

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Jodie Knott, Ph.D.
(NPI: 1043244577; PTAN: CB236812)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-265

Decision No. CR4573

Date: April 7, 2016

DECISION

The request for hearing of Petitioner, Jodie Knott, Ph.D.,¹ is dismissed pursuant to 42 C.F.R. § 498.70(b).

I. Procedural History

Noridian Healthcare Solutions (Noridian), a Medicare contractor, notified Petitioner by letter dated July 21, 2015, that her application to enroll in Medicare was approved effective April 15, 2015. CMS Ex. 1. The letter advised Petitioner that if she disagreed with the effective date determination she could request reconsideration before a contractor hearing officer within 60 days. The letter provided instructions for how to submit the request for reconsideration. CMS Ex. 1 at 2-3.

¹ The evidence suggests that Petitioner was attempting to enroll as Jodie Knott, Ph.D., Psychological Consulting, Inc., NPI 1063803393, at a new practice location. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 4 at 7-8. But there is no further specific reference to this entity in the evidence and there is no impact upon my decision given the facts of this case.

On September 30, 2015, Noridian notified Petitioner that it rejected Petitioner's request for reconsideration, because it was not properly signed and dated by Petitioner, an authorized or delegated official, or a legal representative. CMS Ex. 3.

Petitioner requested a hearing by letter dated January 5, 2016, which was received by the Civil Remedies Division of the Departmental Appeals Board on January 20, 2016. The case was assigned to me for hearing and decision. I issued an Acknowledgment and Prehearing Order on February 3, 2016.

On February 17, 2016, CMS filed a motion to dismiss this case (CMS Motion) with CMS Exs. 1 through 4. Petitioner filed a response on March 9, 2016 (P. Response). Petitioner did not object to my consideration of CMS exhibits 1 through 4 and they are admitted.

II. Applicable Law

A provider or supplier may request reconsideration of an initial determination by CMS that affects the provider's or supplier's ability to participate in the Medicare program. 42 C.F.R. § 498.5(a), (b), (d) and (l). CMS or its contractor reconsiders an initial determination if there is a written request for reconsideration that complies with 42 C.F.R. § 498.22(b) and (c). The request for reconsideration must be filed with CMS or its contractor; either directly by the provider/supplier or through the provider's or supplier's designated legal representative or authorized official, within 60 days of receipt of the notice of the initial determination. 42 C.F.R. § 498.22(b). The date of receipt of the initial determination is presumed to be five days after the date on the notice from CMS or its contractor, unless there is a showing that it was received earlier or later. 42 C.F.R. § 498.22(b).

III. Findings of Fact and Conclusions of Law

My conclusions of law are set forth followed by the pertinent findings of fact and analysis.

A. Petitioner has no right to a hearing before an administrative law judge (ALJ) because there has been no reconsidered determination.

B. Dismissal is appropriate as Petitioner has no right to a hearing.

CMS moved to dismiss Petitioner's request for hearing on grounds that I lack jurisdiction because no reconsidered determination was made in this case. CMS alleges more specifically that Petitioner failed to file a properly signed request for reconsideration and Noridian rejected the request. CMS Motion at 2.

Petitioner filed an application – a CMS-855I dated January 26, 2015 – to enroll in Medicare as a clinical psychologist. CMS Ex. 4 at 15. Petitioner listed Deborah R. Santucci in the application as her “Managing Employee,” effective May 1, 2014. According to the form:

A managing employee means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the supplier, either under contract or through some other arrangement, regardless of whether the individual is a W-2 employee of the supplier.

CMS Ex. 4 at 12. Petitioner also listed Debbie R. Santucci as the person to contact regarding Petitioner’s application. CMS Ex. 4 at 14.

On July 21, 2015, Noridian issued the initial determination approving Petitioner’s enrollment granting an effective date of April 15, 2015. CMS Ex. 1. The unsigned initial determination advised Petitioner that if she disagreed with the effective date determination, she could request reconsideration before a contractor hearing officer. The letter advised that the request for reconsideration had to be submitted in writing within 60 days of the postmark on the envelope bearing the initial determination. The initial determination stated that the reconsideration request had to “be signed and dated by the physician, non-physician practitioner or **any responsible authorized or delegated official within the entity.**” CMS Ex. 1 at 3 (emphasis added). The initial determination also advised Petitioner that the request for reconsideration could be submitted to one of two addresses depending upon the manner of shipping. One address was Provider Enrollment Noridian Healthcare Solutions, PO Box 6775, Fargo, ND 58108-6775. CMS Ex. 1 at 3.

Petitioner filed a request for reconsideration dated September 10, 2015, addressed to Noridian at PO Box 6775 in Fargo. It is not alleged by CMS that the request for reconsideration was untimely. The request stated the background or history and requested an earlier effective date of January 1, 2015. The request was signed by Debbie Santucci on behalf of Petitioner. CMS Ex. 2 at 44.

By letter dated September 30, 2015, Noridian notified Petitioner that reconsideration was denied because the request for reconsideration “did not meet the requirements as stated in the PIM (Program Integrity Manual) 15.25.” CMS Ex. 3. Bolded language in the letter indicates that the reconsideration was denied because it was not “signed and dated by the provider/supplier, the authorized or delegated official, or a legal representative.” CMS Ex. 3. CMS states in its motion that reconsideration was denied because Ms. Santucci and not Petitioner signed the reconsideration request. CMS Motion at 4.

Pursuant to 42 C.F.R. § 498.22(b), an affected party dissatisfied with an initial determination may request reconsideration by filing the request directly or through its legal representative or other authorized official. According to the Medicare Program Integrity Manual (MPIM), CMS pub. 100-08, chap. 15, sec. 15.25.1.2B,² a reconsideration request must be in the form of a letter that is signed and dated by the “individual supplier, the authorized or delegated official, or a legal representative.” A note states that the contact person listed in section 13 of the CMS-855 does not qualify to sign the reconsideration request. Although Ms. Santucci was listed as the contact person in section 13 of Petitioner’s January 26, 2015 CMS-855I, she was also listed as an individual having managing control under section 6 of the form. CMS Ex. 4 at 12, 14.

CMS argues that according to MPIM, chap. 15, sec. 15.5.15.1, only the physician or nonphysician practitioner may sign the CMS-855I. CMS Motion at 4. CMS is correct that MPIM, chap. 15, sec. 15.5.15.1 clearly provides that only the enrolling or enrolled physician or non-physician practitioner may sign the CMS-855I, whether for an initial enrollment, change of information, reactivation, or similar actions that require the filing of a new CMS-855I. In fact, Petitioner did sign and date the CMS-855I in this case. CMS Ex. 4 at 15. The issue in this case is not related to the signing of the application, but rather, the request for reconsideration. In this case, Petitioner did not sign the request for reconsideration, Debbie Santucci did, and Noridian refused to reconsider for that reason. CMS Ex. 3.

Debbie Santucci was designated as Petitioner’s managing employee in the CMS-855I, signed by Petitioner on January 26, 2015, with operational or managerial control or with direct or indirect control of day-to-day operations. CMS Ex. 4 at 12. The regulation requires that the request for reconsideration be signed directly by the affected party, who is Petitioner, or by a “legal representative or other authorized official.” 42 C.F.R. § 498.22(b)(2). There is no evidence that Ms. Santucci was an attorney or legal representative for Petitioner and no argument was made by Petitioner to that effect. There is no definition of “authorized official” in 42 C.F.R. pt. 498. However, the regulations that control enrollment of providers defines an “authorized official” to be:

an appointed official (for example, chief executive officer, chief financial officer, general partner, chairman of the board, or direct owner) to whom the organization has granted the legal authority to enroll it in the Medicare program, to make changes or updates to the organization’s status in the

² MPIM, chap. 15, sec. 15.25 was cited as the basis for the denial of reconsideration. CMS Ex. 3.

Medicare program, and to commit the organization to fully abide by the statutes, regulations, and program instructions of the Medicare program.

42 C.F.R. § 424.502. MPIM, CMS pub. 100-08, chap. 15, sec. 15.1.1, contains a similar definition of authorized official. A managing employee is defined as “a general manager, business manager, administrator, director, or other individual that exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the provider or supplier.” 42 C.F.R. § 424.502. MPIM, CMS pub. 100-08, chap. 15, sec. 15.1.1, contains a similar definition of managing employee. The regulations and CMS policy as discussed in the MPIM define “authorized official” and “managing official” differently. Although Ms. Santucci was designated by Petitioner as a managing official in the CMS-855I dated January 26, 2015, the evidence does not show that she was an authorized official of Petitioner who could sign a reconsideration request under 42 C.F.R. § 498.22(b).

Petitioner argues in her request for hearing that Ms. Santucci was, at one time, a designated official but she was removed from that designation without Petitioner’s knowledge. The CMS-855I lists Ms. Santucci as a managing employee. But Petitioner offers no evidence to show that Ms. Santucci ever met the requirements to be an “authorized official” who had authority to file a request for reconsideration. Petitioner also fails in responding to the CMS motion to dismiss to show that Ms. Santucci was an authorized official with the authority to request reconsideration of the July 21, 2015 initial determination.

I conclude that the evidence before me does not show that Ms. Santucci was authorized to file a request for reconsideration on behalf of Petitioner. I further conclude that there was no legal error in Noridian’s refusal to conduct reconsideration on grounds that the request for reconsideration was not signed and dated by Petitioner, Petitioner’s legal representative, or an authorized official. Pursuant to 42 C.F.R. § 498.5(l)(1), a supplier dissatisfied with an initial determination may request reconsideration under 42 C.F.R. § 498.22(a). Pursuant to 42 C.F.R. § 498.5(l)(2), a supplier dissatisfied with a reconsidered determination is entitled to a hearing before an ALJ. In this case reconsideration was denied and no reconsidered determination was issued. Therefore, Petitioner has no right to a hearing before an ALJ. Accordingly, dismissal pursuant to 42 C.F.R. § 498.70(b), is appropriate.

