

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Theresa Sikole, N.P.
(NPI: 1225472798),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-1540

ALJ Ruling No. 2015-5

Date: November 20, 2014

DISMISSAL

Petitioner, Theresa Sikole, N.P., requested a hearing to challenge the effective date of her participation in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) now moves to dismiss her hearing request. CMS argues that Petitioner has no right to a hearing, because the Medicare contractor dismissed her reconsideration request as untimely and that dismissal is not a reviewable determination.

For the reasons set forth below, I grant CMS's motion and dismiss Petitioner's hearing request pursuant to 42 C.F.R. § 498.70(b).

Background

Petitioner is a nurse practitioner who began working for TridentUSA Mobile Clinical Services, LLC, in April 2013. On May 7, 2013, Mobilex, a subsidiary of TridentUSA, filed two enrollment applications (a CMS-855I (supplier enrollment) and a CMS-855R (reassignment of benefits)) on behalf of Petitioner and requested April 23, 2013, as the effective date for her enrollment. CMS Exhibits (Exs.) 11-12. In a letter dated August 5,

2013, the Medicare contractor rejected Petitioner's enrollment applications because she did not timely provide information that the contractor had requested earlier. CMS Ex. 9.

On September 9, 2013, Mobilex filed a new set of enrollment applications on behalf of Petitioner, and again requested April 23, 2013 as the effective date for her enrollment. CMS Exs. 7-8. By notice letter dated November 18, 2013, the contractor approved Petitioner's enrollment and granted her billing privileges retroactive to August 10, 2013. CMS Ex. 4. The November 18 notice advised Petitioner that, if she did not agree with that initial determination, she had to request reconsideration within 60 days of the notice's date. CMS Ex. 4 at 3, 6.

On March 14, 2014, 116 days after the initial determination, Petitioner filed a request for reconsideration with the Medicare contractor. CMS Ex. 3. She argued that the contractor should establish an earlier effective date for her Medicare enrollment based on her earlier, but rejected May 2013 application. By letter dated June 20, 2014, the contractor hearing officer dismissed Petitioner's reconsideration request as untimely. CMS Ex. 1. The notice correctly did not include further appeal rights.

Nevertheless, on July 8, 2014, Petitioner filed her request for hearing before an administrative law judge. CMS now moves to dismiss Petitioner's hearing request, which, after first failing to file any response, Petitioner now opposes. Along with its motion to dismiss, CMS filed 12 exhibits (CMS Exs. 1-12). Petitioner, in response to a show cause order that I issued on October 22, 2014, filed her opposition to CMS's motion as well as six exhibits, labeled "Affidavit of Tina Fidler" and P. Exs. 1-5. While I am not convinced Petitioner has shown good cause to accept her untimely submissions, that issue is ultimately moot because, in any event, I do not have jurisdiction to consider the merits of this case.¹

Discussion

To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. To enroll, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a). When CMS determines that a prospective supplier meets the applicable enrollment requirements, it grants her Medicare billing privileges. For suppliers such as Petitioner Sikole, the effective date for billing privileges

¹ Petitioner, through her recently-retained counsel, suggests that her being *pro se* during most of this case is good cause for me to accept her submissions out of time. I don't accept Petitioner's premise that a law degree is necessary to understand the meaning of a deadline. Petitioner missed hers and has not offered any cause, let alone good cause, explaining why. Nevertheless, I have read Petitioner's submissions in making this ruling, and find that they do not change the outcome.

“is the *later* of the date of filing” a subsequently approved enrollment application 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 regulations do not permit CMS or its contractor to establish a supplier’s effective date based on the filing date of a rejected enrollment application; the applicable regulation hinges on the receipt of a *subsequently approved* application. *Id.*; *Karthik Ramaswamy, M.D.*, DAB No. 2563 at 4 (2014).

CMS’s determination as to the effective date of enrollment is an “initial determination” that is subject to review under the procedures set forth in 42 C.F.R. Part 498. 42 C.F.R. §§ 498.3(a)(1), (b)(15). A supplier or prospective supplier dissatisfied with an enrollment-related initial determination may request reconsideration by filing a written request within 60 days from receipt of the notice of the initial determination. 42 C.F.R. §§ 498.5(l)(1); 498.22. If CMS (or its contractor) receives a properly-filed request for reconsideration, it makes a reconsidered determination that affirms or modifies the initial determination. *Id.* § 498.24(c). A supplier or prospective supplier dissatisfied with an enrollment-related reconsidered determination is then entitled to a hearing before an administrative law judge. *Id.* § 498.5(l)(2). The regulations do not provide for a hearing in the absence of a reconsidered determination. *See Denise A. Hardy, D.P.M.*, DAB No. 2464 at 4-5 (2012); *Hiva Vakil, M.D.*, DAB No. 2460 at 4-5 (2012). A request for reconsideration that the contractor rejects or dismisses does not constitute a “reconsidered determination” that triggers the right to a hearing before an administrative law judge. *See* 42 C.F.R. §§ 498.24, 498.5(l)(2); *see also Ramaswamy*, DAB No. 2563 at 7.

Here, the Medicare contractor dismissed Petitioner’s request for reconsideration as untimely. CMS Ex. 1. Because the dismissal of a reconsideration request is not a “reconsidered determination,” the regulations do not provide for any further administrative review. Petitioner, therefore, has no right to a hearing. I do not have jurisdiction to address Petitioner’s claim that she is entitled to an earlier effective date for her Medicare enrollment.

Conclusion

Neither CMS nor its contractor issued a “reconsidered determination” in this case. Petitioner, therefore, does not have a right to an ALJ hearing. I dismiss her hearing request pursuant to 42 C.F.R. 498.70(b).

/s/

Carolyn Cozad Hughes
Administrative Law Judge