

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

IQ Surgical Associates, Inc.,
(PTAN: CA142561; NPI: 1093115735),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-3047

Decision No. CR4469

Date: December 3, 2015

DECISION

Petitioner, IQ Surgical Associates, Inc. appealed the determination establishing the effective date of its enrollment and billing privileges as a group practice supplier in Medicare. The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment. For the reasons explained below, I grant summary judgment in favor of CMS. I find that Noridian Healthcare Solutions (Noridian), an administrative contractor for CMS, properly determined that the earliest approvable enrollment application that it received was on December 22, 2014, which necessarily determines Petitioner's effective date of enrollment as December 22, 2014, with a retrospective billing period starting November 22, 2014.

I. Background and Undisputed Material Facts

In its pre-hearing brief and response to CMS's motion for summary judgment, Petitioner states that it "accepts and joins in the undisputed material facts listed in CMS' Pre-Hearing Brief." Petitioner's Pre-hearing Brief and Opposition to CMS's Motion for Summary Judgment (P. Response) at 2. The following are the undisputed material facts, as set forth in CMS's pre-hearing brief and motion for summary judgment (CMS Br.):

October 9, 2014:

Petitioner submitted a Form CMS-855B to Noridian to enroll for the first time as a group

practice supplier in Medicare. CMS Ex. [Exhibit] 1.

- October 31, 2014:** Noridian sent a notice to Petitioner requesting additional information and supporting documents needed to complete Petitioner's application, including Petitioner's billing agent's tax identification number. The notice informed Petitioner that if it failed to provide the necessary further information within 30 days, its application could be rejected. CMS Ex. 2.
- November 21, 2014:** Petitioner faxed Noridian information in response to the October 31, 2014 request. The response did not include Petitioner's billing agent's tax identification number. *See* CMS Ex. 3.
- December 2, 2014:** Noridian wrote to Petitioner rejecting its application because it failed to provide all requested information within 30 days. CMS Ex. 4.
- December 19, 2014:** Petitioner submitted a new Medicare enrollment application, Form CMS-855B, to Noridian. CMS Ex. 5. Petitioner concurrently submitted a request for a Corrective Action Plan (CAP) for the rejected October application, asking that its effective date for billing privileges be based on the submission date of the rejected application. CMS Ex. 6.
- February 23, 2015:** Noridian wrote to Petitioner notifying it that its second enrollment application was approved and that its enrollment was effective December 22, 2014 with billing privileges from November 22, 2014. CMS Ex. 7.
- April 9, 2015:** Petitioner submitted to Noridian a request for reconsideration of its effective date of enrollment of December 22, 2014. CMS Ex. 8.

April 27, 2015:

Noridian ruled unfavorably on Petitioner's request to change the effective date of its enrollment. CMS Ex. 9.

CMS Br. at 3-4. In its brief, Petitioner also set forth what it characterized as "additional undisputed material facts" including that, on December 5, 2014, which was outside of the 30-day requirement, Petitioner faxed the single remaining piece of missing information, the billing company's tax identification number, to Noridian. P. Br. at 2-3; P. Ex. 1 at 3. However, despite Petitioner's characterization, the additional facts are not material to my determination because even if true, as discussed below, they relate to a corrective action plan, the unintentional nature of Petitioner's conceded omission, and the reference to a Noridian practice to only contact a supplier once during a 30-day period to provide missing application documentation.

Petitioner timely filed a request for hearing (RFH) on June 24, 2015, and the case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-Hearing Order (Order) on July 2, 2015. With its brief, CMS filed nine proposed exhibits (CMS Exs. 1-9). With its brief, Petitioner filed three proposed exhibits (P. Exs. 1-3). In the absence of any objection, I admit CMS Exs. 1-9 and P. Exs. 1-3 into the record. CMS and Petitioner did not list any proposed witnesses or file any written direct testimony.

II. Discussion

A. Issues

This case presents two issues:

1. Whether CMS is entitled to summary judgment; and
2. Whether Noridian, acting on behalf of CMS, properly established December 22, 2014, as Petitioner's effective date for enrollment in Medicare, with Petitioner's retrospective billing privileges starting on November 22, 2014.

B. Findings of Fact and Conclusions of Law

1. Summary judgment is appropriate.

Summary judgment is appropriate if "the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300, at 3 (2010) (citations omitted). The moving party must show that there are no genuine issues of material fact requiring an evidentiary hearing and that it is entitled to judgment as a matter of law. *Id.* If the moving party meets its initial burden, the non-moving party must "come forward with specific facts showing that there is a genuine issue for trial . . ." *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). "To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its

pleadings or briefs, but must furnish evidence of a dispute concerning a material fact — a fact that, if proven, would affect the outcome of the case under governing law.” *Senior Rehab.*, DAB No. 2300, at 3. To determine whether there are genuine issues of material fact for hearing, an administrative law judge must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor. *Id.*

Here, CMS moved for summary judgment, and the parties do not dispute the facts material to this case. *See* CMS Br. at 3-4; P. Br. at 2. The only issue to be resolved in this case is a matter of law, which as discussed below, must be decided in CMS’s favor. Accordingly, summary judgment is appropriate.

2. It is undisputed that Noridian rejected Petitioner’s October 2014 enrollment application because Petitioner did not provide requested information within 30 days.

A provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application.” 42 C.F.R. § 424.510(a). A “provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor,” and the application must include “complete, accurate, and truthful responses to all information requested within each section as applicable to the provider or supplier type.” *Id.* § 424.510(d)(1)-(2). “Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program.” *Id.* § 424.510(a).

CMS “may reject” an enrollment application if a supplier “fails to furnish complete information on the provider/supplier enrollment application within 30 calendar days from the date of the contractor request for the missing information.” 42 C.F.R. § 424.525(a)(1); *see also* 42 C.F.R. § 424.502 (definition of *Reject/Rejected*). A supplier does not have the right to appeal a rejected application. *Id.* § 424.525(d). Rather, the supplier must resubmit a new enrollment application. *Id.* § 424.525(c). CMS may extend the 30-day period before rejecting an application “if CMS determines that the . . . supplier is actively working with CMS to resolve any outstanding issues.” *Id.* § 424.525(b). However, that determination is a discretionary matter, and it is also not subject to appeal. *See id.* § 424.525(d).

Petitioner concedes that the enrollment application it submitted to Noridian on October 9, 2014, was missing information but nevertheless argues that Noridian wrongly rejected the application. P. Br. at 2, 4. Petitioner argues that I should “reverse” the rejection and establish an effective date of October 9, 2014, based on the previously rejected application. P. Br. at 5-6.

The record shows that in an email dated October 31, 2014, Noridian notified Petitioner that Noridian may reject Petitioner's enrollment application if Petitioner did not submit certain information and documentation within 30 calendar days. Noridian advised Petitioner to "[s]ubmit the requested information before December 1, 2014." CMS Ex. 2. Among the information Noridian listed as missing from Petitioner's application was Petitioner's billing agent's tax identification number. CMS Ex. 2. On November 21, 2014, in response to Noridian's request, Petitioner faxed additional information, but it did not include its billing agent's tax identification number. *See* CMS Ex. 3. Because Petitioner did not submit all the requested information within the 30-day period, Noridian rejected Petitioner's application on December 2, 2014. CMS Ex. 4; *see* P. Ex. 1 at 2.

Petitioner concedes that it submitted "all required missing information except the biller's tax ID number on November 21, 2014." P. Br. at 5. Petitioner admits further that it faxed the billing agent's tax identification number to Noridian on December 5, 2014. P. Br. at 2; P. Ex. 1 at 2-3. According to Petitioner, it was "actively working" to resolve the missing items, but Noridian did not adequately communicate with it regarding its application and failed to extend the 30-day period in which to supply the missing information. P. Br. at 2, 4, 5; *see* RFH.

Once Noridian notified Petitioner on October 31, 2014, that Petitioner needed to submit certain documentation within 30 days, it was incumbent upon Petitioner to furnish all the requested information to Noridian "before December 1, 2014." Because Petitioner did not furnish all requested information to Noridian within the 30-day period, Noridian rejected its incomplete October 2014 enrollment application on December 2, 2014. Once Noridian rejected the October 2014 application, Petitioner needed to resubmit a new application. *See* 42 C.F.R. § 424.525(c). I have no jurisdiction to consider Petitioner's October 2014 application because a rejection of an enrollment application is not a determination that may be appealed. *See* 42 C.F.R. § 424.525(d).

3. The undisputed evidence shows that Petitioner's effective date of enrollment in Medicare is December 22, 2014, with retrospective billing privileges starting on November 22, 2014, based upon the receipt of Petitioner's subsequent application that Noridian was able to process to approval.

The effective date of enrollment for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is "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 or nonphysician practitioner first began furnishing services at a new practice location." 42 C.F.R. § 424.520(d). The date of filing is the date that the Medicare contractor receives a signed enrollment application

that the Medicare contractor is able to process to approval. *See Karthik Ramaswamy, M.D.*, DAB No. 2565 at 15, 25 (2014). In addition, CMS may permit retrospective billing for up to 30 days prior to the effective date of enrollment. 42 C.F.R. § 424.521(a)(1). The regulations also provide for a longer retrospective billing period in certain disaster situations not applicable to this case. 42 C.F.R. § 424.521(a)(2).

Following the rejection of its October 2014 application, Petitioner mailed a second enrollment application on December 19, 2014, which Noridian received on December 22, 2014. CMS Ex. 5. Noridian subsequently approved this application, and on February 23, 2015, notified Petitioner that its effective enrollment date was December 22, 2014, and that it was eligible for retrospective billing privileges beginning November 22, 2014. CMS Ex. 7.¹

The effective date of enrollment is the date on which a contractor receives a supplier's application that it is able to process to approval. Because December 22, 2014 was the date Noridian received Petitioner's application that it was able to process to approval, Noridian correctly established Petitioner's effective date of enrollment as December 22, 2014, in accordance with 42 C.F.R. § 424.520(d). Further, based on the effective date of December 22, 2014, Noridian correctly established that the retrospective billing period for Petitioner commenced on November 22, 2014. 42 C.F.R. § 424.521(a)(1).

4. I am not authorized to consider Petitioner's equitable arguments.

Petitioner notes that it serves an area with a very high population of Medicare beneficiaries and argues that it will incur a significant financial loss if its claims for services during the period October 9, 2014 through November 21, 2014, are not paid. RFH; P. Br. at 1. Petitioner contends that Noridian failed to adequately communicate with it regarding its "inadvertent error in its application that could have been easily fixed." P. Br. at 1.

Petitioner's assertions regarding its good faith efforts to work with Noridian and its financial hardship are equitable in nature. Even assuming for summary judgment purposes that Petitioner's assertions are true, I do not have the authority to consider these equitable arguments. Neither an administrative law judge nor the Board is authorized to provide equitable relief by reimbursing and enrolling a supplier who does not meet statutory or regulatory requirements. *US Ultrasound*, DAB No. 2302, at 8 (2010); *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009). Further, I am not able to

¹ Noridian's February 23, 2015 letter to Petitioner is somewhat confusing because Noridian advises Petitioner that the "[e]ffective date" is "November 22, 2014" while also stating that Petitioner is "[p]articipating [e]ffective December 22, 2014." CMS Ex. 7. The parties do not now dispute, however, that December 22, 2014 is the intended effective date of enrollment, and November 22, 2014, is the retrospective billing date. CMS Br. at 3; *see* 42 C.F.R. § 424.521(a).

consider any actions that were part of a corrective action plan because neither the Act nor regulations provide for appeal of CMS's (or the CMS contractor's) denial of such a plan.

III. Conclusion

I grant summary judgment in favor CMS. There is no genuine dispute of material facts, and CMS is entitled to judgment affirming the determination that Petitioner's effective date of enrollment is December 22, 2014, and its retrospective billing date is November 22, 2014.

/s/

Joseph Grow
Administrative Law Judge