

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Integrated Rehab Consultants, LLC, and Anureet Brar, D.O.,
(PTANS: 349933 and 324827ZGRJ),

Petitioners,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-730

Decision No. CR3727

Date: March 25, 2015

DECISION

I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) against Integrated Rehab Consultants, LLC (Integrated) and Anureet Brar, D.O. CMS correctly determined that January 26, 2014, was the earliest date on which Petitioners could claim reimbursement for services.

I. Background

Petitioners' representative¹ filed a request for hearing in order to challenge a reconsideration determination that affirmed an effective date of January 26, 2014, for Petitioners' Medicare enrollments. The case was assigned to me for a hearing and a decision. CMS moved for summary judgment. Petitioner submitted an opposition to the summary judgment motion (P. Opposition).

CMS filed 18 exhibits, identified as CMS Ex. 1 – CMS Ex. 18, with its motion for

¹ Petitioners Integrated and Dr. Brar jointly requested a hearing to contest the same effective date the CMS contractor applied to both parties.

summary judgment (CMS Br.). Petitioners filed four exhibits, identified as P. Ex. 1 – P. Ex. 4, with its pre-hearing brief (P. Br.). I receive into the record CMS Ex. 1 – CMS Ex. 18 and P. Ex. 1 – P. Ex. 4.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The sole issue is whether CMS correctly determined the effective date of Petitioners' Medicare enrollments and participation.

B. Findings of Fact and Conclusions of Law

There are no disputed material facts in this case. Petitioners' representative filed three CMS 855 forms at around the same time in September of 2013: an 855I enrollment form for Dr. Brar (CMS Ex. 6); an 855R reassignment of billing privileges form assigning Dr. Brar's billing privileges to Integrated (CMS Ex. 4); and an 855B enrollment form for Integrated (CMS Ex. 1), adding 4 practice locations in Texas and a special payments address in Chicago, Illinois.

Novitas, a CMS contractor, sent a notice to Petitioners' representative dated November 18, 2013 (CMS Ex. 2), requesting additional information relating to an electronic funds transfer authorization form. The notice warned Integrated that if it did not submit the required information within 30 days, CMS may reject its CMS Form 855B enrollment application. Petitioners state that their representative never received the letter, and therefore, she did not submit the required information within 30 days, which lead Novitas to reject the CMS Form 855B application in a letter dated December 18, 2013. CMS Ex. 3.

Upon receiving the rejection notice, Petitioners' representative sent Novitas a letter in which she claimed that she never received the Nov. 18, 2013 letter requesting additional information. With her letter, she re-submitted a CMS Form 855B for Integrated, a CMS Form 855R reassignment form for Dr. Brar, and the electronic funds transfer authorization form. She requested that Novitas "provide the same effective date as requested in these applications." CMS Ex. 9.

Novitas approved Dr. Brar's CMS Form 855I in a letter dated January 24, 2014. CMS Ex. 10. Novitas approved Integrated's CMS Form 855B in a letter dated June 30, 2014, and set an effective date of January 26, 2014. CMS Ex. 12. Novitas approved Dr. Brar's CMS Form 855R in a letter dated July 2, 2014, and set an effective date of January 26, 2014. CMS Ex. 13. Petitioners requested reconsideration, CMS. Ex. 15, and CMS affirmed the effective dates on October 31, 2014. CMS Ex. 17.

Petitioners oppose CMS's motion for summary judgment and identify one fact as in dispute. P. Opposition at 2. Petitioners argue that "the disputed fact which precludes summary disposition is that Petitioner[s] den[y] that [they] ever received the November 18, 2013 request from Novitas for additional information related to the September 5, 2013 Group Application." P. Opposition at 4, citing P. Ex. 1. Though CMS does not actually dispute this fact, I will assume for purposes of summary judgment that Petitioners' representative did not receive the November 18, 2013 letter from Novitas. However, this fact is not material for the reasons stated below.

Petitioners challenge Novitas's rejection of Integrated's September 2013 CMS Form 855B application and the January 26, 2014 effective date for Integrated and Dr. Brar. CMS's rejection of an enrollment application is not appealable. 42 C.F.R. § 424.525(d). That is true even if, as here, the rejection resulted when Integrated failed to supply additional information and CMS cannot prove Petitioners' representative received its request for the information. *See* 42 C.F.R. § 424.525(a)(1). Initial determinations that may be challenged and reviewed on appeal are listed at 42 C.F.R. § 498.3(b). An action by CMS is not appealable unless it comprises one of the listed initial determinations. CMS's rejection of an enrollment application is not one of the listed initial determinations and, therefore, the rejection may not be challenged on appeal. *See Conchita Jackson, M.D., DAB No. 2495, at 6 (2013); DMS Imaging, Inc., DAB No. 2313, at 6 (2010).*

The effective date for Integrated and Dr. Brar is determined by the date on which Novitas received an enrollment application that it subsequently approved. A supplier's effective date is the later of the date the supplier files an enrollment application that the Medicare contractor ultimately approves or the date the supplier first began furnishing services at a new practice location. 42 C.F.R. § 424.520(d). Petitioners do not dispute that Novitas received a CMS Form 855B from Integrated on February 25, 2014, and subsequently approved the application. P. Opposition at 3; CMS Exs. 7, 12. Neither do Petitioners dispute that on December 18, 2013, Novitas rejected Integrated's CMS Form 855B enrollment application dated September 5, 2013. P. Br. at 2. Because Novitas received the only enrollment application for Integrated that it ultimately approved on February 25, 2014, Novitas correctly determined that Petitioners' enrollments could not have an effective date earlier than January 26, 2014.

Petitioners argue that Novitas should have approved Integrated's earlier enrollment application, and because Novitas unfairly rejected the earlier application, CMS should give Petitioners an effective date based on the earlier application. P. Br. at 5-6. Petitioners argue that if their representative had received the November 18, 2013 letter, she would have responded immediately and provided the requested information. As a result, Petitioners argue, Novitas would have approved Integrated's earlier enrollment application, which was identical to the resubmitted enrollment application, and Petitioners' effective dates would have been September 5, 2013. P. Opposition at 6-7.

While it may be true that Petitioners' representative might have submitted a complete enrollment application for Integrated earlier had she received CMS's November 18, 2013 letter, that begs the question. Integrated submitted an incomplete application and CMS could not accept the CMS Forms 855R and 855B and establish an effective participation date based on the accepted applications until Integrated's application was complete. It was not complete until February 25, 2014.

Petitioners' argument is essentially equitable. Petitioners argue that CMS is to blame for Integrated's failure to submit the necessary information at an earlier date and that, therefore, Petitioners should not be penalized. The regulations are, however, clear and I have no authority to waive the requirements of law or to ignore them based on equitable considerations.

/s/

Steven T. Kessel
Administrative Law Judge