

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Donna Maneice, M.D.
Docket No. A-18-24
Ruling No. 2018-1
April 3, 2018

**RULING ON MOTION TO REOPEN DEPARTMENTAL
APPEALS BOARD DECISION NO. 2826**

On January 2, 2018, Donna Maneice, M.D. (Petitioner) filed a motion asking the Board to reopen and revise its decision, *Donna Maneice, M.D.*, DAB No. 2826 (Oct. 13, 2017), and to allow 30 days to submit new evidence in support of her motion. The Board granted Petitioner's request for additional time, to February 1, 2018. Petitioner has not filed any evidence or argument in support of her motion and has not further communicated with the Board about her failure to do so. We deny the motion to reopen.

Reopening under 42 C.F.R. Part 498

Title 42 C.F.R. § 498.100 authorizes the Board, on its own motion or at the request of either party, to reopen a decision within 60 days of the date of notice of the decision. Section 498.100 does not specify the circumstances in which the Board may reopen a decision.¹ In appeals under 45 C.F.R. Part 16, the Board may “reconsider” a decision when a party “promptly alleges a clear error of fact or law.” 45 C.F.R. § 16.13. The Board has held that this clear-error standard is “reasonably applied” in deciding whether to reopen a decision in an appeal (such as the instant case) brought under 42 C.F.R. Part 498. *Experts Are Us, Inc.*, DAB No. 2342, at 2 (2010). The Board has emphasized that reopening a decision is not a routine step in the administrative appeal process but, rather, an opportunity for the parties to identify “any errors that make the decision clearly wrong.” *Id.*; see also *Peter McCambridge, C.F.A.*, DAB Ruling No. 2010-1, at 1 (Feb. 2, 2010); *BioniCare Medical Technologies, Inc.*, DAB Ruling No. 2011-3, at 1 (Dec. 2, 2010).

¹ Title 42 C.F.R. § 498.102, titled “Revision of reopened decision,” implies that the Board may reopen its decision to consider “new evidence.” However, “[t]he Board generally will not exercise the discretion to reopen based on evidence that a party could have submitted before, but did not.” *Meadowwood Nursing Ctr.*, DAB Ruling No. 2014-1, at 5 (March 12, 2014). (Board decisions and rulings cited herein are available on the Board Decisions webpage at <https://www.hhs.gov/about/agencies/dab/decisions/board-decisions/board-decisions-by-year/index.html>.)

Case Background

The Centers for Medicare & Medicaid Services (CMS), acting through its Medicare Administrative Contractor, Cahaba Government Benefit Administrators, LLC, revoked Petitioner's Medicare enrollment and billing privileges effective June 7, 2012, under 42 C.F.R. § 424.535(a)(3), based on Petitioner's June 7, 2012 felony conviction for attempted tax evasion and the filing of a false tax return within the preceding ten years. DAB No. 2826, at 2-3. CMS barred Petitioner from re-enrolling in Medicare for three years. *Id.* at 2.

Petitioner requested a hearing before an administrative law judge (ALJ). By decision based on the written record, the ALJ upheld CMS's determination to revoke Petitioner's enrollment and billing privileges, finding that CMS had a lawful basis to revoke under 42 C.F.R. § 424.535(a)(3). *Id.* at 3-5.

On Petitioner's request for review, the Board upheld the ALJ's decision. *Id.* at 6-9. By electronic transmittal (by DAB E-File) on October 17, 2017, the Board sent its October 13, 2017 decision to Petitioner and CMS. In its transmittal letter, the Board informed the parties that the Board's decision would be binding unless Petitioner timely files a civil action seeking judicial review of the decision or the Board reopens and revises its decision under 42 C.F.R. § 498.102.

Discussion

On January 2, 2018, Petitioner, by her attorney, filed a "Motion to Reopen and Revise Decision and Request for Extension of Time," asking for an additional 30 days to supplement her motion to reopen with "new evidence that was not before the ALJ or [the] Board" and of which she became aware "on or about in the last thirty . . . days." Motion at 1, 2. In her motion, Petitioner stated that her request "was not filed within the 60 day time period which tolled on December 22, 2017," *id.* at 1, but explained that her attorney had severe health impairments during the last six months of 2017, *id.* at 1-2.

By Acknowledgment of Filing and Scheduling Order dated January 11, 2018, the Board granted Petitioner's request for additional time, setting a due date of February 1, 2018, in light of Petitioner's representations concerning her attorney's medical condition. The Board stated that CMS could then file a response to Petitioner's motion to reopen on or before February 22, 2018.

Petitioner has not filed anything in support of her motion to reopen. Nor has Petitioner, or her attorney, or anyone else acting on Petitioner's behalf, further communicated with the Board about the motion or the failure to make any additional submission in support of the motion by the set due date.

On a petition to reopen a Board decision, the core inquiry for the Board is whether the party requesting reopening has articulated a clear error of fact or law in the Board's decision. Inasmuch as Petitioner has not submitted anything in support of her motion to reopen to enable the Board to consider whether there is any such error in DAB No. 2826, the Board denies Petitioner's motion to reopen.

Conclusion

The Board denies Petitioner's motion to reopen DAB No. 2826.

_____/s/
Sheila Ann Hegy

_____/s/
Constance B. Tobias

_____/s/
Susan S. Yim
Presiding Board Member