

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Better Health Ambulance,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-107

Decision No. CR2536

Date: May 4, 2012

DECISION

I uphold the reconsideration decision by the Centers for Medicare and Medicaid Services (CMS) dismissing the request for reconsideration of Petitioner, Better Health Ambulance (Petitioner). Petitioner has no right to a hearing before an Administrative Law Judge (ALJ) because Petitioner did not timely request reconsideration of the September 30, 2010 determination by CMS to revoke Petitioner's Medicare enrollment and Medicare billing privileges effective August 26, 2010. I therefore grant CMS's Motion to Dismiss.

I. Background and Procedural History

Petitioner is a supplier of ambulance services in Puerto Rico. CMS Exhibit (Ex.) 1, at 2. Petitioner submitted a Medicare enrollment application and on September 12, 2009, First Coast Service Options, Inc. (First Coast), a Medicare contractor, notified Petitioner of the approval of its enrollment as a supplier in the Medicare program effective June 2, 2009. CMS Ex. 2. On August 26, 2010, inspectors from SafeGuard Services (SafeGuard), a Zone Program Integrity Contractor, conducted an on-site review at Petitioner's practice location. CMS Ex. 11, at 1; CMS Ex. 3, at 2. The inspectors could not locate a business office for Petitioner and observed no activity involving ambulances or employees. CMS Ex. 11, at 1; CMS Ex. 3, at 3. On September 30, 2010, First Coast notified Petitioner by letter that it was revoking its Medicare billing number pursuant to 42 C.F.R.

§ 424.535(a) based upon the findings of the August 26, 2010 on-site review. CMS Ex. 4, at 1. The letter informed Petitioner that it could appeal the revocation determination by requesting reconsideration within 60 days of the date of the letter, submitting a corrective action plan (CAP) within 30 days of the date of the letter, or both. CMS Ex. 4, at 1-2. Petitioner did not submit either a CAP or a request for reconsideration within the required time period. CMS Ex. 5.

Petitioner eventually filed a request for reconsideration dated July 10, 2011, 284 days after the date of the revocation letter. CMS Ex. 8. First Coast received this request on August 1, 2011 and advised Petitioner that additional evidence would be received if submitted within seven days. CMS Ex. 9. Petitioner did not submit any additional evidence, and on September 14, 2011, First Coast denied Petitioner's request for reconsideration on the ground that it was not submitted within 60 days of the initial revocation determination and therefore was not timely. CMS Ex. 10.

On September 24, 2011, Petitioner filed a hearing request (HR) with the Civil Remedies Division of the Departmental Appeals Board to appeal the reconsideration decision. The case was assigned to me for a hearing and a decision. CMS filed a Motion to Dismiss (CMS Motion), a Pre-Hearing Exchange including a Pre-Hearing Brief (CMS Br.), a List of Proposed Exhibits and Witnesses, and eleven proposed exhibits that it identified as CMS Ex. 1-CMS Ex. 11. Petitioner filed a Pre-Hearing Exchange and two proposed exhibits identified as P. Ex. 1 and P. Ex. 2. In the absence of any objection, I admit CMS Exs. 1-11 and P. Ex. 1-2 to the record. After filing its Pre-Hearing Exchange, Petitioner retained counsel and Petitioner's counsel filed a Motion to Amend Pre-Hearing Exchange of Petitioner (P. Motion) and an Amended Pre-Hearing Brief and Response to Respondent's Motion to Dismiss (P. Br.).

II. Applicable Law and Regulations

A party has a right to reconsideration of an adverse initial determination only if it files that request within 60 days of receiving notice of the determination. 42 C.F.R. § 498.22(b)(3). The 60-day time period may be extended in the case of an untimely filing but only on a showing of good cause for a failure to file timely. 42 C.F.R. § 498.22(d)(2). If the request for reconsideration is not timely filed, or if the deadline for filing is not extended, then the adverse initial determination becomes binding. *See* 42 C.F.R. §§ 498.20(b), 498.22.

III. Issue

The issue in this case is whether CMS had a legitimate basis for denying Petitioner's request for reconsideration.

IV. Analysis

My finding and conclusion is in the italicized heading supported by the subsequent discussion below.

Petitioner made no showing of good cause for untimely filing its request for reconsideration pursuant to 42 C.F.R. § 498.22(d)(2).

It is undisputed that Petitioner did not timely request reconsideration of the initial revocation determination dated September 30, 2010. P. Br. at 4. Petitioner now argues at the ALJ level for the first time that there was good cause for its failure to file a timely request for reconsideration. Petitioner states that the initial revocation letter referenced a different provider under different ownership, and Petitioner mistakenly thought that the revocation letter did not apply to it. Petitioner contends that SafeGuard inspectors conducted an on-site review at the practice location of a different provider, Health Care Ambulance Corp., located at the same kilometer marker on a street where more than one business is located. P. Br. at 2. Petitioner contends that both Petitioner and Health Care Ambulance Corp. have the same address, but the on-site inspection never occurred at Petitioner's place of business. P. Br. at 2-3. Petitioner states that it "was misled or confused by the revocation letter as it clearly states that the revocation was based on an on-site inspection of Health Care Ambulance Corp. Petitioner reasonably believed the notice was sent in error and therefore did not file its reconsideration until July 10, 2011." P. Br. at 4.

I do not find good cause to now disturb CMS's determination. Although the September 30, 2010 notice letter referenced Health Care Ambulance Corp. in the body of the revocation letter, it was clearly addressed to Petitioner and references Petitioner's numbers for Medicare enrollment and billing privileges. A definition of "good cause" does not exist in the applicable regulations, and the "Board has never attempted to provide an authoritative or complete definition of the term 'good cause' . . ." *Hillcrest Healthcare, L.L.C.*, DAB No. 1879, at 5 (2003). Other ALJ's have interpreted the term "good cause" as a circumstance or circumstances beyond the party-litigant's ability to control. *See, e.g., Sedgewick Health Care Ctr.*, DAB CR596 (1999); *Jackson Manor Health Care, Inc.*, DAB CR545 (1998). It was certainly within Petitioner's control to timely appeal during the reconsideration process and offer its explanation that the inspectors went to a different ambulance company located on the same street as the Petitioner. However, Petitioner did not timely appeal the reconsideration decision, and it is too late to do so now. Petitioner filed a request for reconsideration many months after the 60-day time period expired, and I conclude that Petitioner has not demonstrated good cause to grant an extension of time for filing. Moreover, when First Coast gave Petitioner an opportunity to present additional evidence of its operations at the reconsideration level, Petitioner did not do so.

