

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Alfredo Rodriguez Sánchez, M.D.,)	Date: March 4, 2010
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-763
)	Decision No. CR2084
Centers for Medicare & Medicaid)	
Services.)	

DECISION

The Centers for Medicare & Medicaid Services (CMS) has denied the Medicare enrollment application of Petitioner, Alfredo Rodriguez Sánchez, M.D. Petitioner appeals, and CMS has moved for summary judgment.

For the reasons discussed below, I grant CMS’s motion.

I. Background

Petitioner is a physician practicing in Puerto Rico who seeks enrollment in the Medicare program. The Medicare contractor, First Coast Service Options, Inc., denied his March 2009 enrollment application because it determined that the application was not complete. Petitioner requested reconsideration, and, in a determination dated September 14, 2009, the Medicare contractor upheld the denial. Petitioner timely appealed, and the matter is now before me.

In an order dated October 5, 2009, I directed the parties to submit their evidence and briefs “addressing all issues of law and fact.” CMS complied with that order, but Petitioner did not. In a notice dated January 6, 2010, I directed Petitioner to show cause in writing why his request should not be dismissed as abandoned pursuant to 42 C.F.R.

§ 498.69(b)(2), and, if he meant to continue this appeal, the order directed him to submit his evidence and written argument. In a letter dated January 18, 2010, Petitioner indicated that he had confused these proceedings with the Medicare contractor's processing of a new application, and thought he "didn't have anything else to do." He submitted, without additional comment, a set of documents he described as "copies . . . sent to [Medicare contractor] First Coast for processing." The documents are in no particular order, and are not marked as exhibits, as called for in my October 5, 2009 order and Civil Remedies Division procedures. In addition to copies of documents already submitted by CMS (CMS Exs. 1-5), they include applications and other documents that post-date the relevant time period here.

II. Discussion

CMS is entitled to summary judgment because the undisputed facts establish that Petitioner did not timely complete his March 2009 enrollment application. 42 C.F.R. § 424.530(a)(1).¹

Summary judgment is appropriate if a case presents no genuine issue of material fact. "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. . . ." *Livingston Care Center*, DAB No. 1871 (2003) (emphasis in original). The moving party may show the absence of a genuine factual dispute by showing that the non-moving party has presented no evidence "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Livingston Care Center v. Dep't of Health and Human Services*, 388 F.3d 168, 173 (6th Cir. 2004). To avoid summary judgment, the non-moving party must then act affirmatively by tendering evidence of specific facts showing that a dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.11 (1986). *See also Vandalia Park*, DAB No. 1939 (2004); *Lebanon Nursing and Rehabilitation Center*, DAB No. 1918 (2004).

To receive Medicare payments for services furnished to program beneficiaries, a Medicare provider or supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. CMS may deny an enrollment if the provider/supplier is not in compliance with Medicare enrollment requirements and has not submitted a corrective action plan. 42 C.F.R. § 424.530(a)(1). Among those requirements, a prospective provider must submit an enrollment application which includes "[c]omplete, accurate, and truthful responses to all information requested within each section as applicable to the provider or supplier type." 42 C.F.R. § 424.510(d)(2)(i).

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

In this case, CMS has come forward with evidence showing that Petitioner has not filed a complete and valid enrollment application. CMS is entitled to summary judgment because Petitioner has neither argued nor tendered evidence of specific facts establishing that a dispute exists.

Specifically, the evidence shows that in a letter dated March 5, 2009, the Medicare contractor, First Coast Service Options, Inc., advised Petitioner that his enrollment application could not be processed because it contained a copied or stamped signature, which is not considered valid. The letter advised him how to reapply. CMS Ex. 1, at 1.²

Petitioner reapplied, submitting an enrollment application dated March 9, 2009, received by the contractor on March 17, 2009. CMS Ex. 1, at 2-7; *See* CMS Ex. 4. In an April 1, 2009 letter, the contractor acknowledged receipt of Petitioner's enrollment application and advised him that it could not be processed because required information was missing, incomplete or inaccurate. The letter identified the missing information by section, subsection and field, and told Petitioner that the missing information "must be returned" no later than May 1, 2009. That missing information included the effective date of the provider's license, residency status, physician specialty, adverse legal history, and other information. CMS Ex. 2.³

In the meantime, the contractor attempted to verify the information that Petitioner submitted by comparing it to a CMS-created database, the National Plan and Provider Enumeration System (NPPES).⁴ However, the information submitted on Petitioner's application did not match NPPES records. In a letter dated April 21, 2009, the contractor notified Petitioner that the records did not match. The letter instructed Petitioner to correct his NPPES information, and return to the contractor a copy of the notice letter, a development form and a revised application. The letter warned that "we may reject this

² Among Petitioner's unmarked documents is a copy of the March 5 notice letter, attached to which are copies of an application dated February 23, 2009, and an envelope postmarked February 25, 2009.

³ Although only a small portion of the entire application was submitted, its blank section corresponds to one of those listed as missing information in the contractor's April 1 notice letter ("Effective Date" under "Section 2A: Personal Information"). CMS Ex. 1, at 3.

⁴ CMS developed NPPES in response to a Congressional mandate calling for the adoption of standard unique identifiers for providers and health plans. Health Insurance Portability and Accountability Act of 1996 (HIPAA). Its purpose is to improve the efficiency and effectiveness of the electronic transmission of health information. <https://nppes.cms.hhs.gov/NPPES>.

