

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Boivin Family Chiropractic PLLC,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-714

Decision No. CR2873

Date: July 26, 2013

DECISION

Boivin Family Chiropractic PLLC (Petitioner), appeals the Medicare enrollment determination of National Government Services (NGS), a Medicare contractor, seeking an earlier Medicare billing date of September 1, 2012. For the reasons explained below, I grant the Centers for Medicare & Medicaid Services' (CMS's) Motion for Summary Judgment and find that Petitioner's effective date of enrollment is October 25, 2012, with a 30-day retrospective billing date of September 26, 2012.

I. Background

Petitioner filed a hearing request (HR) dated April 9, 2013, challenging the effective date determination* made by National Government Services (NGS), a Medicare contractor.

* Petitioner uses the term "effective date" to refer to the date on which it could bill for Medicare services. *See, e.g.*, Petitioner's Hearing Request ("NGS approved our application giving us an effective date for 9/26/12"). Under the regulations, the effective date is the date NGS received an application from Petitioner that it subsequently approved. The September 26, 2012 date NGS assigned to Petitioner's application is Petitioner's retrospective billing date. The regulation at 42 C.F.R. § 424.521(a)(1), allows NGS to grant retrospective billing privileges 30 days prior to the date the

CMS submitted a Motion for Summary Judgment and a brief in support of its motion (CMS Br.), along with eleven exhibits identified as CMS Exs. 1-11. Petitioner filed a response to the CMS Motion (P. Br.). In the absence of objection, I admit CMS Exs. 1-11 into the record.

II. Applicable Law

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. Act §§ 1102, 1866(j); 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary’s regulations, a provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program.” 42 C.F.R. § 424.510(a).

Also, a “provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor,” and the application must include “complete . . . responses to all information requested within each section as applicable to the provider or supplier type.” 42 C.F.R. § 424.510(d)(1)-(2).

The effective date of enrollment for physicians and nonphysician practitioners is set as follows:

The effective date for billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d).

III. Issue

The issue in this case is whether CMS’s contractor and CMS properly determined Petitioner’s effective date of Medicare enrollment.

application was received. NGS determined Petitioner’s effective date of enrollment to be October 25, 2012, the date it received the application that was ultimately approved. For clarity, I use “effective date” in this decision to refer to the effective date of enrollment in Medicare and not the date on which retrospective billing begins.

IV. Analysis

My findings of fact and conclusions of law are set forth in italics and bold in the discussion captions of this decision.

A. This case is appropriate for summary judgment.

CMS argues that it is entitled to summary judgment. The Departmental Appeals Board (Board) has stated the standard for summary judgment:

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . 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 – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

Senior Rehabilitation & Skilled Nursing Center, DAB No. 2300, at 3 (2010) (citations omitted).

The Board has further explained that the role of an Administrative Law Judge (ALJ) in deciding a summary judgment motion differs from the ALJ's role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Village at Notre Dame, Inc.*, DAB No. 2291, at 5 (2009).

In determining whether summary judgment is appropriate in this case, I accept all of Petitioner's factual assertions as true and draw all reasonable inferences in Petitioner's favor. I also accept Petitioner's description and chronology of these events as true. Therefore, I accept Petitioner's claim that he submitted an initial Medicare enrollment application in August 2012, and that the application was received by NGS on August 27, 2012. HR; P. Br. I further accept Petitioner's claim that he sent a revised application with supporting documentation to NGS by overnight mail based on the advice Petitioner received from a Medicare representative. I also accept Petitioner's assertion that the revised application sent by overnight mail was not received by NGS until October 15, 2012 because the submission was sent to a Post Office box and not a physical address. HR. Finally, I accept Petitioner's assertion that after NGS advised him that his revised

application was denied, Petitioner immediately sent a new application that NGS received on October 25, 2012. HR.

CMS argues that it is entitled to summary judgment because “the undisputed facts show that Petitioner’s effective date was properly assigned.” CMS Br. at 1. The record before me shows that Petitioner has not disputed any fact that is material to my resolution of this case. Specifically, neither side disputes that NGS did not receive a complete Medicare enrollment application from Petitioner that it could process to approval earlier than October 25, 2012. Therefore, I agree with CMS that summary judgment is appropriate in this case.

B. CMS correctly determined the effective date of Petitioner’s Medicare enrollment.

Petitioner, a chiropractor, was enrolled in the Medicare program as a practitioner since 2003. On August 31, 2012, Petitioner left a group practice in order to open his own practice. On August 27, 2012, Petitioner submitted a Medicare enrollment application (Form CMS-855I) to NGS, he began seeing patients at his new location on September 1, 2012. CMS Ex. 1, at 1, 17; P. Br. After reviewing Petitioner’s enrollment application, NGS sent Petitioner a letter dated September 14, 2012 requesting that Petitioner make revisions to the enrollment application and submit supporting documentation. The letter noted that in order to avoid rejection or denial of the application, the revisions and additional documentation had to be furnished to NGS within 30 days of the date on the notice. CMS Ex. 2. Thirty days from the September 14, 2012 notice was October 14, 2012, a Sunday. On October 15, 2012, NGS received the application from Petitioner. Upon review of the application NGS noted that it was not complete. CMS Ex. 3. On October 19, 2012, NGS notified Petitioner that his enrollment application was rejected because a “response was not received, or the requested documents(s) we received were incomplete or not sufficient.” CMS Ex. 4.

Petitioner submitted a second Medicare enrollment application (Form CMS-855I) on October 25, 2012. CMS Ex. 5. NGS received the enrollment application on October 25, 2012, and requested additional information which Petitioner provided. CMS Exs. 6, 7. On February 16, 2012, NGS approved the application and granted Petitioner the effective date of October 25, 2012, with a retroactive billing date of September 26, 2012. CMS Exs. 5, 7, 8.

Petitioner does not dispute the facts as recited above. Moreover, Petitioner offers no evidence to counter the fact that it was not until October 25, 2012 that NGS received an enrollment application from Petitioner that it could subsequently process to approval.

As noted above, the effective date for enrollment for physicians and nonphysician 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 an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location.” The “date of filing” is the date that the Medicare contractor “receives” a signed provider enrollment application that the Medicare contractor is able to process to approval. 42 C.F.R. § 424.520; 73 *Fed. Reg.* 69,725, 69,769 (Nov. 19, 2008). It is well settled that the date of filing is the date the Medicare contractor receives an approvable application. *Caroline Lott Douglas, PA*, DAB CR2406 (2011); *Rizwan Sadiq, M.D.*, DAB CR2401 (2011); *Jennifer Tarr, M.D.*, DAB CR2299 (2010); *Michael Majette, D.C.*, DAB CR2142 (2010); *Roland J. Pua, M.D.*, DAB CR2163 (2010).

Although Petitioner started providing services to Medicare beneficiaries as of September 4, 2012, the facts of this case show that it was not until October 25, 2012 that NGS received a Medicare enrollment application from Petitioner that it could process to approval. The revised application Petitioner submitted to NGS did not contain all the information NGS had requested. The effective date of Medicare enrollment depends on the date NGS first received an approvable application. Therefore, the correct effective date of Petitioner’s enrollment remains October 25, 2012, with a retrospective billing date of September 26, 2012. 42 C.F.R. § 424.520(d).

The arguments Petitioner advances to support an earlier billing date amount to claims of equitable estoppel, and provide no bases for me to provide Petitioner with the relief he seeks. Petitioner states that as a previous Medicare provider he understood that he could continue to provide services in his new practice without disruptions, and that to ensure a smooth transition without delay, in advance of his relocation he timely notified CMS of the changes using the application process. Petitioner also claims that NGS did not receive the revised application until October 15, 2012 because he sent the application by overnight mail to a Post Office box, rather than to a physical address, based on the advice Petitioner received from a Medicare Representative. HR; P. Br. Petitioner also maintains that not receiving reimbursement for services he provided to Medicare beneficiaries from September 1 through 25, results in a significant loss of income to his practice. P. Br.

It is well-established by federal case law, and in Board precedent, that: (1) estoppel cannot be the basis to require payment of funds from the federal government; (2) estoppel can lie against the government, if at all, only on a showing of affirmative misconduct, such as fraud; and (3) I am not authorized to order payment contrary to law based on equitable grounds. *See, e.g., Oklahoma Heart Hospital*, DAB No. 2183, at 16 (2008); *Wade Pediatrics*, DAB No. 2153, at 22 n.9 (2008), *aff’d*, 567 F.3d 1202 (10th Cir. 2009); *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51 (1984). Petitioner alleges no affirmative misconduct against the government and I cannot grant the relief Petitioner requests.

V. Conclusion

For the reasons explained above, and based on the undisputed fact that NGS did not receive an enrollment application from Petitioner which it could process to approval until October 25, 2012, I conclude that Petitioner's effective date of enrollment was correctly determined to be October 25, 2012, with a 30-day retrospective billing date starting September 26, 2012.

/s/

Richard J. Smith
Administrative Law Judge