

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of:	)	
	)	
Onelia Del Pozo Saavedra, M.D.,	)	
	)	Date: September 16, 2009
Petitioner,	)	
	)	
- v. -	)	Docket No. C-09-532
	)	Decision No. CR2004
Centers for Medicare & Medicaid	)	
Services.	)	

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**DECISION DISMISSING REQUEST FOR HEARING**

I dismiss the request for hearing filed by Petitioner, Onelia Del Pozo Saavedra, M.D. Petitioner requested a hearing before the Centers for Medicare & Medicaid Services (CMS), or its agent, made a reconsideration determination. In this circumstance Petitioner has no right to a hearing.

**I. Background**

Petitioner is a physician. On June 18, 2009 Petitioner filed a hearing request to challenge a determination made on behalf of CMS to deny enrollment as a participant in the Medicare program. The case was assigned to me for a hearing and a decision.

CMS then moved to dismiss the hearing request, arguing that Petitioner had no right to a hearing at this time. Petitioner did not reply to the motion.

CMS filed three proposed exhibits in connection with its motion to dismiss, which it has designated as CMS Ex. 1 – CMS Ex. 3. I receive these exhibits into the record.

## II. Issues, findings of fact and conclusions of law

### A. Issue

The issue in this case is whether Petitioner has a right to a hearing at this time.

### B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision. I set forth each Finding below as a separate heading.

***1. A party is not entitled to a hearing to challenge denial of a Medicare enrollment application until reconsideration of the denial is complete.***

A prospective provider or a supplier who is dissatisfied with a determination to deny or revoke his or her enrollment in Medicare is entitled to request reconsideration of that determination. 42 C.F.R. § 498.5(a)(1), (d)(1). The prospective provider or supplier may request a hearing before an administrative law judge to challenge an unfavorable reconsideration determination. 42 C.F.R. § 498.5(a)(2), (d)(2). The regulations do not permit a prospective provider or supplier to bypass the reconsideration step nor do they permit a prospective provider or supplier to request reconsideration and a hearing simultaneously.

***2. Petitioner is not entitled to a hearing because reconsideration has not been completed.***

CMS avers without disagreement from Petitioner that Petitioner requested reconsideration and a hearing simultaneously. CMS avers, also without Petitioner's disagreement, that reconsideration of its initial determination has not yet been completed.

These unchallenged allegations by CMS establish that Petitioner has no right to a hearing at this time. A right to a hearing exists only after reconsideration has been completed and that has not yet occurred. Consequently, I must dismiss Petitioner's hearing request.

/s/

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Steven T. Kessel  
Administrative Law Judge