

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Christian Community Health Center,  
(CCN: 14-1120),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-61

Decision No. CR2358

Date: April 20, 2011

**DECISION**

For the reasons set forth below, I grant the motion of the Centers for Medicare and Medicaid Services (CMS) for summary judgment. Petitioner, Christian Community Health Center (CCHC), submitted an enrollment application for a new practice location as a Federally Qualified Health Center (FQHC), and I find CMS properly determined that Petitioner's effective date of participation for the new practice location was May 26, 2010.

**I. Background**

Petitioner was certified as a FQHC in 1996.<sup>1</sup> On January 4, 2010, Petitioner acquired another entity that provided psychotherapy services and started operating a mental and behavioral health program known as the CCHC Day Program. On January 6, 2010,

---

<sup>1</sup> Petitioner qualifies as an FQHC under section 1861(aa)(4) of the Social Security Act because it receives a grant under section 330 of the Public Health Service (PHS) Act (42 U.S.C. § 254b). Section 330 grants are administered by the Health Resources and Services Administration (HRSA), a component of the Department of Health and Human Services.

Petitioner submitted an application to HRSA that sought to change the scope of its grant award. On March 18, 2010, HRSA issued a Notice of Grant Award Authorization, approving Petitioner's change in scope of its grant award to include the site housing the CCHC Day Program, effective January 6, 2010. CMS Ex. 4, at 49-51. On March 24, 2010, Petitioner submitted an enrollment application for a new practice location as a FQHC to National Government Services (NGS), its fiscal intermediary.<sup>2</sup> NGS received Petitioner's enrollment application on March 29, 2010. NGS forwarded the application to CMS on May 26, 2010. CMS Ex. 4, at 1. NGS advised CMS that it processed Petitioner's enrollment application and found no evidence to indicate that the application should be denied. *Id.* On June 14, 2010, CMS notified Petitioner that its request for enrollment as a FQHC was approved with an effective date of participation of May 26, 2010. CMS Ex. 3, at 1. Petitioner requested reconsideration, seeking to have the effective date changed to January 6, 2010, the date HRSA approved the change of scope of the grant. CMS Ex. 2. A CMS contractor issued a reconsideration decision affirming the May 26, 2010 effective date determination on August 23, 2010. CMS Ex. 1.

Pursuant to 42 C.F.R. § 498.40, Petitioner timely filed a request for an Administrative Law Judge (ALJ) hearing by letter dated October 25, 2010. Petitioner's hearing request was accompanied by two exhibits (P. Exs. A and B). I issued an Acknowledgement and Pre-Hearing Order on November 10, 2010. On December 10, 2010, CMS filed a motion for summary judgment and exchange of evidence and argument (CMS Br.). CMS accompanied its submission with six exhibits (CMS Exs. 1-6). On January 27, 2010, Petitioner filed its response to CMS' motion for summary judgment (P. Br.). In the absence of objection, I receive into the record of this case P. Exs. A and B and CMS Exs. 1-6.

## **II. Relevant Authority**

A FQHC is defined as:

An entity that has entered into an agreement with CMS to meet Medicare program requirements under § 405.2434 and –

---

<sup>2</sup> Fiscal intermediaries are CMS contractors that process Medicare Part A claims; carriers are CMS contractors that process Part B claims. Generally, Part A “provides basis protection against the costs of hospital, related post-hospital, home health services, and hospice care . . . .” 42 U.S.C. § 1395c. FQHC services are funded under Medicare Part B. 42 U.S.C. § 1395k(a) (2) (D). However, “[s]ince payment for services covered under the FQHC benefits is made on a cost-related basis, [FQHC] claims are processed by a fiscal intermediary.” 61 Fed. Reg. 14,640, 14,656 (April 3, 1996).

- (1) Is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or is receiving funding from such a grant under a contract with a recipient of such a grant and meets the requirements to receive a grant under section 329,330, or 340 of the Public Health Service Act;
- (2) Based on the recommendation of the Public Health Service, is determined by CMS to meet the requirements for receiving such a grant;
- (3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or
- (4) Is an outpatient health program or facility operated by a tribe or tribal organization under the India Self-Determination Act or by an Urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.

42 C.F.R. § 405.2401.

To be enrolled in the Medicare program as a FQHC, an entity must meet the definition of a FQHC and file a complete enrollment application that includes a signed attestation statement and the notice of its grant award from HRSA. In the attestation statement, the FQHC agrees to comply with the FQHC requirements set out in 42 C.F.R. subpart X and 42 C.F.R. Part 491 and to promptly report any noncompliance to CMS. 42 C.F.R. § 405.2434(a). If CMS approves the FQHC's enrollment application, the attestation statement acts as the Medicare participation agreement. State Operations Manual (SOM), Ch. 2, § 2826C.

The fiscal intermediary will review the completed application and other documents that the applicant submitted to ensure the receipt of all required information and documentation necessary to meet enrollment requirements. In addition, the fiscal intermediary verifies whether an owner or managing employee has been convicted of a crime, subjected to a civil money penalty, or excluded from the Medicare or Medicaid programs. 42 C.F.R. § 420.204(a). If the fiscal intermediary recommends approval, it will forward its recommendation of approval to the CMS regional office (RO). Upon receipt of the recommendation for approval, the RO verifies that the application is complete and satisfies the necessary requirements. Thereupon, the RO signs the applicant's attestation statement.

The effective date of participation of a FQHC is the date that "CMS accepts the signed agreement, which assures that all Federal requirements are met." 42 C.F.R. § 405.2434(b)(1), *see also* 42 C.F.R. § 489.13(a)(2). If the application is complete when reviewed by the RO, CMS uses the date of the fiscal intermediary's recommendation letter as the effective date so that any delay by CMS in reviewing the application will not delay the FQHC's admission into the Medicare program. SOM, Ch. 2, § 2826F.

### III. Issue

The sole issue in this case is whether CMS properly determined that Petitioner's new practice location was eligible for participation in the Medicare program as of May 26, 2010 as a FQHC.

### IV. Applicable Standard

The Departmental Appeals Board (Board) stated the standard for summary judgment:

Summary judgment is appropriate when 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. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . 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. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

*Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300, at 3 (2010) (citations omitted). The ALJ's role in deciding a summary judgment motion differs from its role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Vill. at Notre Dame, Inc.*, DAB No. 2291, at 5 (2009).

### V. Findings of Fact, Conclusions of Law, and Discussion

**CMS properly determined that the effective date of Petitioner's enrollment application for its new practice location as a FQHC is May 26, 2010.**

Petitioner, in its request for reconsideration and its hearing request, argued that its effective date for participation as a FQHC should be January 6, 2010, the date it submitted its application to HRSA. Subsequently, when Petitioner filed its response brief, Petitioner stated that "in light of the facts presented in CMS's motion for summary judgment and the arguments presented below, CCHC is hereby requesting an effective date of March 29, 2010," the date NGS received Petitioner's enrollment application. P. Br. at 1.

The effective date of participation of a FQHC is the date that “CMS *accepts* the signed agreement, which assures that all Federal requirements are met.” 42 C.F.R. § 405.2434(b)(1) (emphasis added), *see also* 42 C.F.R. § 489.13(a)(2). The plain language of this regulation mandates that enrollment cannot occur until CMS formally accepts a signed agreement from an applicant, assuring CMS that the applicant has met all federal requirements. On March 29, 2010, Petitioner had not yet met all federal requirements as a FQHC because CMS had not yet verified its information. NGS initially processes documents for FQHC approval requests and reviews the application to determine if the information is complete and accurate, as well as confirming that the officers or owners have not been excluded from the Medicare program. NGS verified Petitioner’s documentation and, on May 26, 2010, informed CMS that it “found no evidence to indicate the application should be denied.” CMS Ex. 4. CMS accepted Petitioner’s assurances of compliance with FQHC requirements with an effective date of May 26, 2010, the date that NGS determined that Petitioner’s application was complete.<sup>3</sup> CMS formally accepted Petitioner’s assurances when its representative signed Petitioner’s attestation statement on June 14, 2010. CMS Ex. 3, at 3. An applicant cannot be deemed to have enrolled at a date earlier than the acceptance date.

Petitioner does not dispute the facts surrounding the timeline of its application processing. However, because NGS received Petitioner’s enrollment application on March 29, 2010, and completed its review of Petitioner’s application on May 26, 2010, Petitioner argues that NGS’s almost “two month time period to verify CCHC’s qualifications to meet the Medicare certification standards . . . [were] under the circumstances . . . excessive and should be rejected as it unfairly harmed CCHC.” P. Br. at 4. Petitioner claims that it continued to provide services to the disadvantaged persons seeking its assistance during this time period. Petitioner also claims that NGS should not have taken almost two months to verify the accuracy of its application given that Petitioner had already qualified as a FQHC.

The effective date provisions of 42 C.F.R. § 405.2434(b)(1) and § 489.13(a)(2) are clear. I have no authority to grant Petitioner’s request of an earlier effective date than that which the regulations allow. My review is limited to whether CMS has established a legal basis for its determination to approve an effective date for Petitioner’s enrollment. Petitioner points to no source of authority for me to overturn, based on equitable considerations it raises, CMS’s determination that it is in compliance with applicable law and regulations. It is well-established that ALJs are bound by statute and regulations.

---

<sup>3</sup> CMS determined that Petitioner had provided adequate assurances of compliance with all FQHC requirements on June 14, 2010. CMS Ex. 3, at 3. CMS used the date that NGS completed its review as the effective date of Petitioner’s enrollment as a FQHC so that Petitioner’s participation in the Medicare program would not be delayed by the time it took NGS to forward the application to CMS and for CMS to review the application. CMS Ex. 5, at 9; SOM, Ch. 2, § 2826F.

*Restwell Mattress Co. d/b/a Restwell Mattress Factory*, DAB CR2194, at 6 (2010) (citing *Sentinel Med. Labs., Inc.*, DAB No. 1762, at 9 (2001)). Where a regulation speaks clearly on its face and applies to the question before me, I am bound to follow it. *See US Ultrasound*, DAB No. 2302, at 8 (2010) (“Neither the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements.”). I am without authority to address considerations of equity.

In conclusion, CMS properly determined that the effective date of Petitioner’s enrollment application as a FQHC is May 26, 2010, the undisputed date that CMS accepted the signed agreement assuring Petitioner’s new location met all federal requirements of a FQHC.

\_\_\_\_\_  
/s/  
Joseph Grow  
Administrative Law Judge