

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Hiva Vakil, M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-659

Decision No. CR2456

Date: October 25, 2011

DECISION

I dismiss the hearing request of Petitioner, Hiva Vakil, M.D. Petitioner has no right to a hearing because the initial determination establishing Petitioner's effective date of participation in Medicare became administratively final when Petitioner failed to timely request reconsideration of that determination.

I. Background

Petitioner is a physician who participates in the Medicare program. He filed a hearing request to challenge the determination of a Medicare contractor, Noridian Administrative Services (Noridian), to establish an effective date for reassignment of benefits of July 12, 2010. The case was assigned to me for a hearing and a decision.

At my direction, the Centers for Medicare and Medicaid Services (CMS) filed a brief and proposed exhibits. An entity, Integrated Medical Services (IMS), filed a response on Petitioner's behalf consisting of a letter dated October 3, 2011, along with some attachments. CMS identified its exhibits as CMS Exhibit (Ex.) 1 – CMS Ex. 8. IMS did not identify the attachments to its letter as exhibits. For purposes of creating a record, I am identifying the IMS letter along with its

attachments as P. Ex. 1. I receive into the record CMS Ex. 1 – CMS Ex. 8 and P. Ex. 1.

Neither party provided me with the testimony of any proposed witnesses.

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

A. Issue

The issue is whether Noridian’s determination to establish an effective date of Petitioner’s assignment of Medicare benefits of July 12, 2010 is administratively final.

B. Findings of Fact and Conclusions of Law

The material facts are not in dispute. Noridian, acting on CMS’s behalf, notified Petitioner on August 10, 2010 of the determination to grant him an effective date for reassignment of Medicare benefits. CMS Ex. 6. Neither Petitioner nor IMS expressed dissatisfaction with that determination until April 20, 2011, more than six months after Noridian sent its notice of its determination to Petitioner. CMS Ex. 7 at 1. On that date, IMS sent to Noridian an “appeal letter” on Petitioner’s behalf, requesting that the effective date of reassignment of benefits be changed to September 1, 2009. CMS Ex. 7 at 2.

Regulations governing appeals of administrative determinations in matters involving CMS require a party who is dissatisfied with an initial determination to request reconsideration within 60 days from his or her receipt of that determination. 42 C.F.R. § 498.22(b). The 60-day deadline may be extended only on a showing of good cause by the party requesting the extension. 42 C.F.R. § 498.22(d). Absent a showing of good cause for an untimely request, the initial determination becomes administratively final, and the party who is dissatisfied with the determination forfeits his or her right to appeal it.

Petitioner’s request for reconsideration was untimely. IMS filed its “appeal” on Petitioner’s behalf more than six months after Petitioner received notice of Noridian’s determination, and more than four months after expiration of the deadline for requesting reconsideration. Neither IMS nor Petitioner offered an explanation – much less a showing of good cause – for this untimely request.

In its October 3 letter, IMS concedes to “making mistakes (delays) in the application process” P. Ex. 1 at 1. However, IMS contends, on Petitioner’s behalf, that Noridian made a “couple of critical errors which contributed to the confusion of when . . . [Petitioner] was actually effective with Medicare to begin

treating patients.” *Id.* But, IMS does not identify these allegedly critical errors nor does it explain why Petitioner failed to file a request for reconsideration timely.

In its response to CMS’s submission, IMS implies that Noridian or CMS made an error by originally awarding Petitioner an effective date of Medicare participation by letter dated October 13, 2009. CMS Ex. 2. IMS seems to assert that this letter confused IMS and Petitioner as to their obligations and caused a delay in filing an application for reassignment of benefits. But, whatever confusion may have resulted from this letter – and I can not comprehend why IMS or Petitioner would have been confused by it – the October 13, 2009 letter did not have any bearing on the failure to request reconsideration from the determination establishing July 12, 2010 as the effective date for *reassignment of Medicare benefits* from Petitioner to IMS. The August 10, 2010 letter from Noridian to IMS, on Petitioner’s behalf, informing IMS of the effective date of reassignment of benefits was clear on its face.¹ CMS Ex. 6 at 1. Thus, I find no legitimate basis for IMS or Petitioner to have been confused and certainly no good cause for the untimely request for reconsideration.

Noridian’s determination is thus administratively final. An administrative law judge may dismiss a hearing request in the circumstance where a party has no right to a hearing. 42 C.F.R. § 498.70(b). Petitioner has no right to a hearing inasmuch as he has no right to a reconsideration determination. Therefore, I dismiss his hearing request.

/s/
Steven T. Kessel
Administrative Law Judge

¹ This letter contains an inaccurate and legally incorrect statement telling IMS that: “Per regulations 42 CFR 405.874, a provider or supplier may *only appeal a denial or revocation decision.*” This statement is wrong in that it has long been established as a matter of law that a provider or a supplier may appeal a determination establishing an effective date. 42 C.F.R. § 498.3(b)(15). However, IMS does not contend that it or Petitioner was misled by this inaccurate statement.