Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Hieu Ball, M.D., Inc.,
(PTAN: CA153477)
(NPI: 1740338946)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-142

Decision No. CR5002

Date: December 29, 2017

DECISION

Petitioner, Hieu Ball, M.D., Inc., is a surgical practice in San Ramon, California. After the practice's Medicare billing privileges were deactivated, it applied to reenroll in the program. The Centers for Medicare & Medicaid Services (CMS) granted the enrollment application, effective May 4, 2015. Petitioner now challenges that effective date.

Because Petitioner filed its subsequently-approved enrollment application on May 4, 2015, I find that CMS properly established that as the effective date of its enrollment. I have no authority to review the deactivation. *William Goffney, Jr., M.D.*, DAB No. 2763 at 3-5 (2017).

Background

In a letter dated June 19, 2015, the Medicare contractor, Noridian Healthcare Solutions, advised Petitioner Ball, Inc. that it approved Petitioner's Medicare enrollment, effective May 4, 2015. CMS Exhibit (Ex.) 4. Petitioner sought reconsideration, asking that the effective date of enrollment be changed to September 3, 2014, the date the contractor deactivated its enrollment. CMS Ex. 5. In a reconsidered determination, dated September 29, 2015, the contractor denied Petitioner an earlier effective date. CMS Ex. 6.

Petitioner appealed.

Although CMS has moved for summary judgment, I find that this matter may be decided on the written record, without considering whether the standards for summary judgment are satisfied. In my initial order, I instructed the parties to submit the written direct testimony of any proposed witness. Although Petitioner indicates that it wishes to call two witnesses, it did not submit their written testimony, so Petitioner has waived the right to present that testimony. *See* Acknowledgment and Prehearing Order at 4-5 (¶ 8). CMS lists no witnesses. Because there are no witnesses to be cross-examined, an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 5 (¶ 10).

With its brief (CMS Br.), CMS submits six exhibits (CMS Exs. 1-6). With its brief (P. Br.), Petitioner submits three exhibits (P. Exs. 1-3). In the absence of any objections, I admit into evidence CMS Exs. 1-6 and P. Exs. 1-3.

Discussion

> ***Petitioner filed its subsequently-approved application on May 4, 2015, and its Medicare enrollment can be no earlier than that date. 42 C.F.R. § 424.520(d).***[1]

Enrollment. Petitioner Ball, Inc. participates in the Medicare program as a "supplier" of services. Social Security Act § 1861(d); 42 C.F.R. § 498.2. To receive Medicare payments for the services it furnishes to program beneficiaries, a prospective supplier must enroll in the program. 42 C.F.R. § 424.505. "Enrollment" is the process used by which CMS and its contractors: 1) identify the prospective supplier; 2) validate the supplier's eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier's owners and practice location; and 4) grant the supplier Medicare billing privileges. 42 C.F.R. § 424.502.

To enroll, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a). An enrollment application is either a CMS-approved paper application or an electronic process approved by the Office of Management and Budget. 42 C.F.R. § 424.502.[2] When CMS determines that a prospective supplier meets the applicable enrollment requirements, it grants Medicare billing privileges, which means that the supplier can submit claims and receive payments from Medicare for covered services provided to program beneficiaries. The effective date for its billing privileges "is the *later* of . . . [t]he date of filing" a subsequently-approved

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

[2] CMS's electronic process is referred to as PECOS (Provider Enrollment, Chain, and Ownership System).

enrollment application or "[t]he date that the supplier first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d) (emphasis added). If it satisfies certain requirements, CMS will allow a supplier to bill retrospectively for up to 30 days prior to the effective date. 42 C.F.R. § 424.521(a)(1).

Deactivation. To maintain its billing privileges, a supplier must, at least every five years, resubmit and recertify the accuracy of its enrollment information, a process referred to as "revalidation." 42 C.F.R. § 424.515. In addition to periodic revalidations, CMS may, at other times and for its own reasons, ask a supplier to recertify the accuracy of its enrollment information. 42 C.F.R. § 424.515(d). Within 60 days of receiving CMS's notice to recertify, the supplier must submit an appropriate enrollment application with complete and accurate information and supporting documentation. 42 C.F.R. § 424.515(a)(2).

If, within 90 days from receipt of CMS's notice, the supplier does not furnish complete and accurate information and all supporting documentation or does not resubmit and certify the accuracy of its enrollment information, CMS may deactivate its billing privileges, and no Medicare payments will be made. 42 C.F.R. §§ 424.540(a)(3); 424.555(b). To reactivate its billing privileges, the supplier must complete and submit a new enrollment application. 42 C.F.R. §424.540(b)(1).

Petitioner's deactivation and reenrollment. In a notice dated April 21, 2014, the Medicare contractor directed Petitioner to revalidate its provider enrollment by reviewing, signing, and submitting a revalidation application through the PECOS system or by mailing a completed CMS-855 Medicare enrollment application to the contractor. CMS Ex. 1. The notice cautioned that failing to submit the application within 60 calendar days could result in the practice's Medicare billing privileges being deactivated. CMS Ex. 1 at 3.

The contractor mailed copies of the notice to the two addresses it had on file: 200 Porter Drive, San Ramon, California (CMS Ex. 1); and 301 Lennon Lane, Walnut Creek, California (CMS Ex. 2). When Petitioner did not respond, the contractor deactivated its billing privileges, effective September 3, 2014. *See* CMS Ex. 6 at 2.

On *May 4, 2015*, Petitioner electronically submitted (by means of the PECOS system) its enrollment application, CMS Form 855I. After Petitioner submitted supplemental information, the contractor approved the application. CMS Exs. 3, 4. Thus, pursuant to section 424.520(d), the date Petitioner filed its subsequently-approved enrollment application – May 4, 2015 – is the correct effective date of enrollment.

Petitioner, however, argues that its reenrollment should be effective the date the contractor deactivated its Medicare billing privileges. Petitioner claims that, in April 2014, it moved its practice location from Walnut Creek to San Ramon – but not to 200 Porter Drive. Because the contractor sent the revalidation notice to the wrong address, the medical practice did not receive it and was not aware of the deactivation.

Petitioner also claims that, on April 22, 2014, its previous billing agent filed a change of address with the contractor. In support, Petitioner submits email correspondence, dated April 22, 2014, from customer service at CMS. The correspondence indicates that Petitioner's then billing agent submitted a Medicare enrollment application. It says nothing about the contents of that application. P. Ex. 1. Petitioner acknowledges that, during the period of its deactivation, it did not receive Medicare reimbursement for the bills submitted, but explains that its new billing agent attributed any delays in payment to "glitches" in the practice's new electronic medical records system.

Petitioner has not established that it timely advised the contractor of its new address. In any event, the circumstances surrounding Petitioner's deactivation are not relevant to this decision. *Goffney*, DAB No. 2763 at 7 ("Only facts relevant to the effective date resulting from the . . . application were material to the ALJ decision."). It is settled that, following deactivation, section 424.520(d) governs the effective date of reenrollment, which means that the date Petitioner filed its subsequently-approved application is the effective date of its reenrollment. *Id*.

Conclusion

Because Petitioner filed its subsequently-approved reenrollment application on May 4, 2015, CMS properly granted its Medicare enrollment effective that date.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge