

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Robert H. Odell, Jr., M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-639

Decision No. CR2455

Date: October 21, 2011

**DECISION**

I sustain the determination of the Centers for Medicare and Medicaid Services (CMS) to establish an effective date for the reassignment of Medicare benefits from Petitioner Robert H. Odell, Jr., M.D., to Pacific Anesthesia Consultants (Pacific) of April 25, 2011.

**I. Background**

Petitioner is a physician. He applied to Palmetto, GBA (Palmetto), a Medicare contractor, to reassign Medicare benefits to Pacific. This application was approved by Palmetto on May 20, 2011, and Palmetto established an effective date of reassignment of April 25, 2011.<sup>1</sup> Petitioner was dissatisfied with this determination and requested reconsideration, asking that he be given an effective date for reassignment of benefits of January 25, 2011. On reconsideration, the

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<sup>1</sup> In its May 20 notice letter, Palmetto incorrectly told Petitioner that it had established an effective date of reassignment of March 26, 2011. What Palmetto evidently was referring to was the earliest date for which Petitioner's claims for Medicare reimbursement would be accepted, which is established by regulation to be 30 days prior to the effective date of a provider's enrollment.

determination establishing the April 25 effective date was sustained. Petitioner then requested a hearing, and the case was assigned to me for a hearing and a decision.

At my direction, CMS filed a brief and proposed exhibits, which CMS designated as CMS Ex. 1 – CMS Ex. 9. Petitioner responded to CMS's submission with a letter that is dated September 15, 2011. I receive into evidence CMS Exhibit (Ex.) 1 – CMS Ex. 9, and I also receive Petitioner's letter into the record.

## **II. Issue, Findings of Fact, and Conclusions of Law**

### **A. Issue**

The issue in this case is whether Palmetto, acting on behalf of CMS, correctly established an effective date of April 25, 2011 for the reassignment of Medicare benefits from Petitioner to Pacific.

### **B. Findings of Fact and Conclusions of Law**

The facts of this case are undisputed. Petitioner submitted three applications to Palmetto to reassign his Medicare benefits. Petitioner's first application was approved, effective January 25, 2011. CMS Ex. 2. Petitioner then realized that he had erroneously designated the wrong assignee in his first application. To correct that error, he submitted a second application on April 14, 2011. CMS Ex. 3. However, Petitioner then discovered that he had submitted an incorrect certification as part of his second application. Petitioner submitted a third application for reassignment of benefits to correct this error. CMS Ex. 4. Palmetto received that third application on April 25, 2011, and it then approved it with the effective date of April 25, 2011.

The effective date of a physician's participation in Medicare is established by regulation to be:

the later of the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor or the date an enrolled physician . . . first began providing services at a new practice location.

42 C.F.R. § 424.520(d). The earliest date that Palmetto could approve Petitioner's reassignment of Medicare benefits to Pacific was the date when he filed an acceptable application for that reassignment. That date was April 25, 2011. Petitioner, therefore, received the earliest effective date permitted by regulation.

