

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Amber Mullins, NP,  
(PTAN: 403844YPP5, 403844YPPZ, 403844YP9B)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-16-77

Decision No. CR4528

Date: February 9, 2016

**DECISION**

I sustain the determination of a Medicare contractor to assign an effective Medicare participation date of March 31, 2015, to Petitioner, Amber Mullins, NP.

**I. Background**

Petitioner filed a hearing request challenging her effective Medicare participation date. She seeks an effective participation date of either September 1, 2014 or December 1, 2014. CMS moved for summary judgment. With its motion it filed proposed exhibits that are identified as CMS Ex. 1 – CMS Ex. 17. Petitioner opposed the motion. She filed two unidentified exhibits consisting of a record of payroll checks and a list of patients that Petitioner asserts that she treated. I identify these exhibits as P. Ex. 1 and P. Ex. 2, respectively. I receive both parties' exhibits into the record.

Although CMS styled its brief as a motion for summary judgment it is unnecessary that I treat it as such. Neither CMS nor Petitioner has offered the testimony of any witnesses. Therefore, I decide the case based on the parties' written exchanges.

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

### A. Issue

The issue is whether the Medicare contractor appropriately assigned an effective participation date to Petitioner of March 31, 2015.

### B. Findings of Fact and Conclusions of Law

The effective participation date of a Medicare supplier such as Petitioner is governed by regulation. 42 C.F.R. § 424.520(d). The regulation provides that the effective participation date shall be the later of the following: the date when the supplier submits a participation application that is subsequently approved, or the date when the supplier begins practicing at a new practice location.

In this case Petitioner submitted three applications to participate in Medicare: an application that is dated September 1, 2014; a second application that is dated December 1, 2014; and a third application that was received by the contractor on March 31, 2015. The contractor did not receive the first two applications until January 7, 2015. CMS Ex. 7; CMS Ex. 8; CMS Ex. 13 at 2.

The contractor rejected Petitioner's first two applications because they were incomplete and Petitioner did not provide requested supplemental information. CMS Ex. 7; CMS Ex. 8; CMS Ex. 13 at 2; CMS Ex. 16; CMS Ex. 17. Petitioner does not challenge the contractor's rejection of either of these applications. She offers neither evidence nor argument to suggest that the contractor rejected them incorrectly. The contractor eventually accepted the third application and assigned Petitioner an effective participation date of March 31, 2015, because it had "subsequently approved" the application that it had received on that date.<sup>1</sup>

The foregoing facts establish the contractor's determination to be correct. The *earliest* effective participation date that the contractor could have assigned to Petitioner was March 31, 2015, based on the contractor's acceptance of the application that it received on that date. The contractor could not assign Petitioner an effective date based on either of Petitioner's previously filed applications because those applications undisputedly were incomplete and were ultimately rejected by the contractor when Petitioner failed to provide requested supplemental information.

Petitioner essentially makes equitable arguments in support of her contention that she should be assigned an earlier effective participation date than March 31, 2015. She

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<sup>1</sup> As a consequence, Petitioner was entitled to claim reimbursement for Medicare items or services that she provided beginning on March 1, 2015. 42 C.F.R. § 424.521.

