

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Shahriar Haji-Momenian, M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-535

Decision No. CR2426

Date: September 12, 2011

DECISION

Based upon the written record of this case, including the materials submitted by both the Centers for Medicare and Medicaid Services (CMS) and Petitioner, Shahriar Haji-Momenian, M.D., I conclude that the undisputed evidence establishes that CMS properly enrolled Petitioner as a provider in the Medicare program effective August 28, 2010.

I. Background

Petitioner filed a hearing request and challenged the effective date of his enrollment in the Medicare program. Petitioner alleges that he should have been enrolled effective July 1, 2010, an earlier date than when CMS's contractor determined that Petitioner was eligible for enrollment. The case was assigned to me for a hearing and a decision.

CMS subsequently filed a pre-hearing brief (CMS Br.) and moved for summary disposition. Petitioner opposed CMS's motion and filed a letter in response (P. Response). CMS filed five proposed exhibits, which it designated CMS Exhibit (Ex.) 1 – CMS Ex. 5. Petitioner did not file any exhibits. I receive CMS's proposed exhibits into the record of this case.

Neither party proffered direct testimony of any proposed witnesses or indicated that they would call witnesses at a hearing. Thus, I decide this case based on the written record.

II. Issue, Finding of Fact, and Conclusion of Law

A. Issue

The issue in this case is whether:

1. CMS's contractor and CMS properly determined Petitioner's effective date of Medicare enrollment.

B. Finding of Fact and Conclusion of Law

I make the following finding of fact and conclusion of law (Finding).

1. *CMS correctly determined the effective date of Petitioner's Medicare enrollment.*

The effective date of a physician's enrollment in Medicare is governed by regulations at 42 C.F.R. § 424.520(d). The effective date of enrollment for a physician may only be the *later* of two dates: the date when the physician filed an application for enrollment that was subsequently approved by a Medicare contractor charged with reviewing the application on behalf of CMS; or the date when the physician first began providing services at a new practice location. *Id.* The regulations do not empower CMS or me to grant a provider an earlier effective date, nor may I waive the regulations' criteria.

The undisputed facts of this case are as follows. On June 14, 2010, Petitioner filed an enrollment application with Highmark Medicare Services (Highmark), a Medicare contractor operating on CMS's behalf. CMS Ex. 1. On July 1, 2010, Highmark informed Petitioner that it was returning Petitioner's application because the CMS-855R form submitted was not signed by an authorized/delegated official of Petitioner's group practice. *Id.* Highmark advised Petitioner that he could complete the CMS-855B application to update the group's file and listed the authorized/delegated officials currently on file and eligible to sign the CMS-855R for Petitioner's group practice. *Id.* Highmark instructed Petitioner to make sure to address this issue, when he resubmitted his application. *Id.* Highmark also stated that Petitioner must complete the CMS 855-R application with the proper original signature, before it could begin processing the application. *Id.* On September 27, 2010, Highmark received a completed CMS-855R application from Petitioner which was signed by an authorized official for Petitioner's group practice. On December 29, 2010, Highmark notified Petitioner that his application was approved, and he was enrolled in Medicare with an "effective date" of August 28,

2010.¹ CMS Ex. 5. Petitioner was dissatisfied with this determination and requested reconsideration. On April 26, 2011, Highmark advised Petitioner that his effective billing date remained August 28, 2010, 30 days prior to the date Petitioner initially applied for enrollment. CMS Ex. 2.

The undisputed facts establish that the *earliest* date when CMS could have approved Petitioner's application for enrollment was the date of his resubmitted application, September 27, 2010. 42 C.F.R. § 424.520(d). Petitioner does not assert that there are any facts that would entitle him to an earlier enrollment date pursuant to the requirements of 42 C.F.R. § 424.520(d).

Instead, Petitioner argues that "the extremely cumbersome and difficult" enrollment application submitted on June 14, 2010 "was unintentionally inaccurate." P. Response. Petitioner states that a "former billing vendor made several attempts to correct the inaccurate information which did take several months." *Id.* Petitioner does not dispute the fact that Highmark "received all of the correct information in September 2010" instead he disputes "the fact that Highmark is not recognizing the many attempts between June 2010 and September 2010 to get them this data." *Id.* Petitioner also argues that "requests for information from Highmark did not come directly to me nor were these requests made to my administrative staff . . . requests were sent to our billing vendor . . ." *Id.* Petitioner contends that, if he is "going to be held responsible for the effective date, I would think that Highmark would have a responsibility to give me the opportunity to respond to the requests for data or in the very least monitor the billing vendor's actions." *Id.*

Petitioner has not shown any basis in fact or in law that would support an earlier effective enrollment date than that which CMS established. Even if true, Petitioner's complaints, such as his issues with the communication between Highmark and Petitioner's billing vendor, provide no legal ground for me to grant Petitioner an earlier effective date. Petitioner has conceded that his initial application submitted on June 14, 2010 was inaccurate. Petitioner argues that the errors in that application were due to the fault of other non-government personal than himself. The fact that human error -- whether by Petitioner or someone acting on his behalf -- caused the first application to be non-processible provides no basis to change the effective date of Petitioner's Medicare participation. The earliest date that Highmark or CMS could have accepted Petitioner's application was the date that he submitted one that was materially accurate, September 27, 2010.

Petitioner points to no source of authority for me to grant him an exemption from

¹ It appears that Highmark may have intended to assure that Petitioner could claim reimbursement for services provided up to 30 days prior to the date of his September 27, 2010 application, consistent with 42 C.F.R. § 424.521.

regulatory compliance. Moreover, I have no authority to declare statutes or regulations invalid or ultra vires. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009) (“An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground.”). Thus, I have no authority to change Petitioner’s Medicare enrollment date based upon equitable considerations. Nor do I have authority to consider a challenge to the way in which this Department implements regulations.

Petitioner submitted an application that was subsequently approved by the contractor on September 27, 2010, and CMS’s determination of Petitioner’s effective date of Medicare enrollment was entirely consistent with regulatory requirements. I have no authority to order CMS to make payment for claims prior to August 28, 2010 that were provided outside of the 30-day retroactive billing period provided by regulation.

 /s/
 Steven T. Kessel
 Administrative Law Judge