

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Ifeoma Igbokwe, N.P.,  
(NPI: 1649589334),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-12-1243

Decision No. CR2704

Date: February 7, 2013

**DISMISSAL/DECISION**

Petitioner, Ifeoma Igbokwe, N.P., is a nurse practitioner who sought to enroll in the Medicare program as a member of Srilatha Reddy, M.D.'s practice group. The Centers for Medicare and Medicaid Services (CMS) granted the application, effective December 13, 2010. Here, Petitioner challenges that effective date.

For the reasons discussed below, I dismiss as untimely Petitioner's hearing request. In the alternative, I find that December 13, 2010 is Petitioner's earliest possible enrollment date.

**Procedural Background**

I issued a prehearing order on September 13, 2012. Among other instructions, I directed the parties to submit their written arguments and proposed exhibits. In response to that order, CMS submitted a brief (CMS Br.) and 3 exhibits (CMS Exs. 1-3).

For her part, Petitioner, whose submissions were due November 21, 2012, filed nothing. In an order to show cause, dated December 5, 2012, I directed her to show cause in

writing, no later than December 19, 2012, why her case should not be dismissed for abandonment. On December 26, 2012, we received an undated letter from Dr. Reddy's office. In it, Dr. Reddy's office administrator, Gurram Srinivas Reddy, explains that the office lost contact with Petitioner Igbokwe. Because he could not get in touch with her, she had not approved his representing her in these proceedings, and that caused a delay. Enclosed with the letter is an undated statement, signed by Petitioner Igbokwe, authorizing Mr. Reddy to represent her.

Petitioner did not submit a pre-hearing exchange.

## Discussion

***1. Petitioner is not entitled to a hearing because she did not file a timely hearing request, and no good cause justifies extending the time for filing.<sup>1</sup>***

Petitioner, Ifeoma Igbokwe, N.P., applied for enrollment in the Medicare Part B program. By letter dated February 11, 2011, the Medicare Contractor, Trailblazer Health Enterprises, advised her that it received her application on January 18, 2011, and approved it, with an effective billing date of December 20, 2010. CMS Ex. 2.<sup>2</sup>

Petitioner Igbokwe sought reconsideration, challenging the effective date. In a notice letter dated May 25, 2011, the contractor agreed that it had overlooked Petitioner's paper-filed application, which it received on December 13, 2010. The contractor therefore changed her effective enrollment date to December 13, which authorizes her to bill for services provided as early as November 14, 2010.

<sup>1</sup> My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this opinion.

<sup>2</sup> The contractor's notice letters do not carefully distinguish between the effective *enrollment* date and the effective *billing* date, sometimes using the term "effective date" to refer to the date on which Petitioner can begin billing for Medicare services. *See, e.g.* CMS Exs. 2, 3. As discussed above, the regulations provide that "effective date" means the date the contractor receives the application that it approves. CMS allows certain physicians and nonphysician practitioners to bill retrospectively for up to "30 days prior to their effective [enrollment] date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries." 42 C.F.R. § 424.521(a)(1). I use the term "effective date" to refer to the effective date of enrollment, not the date on which retrospective billing begins.

The contractor's letter included notice of Petitioner's appeal rights, advising that the "appeal must be filed within 60 calendar days after the date of receipt of this decision . . . ." The letter then told her to submit her appeal to this office, and provided the address of the Civil Remedies Division of the Departmental Appeals Board. The letter also referred her to 42 C.F.R. Part 498 for an explanation of her appeal rights. CMS Ex. 3.

It seems that the contractor sent Petitioner a second letter, also dated May 25, 2011, captioned "Revised." This "revised" notice letter appears to be an initial determination, granting Petitioner's enrollment, with an effective billing date of November 14, 2010. The letter advised Petitioner that she could request reconsideration, if she submitted a written and signed request "within 60 calendar days of the postmarked date on this letter."

One year and three months later, Petitioner submitted her appeal to the Civil Remedies Division. In a letter dated August 20, 2012 (received August 29, 2012), Srilatha A. Reddy, M.D. wrote that a year earlier, he sent "certified mail to [an] ALJ in Baltimore, MD," but had received no response regarding the appeal. Attached to Dr. Reddy's letter are the following:

- 1) an undated letter, signed by Dr. Reddy and addressed to the contractor's "Director of Appeals," asking that the effective date be changed to October 11 or 18, 2010;
- 2) the return receipt for the letter sent to the "Director of Appeals ALJ" in Baltimore, indicating a delivery date of *November 14, 2011*;
- 3) Petitioner Igbokwe's enrollment application (CMS-855I) with the signature page dated October 18, 2010;
- 4) the contractor's May 25, 2011 notice letter;
- 5) page 1 of the contractor's Revised May 25, 2011 notice letter; and
- 6) an October 26, 2011 letter from the contractor to Dr. Reddy indicating that Dr. Reddy's "July 25, 2011 request" was invalid because the contractor closed the reconsideration request on May 25, 2011. The letter advised him to "follow the guidelines listed" in the "Further Appeal Rights: Administrative Law Judge (ALJ) section" of the May 25 notice letter.

The regulations governing these proceedings mandate that an affected party, who would be entitled to a hearing under 42 C.F.R. Part 498, must file her request for hearing in writing within 60 days of the day she receives notice of the determination that she wishes to appeal, unless the appeal period is extended. 42 C.F.R. § 498.40(a)(2). On motion of a party, or on her own motion, an administrative law judge may dismiss a hearing request

that was not timely filed, if the time for filing was not extended. 42 C.F.R. § 498.70(c). Receipt of the notice is “presumed to be 5 days after the date on the notice unless there is a showing that it was, in fact, received earlier or later.” 42 C.F.R. §§ 498.40(a)(2), 498.22(b)(3).

Here, Petitioner filed no written request for extension, although Dr. Reddy’s undated correspondence to the Director of Appeals suggests that the long delay in filing (a year and three months) was because Dr. Reddy sent the hearing request to Baltimore at the address provided in the Revised May 25, 2011 notice letter.<sup>3</sup> I am willing to consider the Baltimore submission a valid hearing request. Petitioner’s problem is that the filing deadline was July 29, 2011, and Dr. Reddy sent the hearing request to Baltimore more than three months after that deadline had passed, on or about November 9, 2011 (assuming 5 days for delivery).

***2. CMS properly determined the effective date for Petitioner’s Medicare enrollment, because the evidence establishes that the Medicare contractor first received her enrollment application on December 13, 2010, and her effective date can be no earlier than the date she filed her application.***

In any event, even if I considered Petitioner’s appeal timely filed, Petitioner could not prevail. The regulations provide that the enrollment date for nonphysicians is “the later of the date of filing 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).

Petitioner maintains that she submitted an earlier application in October 2010 but presents no evidence suggesting a filing date any earlier than December 13, 2010. *See* Request for Hearing at 4 (conceding that Petitioner’s October 18, 2010 electronically-filed application was not subsequently approved by CMS and that Petitioner did not retain a copy of the application). Because Petitioner provides no documents, she has not met the burden of establishing that she submitted a “subsequently approved enrollment application” any earlier than December 13, 2010. *Shalbhadra Bafna, M.D.*, DAB No. 2449 (2012).

That she may have provided otherwise-billable services to Medicare beneficiaries does not alter this result. Petitioner is simply not entitled to Medicare payment for those services because she was not enrolled in the program when she provided them. *See US Ultrasound*, DAB No. 2302 at 8 (2010).

<sup>3</sup> CMS mentions in a footnote that Petitioner “may have good cause for its untimely appeal,” but offers no suggestion as to what such “good cause” might be. CMS Br. at 2 n. 1.

**Conclusion**

Because Petitioner did not file her hearing request within 60 days of receiving the contractor's notice letter, and no good cause justifies my extending the time for filing, I dismiss Petitioner's hearing request. 42 C.F.R. § 498.70(c).

In the alternative, I find that Petitioner's effective date of enrollment in the Medicare program can be no earlier than December 13, 2010, the date she filed the enrollment application accepted by the Medicare contractor.

/s/

Carolyn Cozad Hughes  
Administrative Law Judge