

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

G. Douglas Andersen DC,
(PTAN: DC17373),

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-18-37

Decision No. CR4992

Date: December 14, 2017

DECISION

I sustain the determination of a Medicare contractor, as affirmed on reconsideration, to reactivate the Medicare enrollment of Petitioner, G. Douglas Andersen DC, effective March 20, 2017.

I. Background

The Centers for Medicare & Medicaid Services moved for summary judgment. It is unnecessary that I decide whether the criteria for summary judgment are met in this case because neither side offered witness' testimony. Consequently, I decide the case based on the parties' written exchanges. CMS offered one exhibit, identified as CMS Ex. 1, in support of its case. Petitioner offered no exhibits, although he filed a written argument in support of his contentions. I receive CMS Ex. 1 into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor correctly determined to reactivate Petitioner's Medicare billing privileges effective March 20, 2017.

B. Findings of Fact and Conclusions of Law

Suppliers enrolled as participants in the Medicare program must revalidate their billing privileges at least once every five years. 42 C.F.R. § 424.515. In order to revalidate, the supplier must file certain requisite information with a Medicare contractor or with CMS. 42 C.F.R. §§ 424.510, 424.515. CMS or its contractor may deactivate a supplier if the supplier fails to file requisite information within 90 days of receiving a request to file that information. 42 C.F.R. § 424.540(a)(3).

A decision by a Medicare contractor to reject an application for reactivation of billing privileges is not an appealable determination and it confers no hearing rights on the deactivated supplier. 42 C.F.R. § 498.3(b). Consequently, a supplier whose application for billing privileges is rejected and who is therefore deactivated has no route of appeal from the rejection but must file a new Medicare enrollment application in order to have his or her billing privileges reactivated. 42 C.F.R. § 424.540(b)(1).

CMS and its contractors process an application for reactivation of billing privileges under the identical criteria that they use to process new enrollment applications, relying on the requirements of 42 C.F.R. § 424.520(d)(1). This regulation effectively states that the *earliest* effective date of participation of a participating Medicare supplier will be the date when the contractor receives an enrollment application that the contractor accepts. As a consequence of this application, the deactivated supplier may not receive an effective participation date (date of reactivation) that is earlier than the date that it submits an application for reactivation that the contractor accepts. 42 C.F.R. § 424.520(d)(1); Medicare Program Integrity Manual (MPIM) §§ 15.27.1.2, 15.29.4.3.

Medicare will not accept a supplier's claims for reimbursement for items or services that it provides on dates that fall between the date of deactivation and the effective date of reactivation. 42 C.F.R. § 424.555(b). The regulations plainly allow for a reimbursement gap. But, that gap, should it occur, is the consequence of regulatory language as has been interpreted by the Secretary via CMS. The regulations do not allow for CMS or its contractors to waive the requirement that the reactivation date be the date when a deactivated provider files an acceptable application with the contractor.

The regulations governing reactivation have been the subject of numerous cases before the Departmental Appeals Board. Administrative law judges and the Board itself have ruled in numerous instances that CMS's application of the regulations constitutes a reasonable reading of regulatory language and, more importantly, expresses the Secretary's will. *Willie Goffney, Jr., M.D.*, DAB No. 2763 at 6 (2017). CMS's interpretation of its regulations is settled law within this Department and at this juncture I have no authority to revisit it or to overturn it.

The facts of this case are undisputed. On July 11, 2016, a Medicare contractor sent a notice to Petitioner asking him to revalidate his Medicare billing privileges. CMS Ex. 1 at 62. Petitioner submitted a revalidation application on August 15, 2016. *Id.* at 13-15, 65. The contractor concluded that the application was incomplete in that it was missing certain mandatory information. The contractor ultimately rejected the application on October 12, 2016. *Id.* at 77.

Petitioner filed a second application for revalidation on January 25, 2017. CMS Ex. 1 at 23. The contractor again concluded that the application was incomplete. On March 15, 2017, it rejected the second application. *Id.* at 75.

Petitioner filed a third application for recertification on March 20, 2017. CMS Ex. 1 at 31. The contractor eventually accepted this application and reactivated Petitioner's billing privileges effective March 20. *Id.* at 72.

As I have discussed, Petitioner may not appeal the contractor's rejection of Petitioner's August 15, 2016 and January 25, 2017 revalidation applications and he may not appeal the contractor's decision to deactivate his billing privileges. The contractor determined to reactivate Petitioner's billing privileges effective March 20, 2017, based on Petitioner's reactivation application of that date. That is the *earliest* date when Petitioner qualified for reactivation. Consequently, the undisputed facts and the applicable law support the contractor's determination.

Petitioner essentially argues that his deactivation and delayed reactivation are a consequence of honest human error. He asserts that his employee inadvertently supplied the contractor with a personal e-mail address rather than a business e-mail address. The result, he contends, was that he did not receive e-mails from the contractor in which the contractor requested supplemental information from him about his reactivation applications. Consequently, according to Petitioner, he failed to supply the contractor with that which the contractor requested, and the contractor rejected his applications for incompleteness.

That may be so, but it provides no basis for me to grant Petitioner an earlier reactivation date than March 20, 2017. As I have discussed, the earliest date that Petitioner could qualify for reactivation was March 20. The regulations confer no authority on me to

grant Petitioner an earlier date. Furthermore, I may not waive or ignore regulatory requirements based on equitable considerations. *US Ultrasound*, DAB No. 2302 at 8 (2010).

/s/

Steven T. Kessel
Administrative Law Judge