2016. That was the date that the contractor determined to assign and consequently, it was appropriate under governing regulations.

Petitioner does not challenge the contractor's rejection of its September and December 2015 applications nor does it challenge the contractor's deactivation of its billing privileges in February 2016. It argues that it should be assigned an effective date of participation in May 2016 based on its May 2016 application, which Petitioner asserts that the contractor ought to have accepted. Petitioner suggests that it may have been misled by a contractor's employee's advice when it completed that application. Moreover, Petitioner argues that it provided the contractor with all requested information. It asserts that the contractor may have misplaced that which Petitioner sent to it and therefore, improperly rejected the May application.

As I discuss above, I lack authority to decide the merits of Petitioner's claim that the contractor improperly rejected its May 2016 application because a rejection is not an initial determination that creates hearing rights. As to Petitioner's argument that it was misled, this comprises an equitable argument that I also lack authority to hear and decide. *Foot Specialists of Northridge*, DAB No. 2773 at 18 (2017).

_____/s/
Steven T. Kessel
Administrative Law Judge