

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Deepa P. Kudalkar, M.D.,
(NPI No. 1437157146),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-211

Decision No. CR2089

Date: March 10, 2010

DECISION

I dismiss the hearing request of Petitioner Deepa P. Kudalkar, M.D. because under the applicable regulations Petitioner does not have a right to a hearing before me.

I. Background

Petitioner filed a hearing request with respect to the effective date Petitioner was given for billing Medicare. Petitioner concedes that her earlier two Medicare enrollment applications were returned to her as they contained an incorrect or missing signature. A subsequent application submitted by Petitioner was approved for Medicare enrollment effective September 8, 2009, and thus, under the regulations in effect as of January 2009, her right to bill for services provided to Medicare beneficiaries became effective as of August 9, 2009. Petitioner seeks a retroactive effective date of July 15, 2009.

Following my review of Petitioner's hearing request it was apparent that Petitioner's appeal involves a challenge to regulations which govern the time for which Medicare will retrospectively reimburse a supplier for items or services provided prior to the effective date of enrollment by suppliers who are newly enrolled in the Medicare program.

Consequently, I issued an Order to Show Cause on January 15, 2010 directing Petitioner to respond in writing not later than February 4, 2010 why her request for hearing should not be dismissed. That Order further directed CMS to show cause by February 24, 2010 why Petitioner's request for hearing should be dismissed pursuant to 42 C.F.R. § 498.70(b). CMS's response requesting that Petitioner's appeal be dismissed was received on February 4, 2010. Petitioner did not respond to my Order to Show Cause.

II. Issue, findings of fact and conclusions of law.

A. Issue

The issue is whether the Petitioner has a right to a hearing before me.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth my Findings below as separate headings.

1. Petitioner does not have a right to a hearing.

Petitioner is a physician whose request for hearing appears to challenge regulations governing the time from which Medicare retrospectively reimburses items or services supplied by physicians who are newly enrolled in the Medicare program (or re-enrolled at a point in time after enrollment has lapsed), but prior to the effective date of their enrollment.

Petitioner is a newly enrolled supplier in the Medicare program. Petitioner provided services to Medicare beneficiaries as of July 15, 2009, prior to the date of her enrollment, and seeks to claim reimbursement for those services.

Petitioner asks that the filing date of its first enrollment application (June 16, 2009) be considered and that the effective enrollment date be made retroactive to July 15, 2009. However, CMS correctly cites to the regulation at 42 C.F.R. § 424.525 which states without ambiguity as to its interpretation: "Enrollment applications that are rejected are not afforded appeal rights." As Petitioner has conceded to, her earlier applications were not processed because they contained incomplete information. Moreover, the regulation specifically establishes the point in time (referenced as effective date) from which Medicare may reimburse retrospective claims for services provided by an enrolled physician. The regulations provide that the effective date for Medicare billing privileges for physicians and certain other practitioners is the later of the date of filing of a *Medicare enrollment application that was subsequently approved* by a Medicare contractor or the date that an enrolled physician or other practitioner first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). Therefore,

Medicare will reimburse retrospectively a claim for services by an enrolled physician for up to 30 days prior to the effective date of enrollment “if circumstances preclude enrollment in advance of providing services to Medicare beneficiaries.” 42 C.F.R. § 424.521(a)(1). Although Petitioner does not advance this argument, Medicare will reimburse retrospectively for up to 90 days prior to the effective date of enrollment in the event that a Presidentially-declared disaster precluded enrollment in advance of providing services. 42 C.F.R. § 424.521(a)(2). Those are the only circumstances under which retrospective reimbursement is permitted.

Petitioner’s challenge to the regulations governing the time from which Medicare retrospectively reimburses items or services supplied by physicians who are newly enrolled in the Medicare program is not something that I have the authority to hear and decide. In my capacity as an ALJ I have authority to hear cases where Medicare enrollment was denied or revoked - but here, Petitioner’s Medicare enrollment was not improperly denied or revoked. *See* 42 C.F.R. § 498.3(b)(17). As noted in my Order to Show Cause, the ALJs of this forum have summarily dismissed such hearing requests pursuant to 42 C.F.R. § 498.70(b). *See, e.g., Bradley D. Anawalt, M.D., et al.*, DAB CR2021 (2009); *Rachel Ruotolo, M.D.*, DAB CR2029 (2009); *David M. Baker, M.D., et al.*, DAB CR2035 (2009); *Peter Manis, M.D.*, DAB CR2036 (2009).

2. I must dismiss Petitioner’s request for hearing.

I may dismiss a hearing request in the circumstance where a party requesting a hearing has no right to a hearing. 42 C.F.R. § 498.70(b). Petitioner has not established a right to a hearing, and has in fact declined to express opposition to the position CMS has taken. Consequently, I dismiss this case.

/s/
Richard J. Smith
Administrative Law Judge