Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Abhilasha Singh, M.D.,
(PTAN: K010411),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1374

Decision Number: CR3211

Date: April 28, 2014

DECISION

Petitioner Abhilasha Singh, M.D., a Medicare supplier,[1] filed a hearing request to challenge the effective date of her Medicare enrollment and billing privileges. For the reasons discussed below, I affirm the Centers for Medicare & Medicaid's (CMS's) determination that the effective date of Petitioner's Medicare enrollment and billing privileges is February 1, 2013, with a retrospective billing date of January 3, 2013.

I. Background

On February 1, 2013, CGS, a CMS administrative contractor, received a Medicare enrollment reassignment application (CMS 855R) on behalf of Petitioner, a physician employed at Graves Gilbert Clinic (the Clinic). CMS Exhibit (Ex.) 4; Petitioner's (P.) Ex. 3, at 3. On February 4, 2013, CGS sent a letter to the Clinic acknowledging receipt of Petitioner's CMS 855R. CMS Ex. 3. On March 8, 2013, CGS notified the Clinic that

[1] A "supplier" is a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." 42 C.F.R. § 400.202.

it approved Petitioner's reassignment application with an effective date of February 1, 2013.[2] CMS Ex. 2.

Petitioner requested reconsideration[3] and a September 28, 2012 effective date, arguing that the Clinic previously sent CGS a CMS 855R reassignment application on September 26, 2012, which CGS received on September 28, 2012. Petitioner enclosed a copy of an envelope dated September 28, 2012, and a proof of receipt to support this claim. On July 26, 2013, CGS denied Petitioner's request and upheld the effective date established in its determination letter. CGS's reconsideration determination states that:

> [T]he application submitted in this envelope was for a nurse practitioner, [KN]. CGS reviewed the entire document box that contains this envelope and all of its contents. An application for [Petitioner] was not included in this envelope, in addition a cover letter from [MB, the Clinic's Administrative Assistant to the Assistant Administrator] identified that the enclosed information was for [KN]. CGS has determined the effective date was issued correctly based on the receipt date of the approved application. Therefore the effective date will remain [February 1, 2013].

CMS Ex. 1, at 2.

Petitioner requested a hearing on September 25, 2013 and again argued she sent her original CMS 855R with another applicant's enrollment application via certified mail, which was delivered to CGS on September 28, 2012. Petitioner argues, accordingly, that the February 1, 2013 effective date is erroneous and that she is entitled to a September 28, 2012 effective date.

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[2] CGS states in its February 4, 2013 letter that January 3, 2013 is the effective date of Petitioner's enrollment and billing privileges. By regulation, however, the effective date of this supplier's enrollment and billing privileges is the date that the Medicare contractor received an enrollment application that it could subsequently approve. 42 C.F.R. § 424.520(d). CMS and its contractors are authorized, however, to permit providers and suppliers to "retrospectively bill" for their services for up to 30 days prior to their effective date, which CGS did here when it cited the effective date as January 3, 2013 (the retrospective billing date) not February 1, 2013 (the enrollment effective date). 42 C.F.R. § 424.521(a)(1). For clarity in this case, I refer to the effective date of enrollment as the date that is established by regulation, February 1, 2013, and not the date on which Petitioner's retrospective billing privileges began, January 3, 2013.

[3] Apparently Petitioner requested reconsideration twice. Her first request was returned because it was not properly signed. CMS Ex. 8.

The case was assigned to me for hearing and decision. I issued an Acknowledgment and Pre-Hearing Order on October 24, 2013 (October 24 Order). Pursuant to my October 24 Order, CMS filed a brief (CMS Br.) and nine exhibits (CMS Exs. 1 – 9). Petitioner filed a brief (P. Br.) and four exhibits (P. Exs. 1 – 4).

My October 24 Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party affirmatively requested an opportunity to cross-examine a witness. October 24 Order ¶¶ 8, 9; *see Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses). CMS listed one witness, JG, a CGS hearing officer, and filed her declaration as CMS Ex. 9. Petitioner filed affidavits for two witnesses: CH, the Clinic's Assistant Administrator (P. Ex. 4) and MB, CH's Administrative Assistant (P. Ex. 3). As neither party requests cross-examination, I find that an in-person hearing in this case is unnecessary, and I issue this decision on the full merits of the written record. October 24 Order ¶¶ 10, 11.

The regulations at 42 C.F.R. Part 498 set forth the procedures for hearings and appeals here. In cases subject to Part 498, the Departmental Appeals Board (Board) has found that CMS must establish a prima facie showing of a regulatory violation, and the regulated entity then bears the burden of showing by a preponderance of the evidence that it was compliant with the Social Security Act (Act) or regulations, or that it had a defense. *Evergreene Nursing Care Ctr.*, DAB No. 2069, at 7-8 (2007); *Batavia Nursing and Convalescent Inn,* DAB No. 1911 (2004); *Batavia Nursing and Convalescent Ctr.*, DAB No. 1904 (2004); *Emerald Oaks,* DAB No. 1800 (2001); *Cross Creek Health Care Ctr.*, DAB No. 1665 (1998). The Board has found this allocation of the burden of going forward with the evidence and the burden of persuasion properly applied in supplier enrollment cases. *MediSource Corp.*, DAB No. 2011, at 2-3 (2006).

II. Discussion

A. Issue Presented

Whether CGS, acting on behalf of CMS, properly established February 1, 2013, as Petitioner's effective date for enrollment in Medicare, with her retrospective billing privileges starting on January 3, 2013.

B. Findings of Fact and Conclusions of Law

1. The effective date of Petitioner's Medicare enrollment and billing privileges is the date I find CGS received an enrollment application from Petitioner that it was able to subsequently approve.

Suppliers such as Petitioner must enroll in the Medicare program to "receive payment for covered Medicare items or services from either Medicare (in the case of an assigned claim) or a Medicare beneficiary (in the case of an unassigned claim) . . . ." 42 C.F.R. § 424.505. The regulations at 42 C.F.R. Part 424, subpart P, establish the requirements for a supplier to enroll in the Medicare program. *See also* Act § 1866(j)(1)(A) (authorizing the Secretary of the U.S. Department of Health and Human Services to establish by regulation the process for enrolling providers and suppliers in the Medicare program).

The regulation addressing the effective date of a physician's Medicare billing privileges states:

> The effective date for billing privileges for physicians . . . 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 . . . 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 provider enrollment application that the Medicare contractor is able to process to approval. 73 Fed. Reg. 69,726, at 69,769 (Nov. 19, 2008). Under 42 C.F.R. § 424.521(a)(1), physicians may retrospectively bill for their services when they have "met all program requirements" and "services were provided at the enrolled practice location for up to – . . . 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries. . . ." [4]

CMS argues the critical receipt date of Petitioner's application was February 1, 2013, while Petitioner argues CGS received it on September 28, 2012 but that CGS must have lost it.

2. I do not find that that CGS received Petitioner's enrollment application on September 28, 2013.

Petitioner argues that she should have been enrolled in Medicare as a physician at the Clinic as of September 28, 2012, the date on which Petitioner argues CGS received her

[4] There is also a 90-day retrospective billing period if a Presidentially-declared disaster precluded enrollment. 42 C.F.R. § 424.521(a)(2).

CMS 855R. Petitioner submitted Petitioner's application as an exhibit, purportedly signed by Petitioner on September 26, 2012, affixed to which is a post-it note stating: "This app wasn't mailed until 9/26 because we had to obtain Dr. Singh's Medicare # from previous office. Sent certified mail 9/26/12." P. Ex. 1.

MB, the Clinic employee responsible for credentialing physicians, testified that she sent Petitioner's CMS 855R to CGS, along with the CMS 855S for KN, a Nurse Practitioner applicant, on September 26, 2012. MB testified that she placed Petitioner's CMS 855R in an envelope along with KN's CMS 855S. MB testified that she also placed a cover letter in the envelope referencing only KN's CMS 855S, at CGS's suggestion, because CGS claimed never to have received an earlier enrollment application for KN. MB testified that she did not include a cover letter for Petitioner's application because she does not typically include a cover letter when submitting enrollment applications and only did so for KN because of the "special circumstances" of CGS not receiving earlier applications MB submitted for KN. She explained she did not mention Petitioner in the letter because doing so would have been "irrelevant" to those special circumstances.

MB testified she typically follows up on credentialing applications about 45 days after their submission to ensure that CGS is processing the submitted applications, but she did not do so in Petitioner's instance due to "[the Clinic] adding a number of providers during the time and an increase in job responsibilities." MB testifies she did not realize there was a problem with Petitioner's CMS 855R until a Clinic billing supervisor alerted her that the Clinic was not being reimbursed for Petitioner's services in January 2013. It is undisputed, however, that on October 2, 2012, CGS only acknowledged the CMS 855S for KN, which CGS received on September 28, 2012, and not the application for Petitioner. It is also undisputed that the Clinic did not receive a CGS acknowledgment for Petitioner's CMS 855R until February 2013, after MB purportedly re-mailed Petitioner's application. CGS subsequently processed that February submission to approval. P. Br. at 1-3; P. Ex. 3.

MB testified she contacted CGS after the billing supervisor alerted her in January 2013, and CGS informed her that they did not have a record of receipt of Petitioner's CMS 855R. MB testifies that she then re-sent the "original" CMS 855R, along with proof that it was delivered on September 28, 2012. MB testified that it is likely that CGS lost or misplaced the CMS 855R Petitioner submitted in September 2012 because CGS had also previously lost or misplaced KN's CMS 855R. P. Br. at 5-6; P. Ex. 3.

JG, a CGS hearing officer who decided Petitioner's reconsideration request, testified that all enrollment applications CGS receives by mail are scanned into its computer system and that the hard copies of the enrollment applications and their envelopes are stored in a box. The entire contents of an envelope, which could contain multiple enrollment applications, are placed in one box. JG further testified that she had the CGS mailroom "pull" the box containing KN's CMS 855S, which CGS received on September 28, 2012.

JG testified that she first had another CGS employee search the box and then she herself searched the "entire box." She testified she viewed KN's CMS 855S, the envelope in which it was mailed, and the cover letter referencing it. She testified that she did not find a CMS 855R for Petitioner in that envelope. CMS Exs. 8, 9.

The receipt of mailing and post office tracking shows only that CGS received an envelope from the Clinic in September 2012. In accordance with the cover letter, I find it more likely that the envelope only contained KN's application materials and not Petitioner's application. MB's testimony lacks credibility – it does not sound reasonable that she would only mention KN's application in that cover letter if Petitioner's application were also actually included in the submission. Moreover, I find credible JG's explanation with regard to CGS's acknowledgment and retention of records, and her own personal search of those records. I assign, therefore, JG's testimony more weight than MB's testimony. Although CH, MB's supervisor, testified that MB's job performance is "very highly rated" and that he believes her account of transmitting Petitioner's application in September 2012, I find it would be a reasonable expectation that MB, who had considerable experience with the Medicare application process, would have followed-up earlier with CGS if she did not get a timely acknowledgment receipt for Petitioner's application, especially because CGS did acknowledge receipt of KN's application. Considering JG herself actually searched the relevant box and did not find Petitioner's CMS 855R, combined with the fact that CGS did not acknowledge a CMS 855R for Petitioner prior to February 4, 2013, I find it more likely that CGS did not receive a CMS 855R for Petitioner on September 28, 2012. Especially considering MB's reference to previous receipt issues with KN's application, I would have reasonably expected MB to document Petitioner's application in the cover letter if she did in fact submit it in the envelope she mailed to CGS in September 2012.

For these same reasons, I do not find persuasive the copy of Petitioner's application, purportedly signed in September 2012, which Petitioner now produces for the first time in support of a showing of its inclusion in the September 2012 mailing. *See* P. Ex. 1. MB testified that, in January 2013, she resent the original application Petitioner signed in September 2012. However, the application that CMS processed to approval was signed by Petitioner in January 2013. CMS Ex. 4, at 7. Further, I am precluded from considering, without good cause, evidence first presented at the ALJ level in supplier enrollment appeals. *See* 42 C.F.R. § 498.56(e)(2)(ii); CMS Ex. 1, at 2.

III. Conclusion

I affirm CMS's determination that the effective date of Petitioner's supplier enrollment and billing privileges is February 1, 2013, with a retrospective billing date to January 3,

2013. The weight of the evidence shows that CGS first received a CMS 855R for Petitioner on February 1, 2013 and not on September 28, 2012.

/s/
Joseph Grow
Administrative Law Judge