

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Hospitalist Medicine Physicians of Prince George's County, P.C., et al.,¹
(PTAN: 152473),

Petitioners

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-664 through C-10-674

Decision No. CR2238

Date: September 8, 2010

DECISION

Hospitalist Medicine Physicians of Prince George's County, P.C., (Hospitalist) requested hearings on behalf of itself and ten physician-members of the Hospitalist group (collectively, Petitioners) to challenge the effective dates assigned to their enrollment in Medicare. For the reasons explained below, I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) upholding the assigned effective dates, except as to the Hospitalist group and one physician-member Petitioner, Suresh Malik, M.D. I remand those two appeals to CMS, because the documentation submitted by the parties is inadequate to establish the correct effective dates to assign to them.

I. Background

By letter dated April 29, 2010, Hospitalist sought review of effective date determinations for the Medicare enrollment of the Hospitalist group and each of the ten physicians under Hospitalist's group account. I issued separate initial orders for Hospitalist and each of the ten physicians and assigned each a separate docket number, C-10-664 through C-10-674. Both parties requested consolidation of these cases. Upon review of the records, I

¹ The names, docket numbers, and Provider Transaction Access number or National Provider Information number for each Petitioner are listed in an appendix to this decision.

determined that the issues appear to be substantially the same; Petitioners each requested that their “effective dates” be changed to March 19, 2009.² Accordingly, I found consolidation was appropriate and issued an order consolidating the cases under the lead docket number C-10-664. Order Granting Consolidation issued May 21, 2010.

With their hearing request (HR), Petitioners attached a spreadsheet with dated notes relating to 25 communications or communication attempts that it made during the application and reconsideration processes. The notes start with April 14, 2009 (the date on which Petitioners indicate that a group application was submitted for five of the physicians) and continue through March 4, 2010 (the date Petitioners received a corrected reconsideration decision letter).³ In the hearing request letter, Petitioners explain that Hospitalist submitted a request for reconsideration of the effective dates of itself and the ten physicians on August 3, 2009 and did not receive a reconsideration decision until February 23, 2010. Petitioners state that the reconsideration decision dated February 23, 2010 contained inaccurate information; specifically, the date of Petitioners’ initial request for reconsideration was stated as being January 28, 2010, not August 3, 2009. HR. Petitioners argue that their effective dates should be based on the dates requested in their enrollment applications and that their requests were thwarted by delays caused by contractor mishandling. HR.

CMS filed a motion to dismiss or, in the alternative, motion for summary judgment, and pre-hearing brief dated June 7, 2010 (CMS Br.). CMS argues that Petitioners are not entitled to an administrative hearing under the appeals procedures at 42 C.F.R. Part 498. CMS Br. at 7. Even if Petitioners are found to be entitled to a hearing, CMS argues, the

² The parties use the term “effective date” to refer to the earliest date of services for which a Petitioner could bill for Medicare. Under the current regulations, the first date of services for which a supplier could bill Medicare would ordinarily be the date the contractor received an application that it ultimately approved and would therefore be the same as the effective date of the supplier’s enrollment in Medicare. The regulations, however, permit CMS to allow a supplier to “retrospectively bill” for services for up to 30 days prior to the “effective date” of Medicare enrollment, as it did here. 42 C.F.R. § 424.521(a). In that situation, the initial date of retrospective billing is different from the effective date of enrollment. For clarity, I use “effective date” to refer to the effective date of enrollment, and *not* the date on which retrospective billing begins.

³ I decline to rely on this spreadsheet, however, because on its face it is inconsistent in several respects when compared against the documentation in the record. For example, Petitioner’s notes for April 14, 2009 read: “Group application submitted with Drs. Jacobs, Malik, Mirebrahimi-Tafreshi, Obi and Tak.” Upon reviewing the parts of these physician’s applications in the record, the signatures of Drs. Jacobs, Mirebrahimi-Tafreshi, Obi, and Tak are dated May 22, 2009, indicating that their applications could not have been submitted prior to May 22, 2009. CMS Exs. 2, 4, 5, 7, 10 (Dr. Malik’s application is not in the record). Petitioners have not produced earlier signed applications or otherwise explained these inconsistencies.

CMS hearing officer's determinations of the effective dates should be affirmed as a matter of law. *Id.* at 10. With its motions and brief, CMS filed exhibits (CMS Exs.) 1 through 12, which I admit into evidence without objection.

After inquiry from my staff when I received no response to CMS's motions, Petitioners' representative indicated that Petitioners have submitted all documents that they would like to be considered in response to CMS's motions.⁴

II. Issues

The issues in this case are:

1. Whether Petitioners have a right to a hearing on the effective dates of their enrollment in the Medicare program; and
2. Whether CMS is entitled to summary judgment that Petitioners' effective dates are correct as a matter of law.

III. Findings of Fact, and Conclusions of Law

My findings and conclusions are in the italicized headings supported by the subsequent discussions below.

⁴ In addition to their hearing request letter and the attached spreadsheet described above, Petitioners submitted the following documents with their hearing request: (1) a copy of the corrected reconsideration decision dated February 23, 2010; (2) a copy of the February 16, 2010 reconsideration decision with the incorrect date that Petitioner requested reconsideration; (3) a fax cover sheet dated October 14, 2009, indicating that the original reconsideration request letters are attached and that only providers Dr. Konatalapalli and Dr. Munim have received acknowledgement of this request; (4) a fax transmission verification form dated October 14, 2009 of a four-page fax sent to (717) 302-3667; (5) a fax cover sheet dated November 23, 2009, addressed to the same person as the previous fax, asking for "the status"; (6) a fax transmission verification form dated November 22, 2009 of a three-page fax sent to (717) 302-3667; (7) a letter dated January 25, 2010 from Petitioners to Highmark Medicare Services (Highmark), the Medicare contractor, stating that they submitted a reconsideration request letter on August 3, 2009, reciting various communications with Highmark including a verbal denial of Petitioners' reconsideration request, and requesting a written decision be executed within 10 days; and (8) a copy of the initial reconsideration request that is not dated but that is referred to in the January 25, 2010 letter as being the August 3, 2009 reconsideration request letter.

A. I reject CMS’s argument that Petitioners have no right to appeal the effective date determinations.

CMS sought dismissal on the basis that the regulations do not permit appeals of effective date determinations by suppliers whose enrollment is approved. CMS Br. at 7-10. I reject this argument for the reasons explained here.

The Board recently addressed CMS’s argument about effective date appeals in *Victor Alvarez, M.D.*, DAB No. 2325 (2010). In *Alvarez*, the Board concluded that “a determination of a supplier’s effective date of enrollment in Medicare is an initial determination subject to appeal rights under 42 C.F.R. Part 498.” *Alvarez*, DAB No. 2325, at 1. The Board explained that this determination is consistent with the historical interpretation of hearing rights under section 1866(h)(1)(A) and as discussed in the rulemaking process. Further, “while section 498.3(b)(15) originally applied primarily to suppliers subject to survey and certification, the term ‘supplier’ as used in 42 C.F.R. Part 498 was amended to cover all Medicare suppliers, including physicians.” *Id.* at 3.

In several prior decisions, I also came to the same conclusion. *See, e.g., Michael Majette, D.C.*, DAB CR2142 (2010); *Eugene Rubach, M.D.*, DAB CR2125 (2010); *Mobile Vision, Inc.*, DAB CR2124 (2010). I likewise concluded that the wording of section 498.3(b)(15) appears straightforward in providing that the “effective date of a Medicare provider agreement or supplier approval” is an appealable initial determination and includes no qualifying or limiting language. A legislative rule generally binds the agency that issues it, and the agency is legally bound to follow its own regulations as long as they are in force. *Cal. Dep’t of Soc. Servs.*, DAB No. 1959 (2005); *Hermina Traeye Mem’l Nursing Home*, DAB No. 1810 (2002), citing Kenneth Culp Davis and Richard J. Pierce, Jr., *Administrative Law Treatise* § 6.5 (3rd ed. 1994), *aff’d sub nom., Sea Island Comprehensive Healthcare Corp. v. U.S. Dep’t of Health & Human Servs.*, 79 F. App’x 563 (4th Cir. 2003); 2 AM. JUR. 2d *Administrative Law* § 236 (2010), available at WL AM. JUR. ADMINLAW § 236. Absent further rulemaking, I am bound to follow the plain meaning of the regulation and, as the Board mandated, permit an appeal by any provider or supplier dissatisfied with a determination as to the effective date of its provider agreement or supplier approval.

I therefore deny CMS’s motion to dismiss on this basis.

B. I grant summary judgment in favor of CMS as to Petitioners Ronald Casey, M.D.; Ronnie Jacobs, M.D.; Rukmini Konatalapalli, M.D.; Ali Mirebrahimi-Tafreshi, M.D.; Abdul Munim, M.D.; Izuchukwu Obi, M.D.; Vitalis Ojiegbe, M.D.; Olalekan Olufemi, M.D.; and Abdul Tak, M.D.

The determination of the effective date of supplier enrollment and billing privileges is governed by 42 C.F.R. §§ 424.520 and 424.521. Section 424.520(d) provides that the effective date for billing privileges for physician, nonphysician practitioners, and

physician and nonphysician practitioner organizations 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 or nonphysician practitioner first began furnishing services at a new practice location.” (Emphasis added). 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. 69,769 (Nov. 19, 2008).

Certain suppliers, including physicians, may be permitted to bill retrospectively for certain services provided before approval, if they have met all program requirements. Current regulations limit retrospective billing to 30 days prior to the effective date, “if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries,” or 90 days in certain disaster situations. 42 C.F.R. § 424.521(a).

Petitioner Hospitalist seeks an effective date of March 19, 2009 for itself and each of the ten physician Petitioners. I will discuss each of the Petitioners’ effective date determinations in turn below.

Before doing so, I address Petitioners’ overarching complaint that contractor delays prejudiced their appeals. Petitioners state in the hearing request letter:

The purpose of this letter is to illustrate the negligence and continued inconsistency of information given by HMS’s [Medicare contractor Highmark Medicare Services] office for nine months. We would like to reach a resolution to our initial requests that we believe may have been handled differently if they had been attended to within timely standards. Ultimately, it does not seem just to dismiss the request for reconsideration on the grounds of submitting within timely filing limits if CMS’s intermediaries are not willing to adhere or held to the same standards.

HR. The reconsideration requests were not dismissed as untimely but instead based on Highmark’s erroneous understanding that effective date determinations could not be challenged. CMS Ex. 12. In any case, I do not have general authority to oversee the contractor’s manner of performing tasks under its contract with CMS and I can find no basis here to attribute any prejudicial effect to any delays or procedural errors alleged by Petitioners. Petitioners’ enrollment applications all appear to have been approved within a very short time of their signed applications. The delays Petitioners attribute to HMS instead appear to involve delays in the reconsideration process. Those delays did not affect the outcome because, as detailed in my discussion below, the contractor’s decision could not have been different had the contractor reached a decision on August 3, 2009, the day Petitioners mailed their request for reconsideration to the contractor.

1. The effective date of Petitioner Ronald Casey, M.D. was properly determined.

The enrollment application for Dr. Casey is date-stamped received on June 17, 2009. CMS Ex. 1, at 7, 9. The “effective date” assigned to Dr. Casey is May 17, 2009. *Id.* at 2. Here, the actual effective date under 42 C.F.R. § 424.520(d) is June 17, 2003, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. The date set in CMS’s letter dated June 17, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to May 17, 2009.

Petitioner does not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was “regrettably unaware” of it, with the result that the physicians began treating patients “in good faith” beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at May 17, 2009, thirty days prior to the date of filing of Petitioner’s enrollment application.

2. The effective date of Petitioner Ronnie Jacobs, M.D. was properly determined.

The enrollment application for Dr. Jacobs is date-stamped received on May 26, 2009. CMS Ex. 2, at 6. The “effective date” assigned to Dr. Jacobs is April 27, 2009. *Id.* at 2. Here, the actual effective date under 42 C.F.R. § 424.520(d) is May 26, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor.⁵ The date set in CMS’s letter dated June 8, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to April 27, 2009.

Petitioner does not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist

⁵ It appears that CMS’s brief contains a typographical error on page 7, which lists the effective date as May 29, 2009, citing CMS Exhibit 2. Page 6 of CMS Exhibit 2 indicates that the receipt date is May 26, 2009. Moreover, CMS does not dispute the effective date determined by the Medicare contractor.

was “regrettably unaware” of it, with the result that the physicians began treating patients “in good faith” beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at April 27, 2009, thirty days prior to the date of filing of Petitioner’s enrollment application.

3. The effective date of Petitioner Rukmini Konatalapalli, M.D. was properly determined.

The enrollment application for Dr. Konatalapalli is date-stamped received on May 29, 2009. CMS Ex. 3, at 11. The effective date assigned to Dr. Konatalapalli is May 29, 2009. *Id.* at 2. Here, the actual effective date was properly determined under 42 C.F.R. § 424.520(d) to be the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. In a letter dated August 18, 2009, CMS states that the effective date is changed to April 30, 2009, which reflects that Petitioner was granted a 30-day period of retrospective billing to April 30, 2009. *Id.* at 7.

Petitioner did not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was “regrettably unaware” of it, with the result that the physicians began treating patients “in good faith” beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at April 30, 2009, thirty days prior to the date of filing of Petitioner’s enrollment application.

4. The effective date of Petitioner Ali Mirebrahimi-Tafreshi, M.D. was properly determined.

The enrollment application for Dr. Mirebrahimi-Tafreshi is date-stamped received on May 26, 2009 on the first page of the application pages submitted. CMS Ex. 5, at 2. Two other application pages submitted are date-stamped received on June 9, 2009. *Id.* at 3, 5. The “effective date” assigned to Dr. Mirebrahimi-Tafreshi is April 27, 2009. *Id.* at 8. Based on that effective date determination, it appears that the pages of the application date-stamped June 9, 2009 were likely submitted in response to a contractor’s request for additional information after the application was initially received on May 26, 2009. The

fact that CMS used the earlier receipt date is to Petitioner's benefit, and CMS does not dispute that effective date determination. Here, the actual effective date under 42 C.F.R. § 424.520(d) is May 26, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. The date set in CMS's letter dated June 10, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to April 27, 2009. *Id.*

Petitioner does not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was "regrettably unaware" of it, with the result that the physicians began treating patients "in good faith" beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at April 27, 2009, thirty days prior to the date of filing of Petitioner's enrollment application.

5. The effective date of Petitioner Abdul Munim, M.D. was properly determined.

The enrollment application for Dr. Munim is date-stamped received on May 29, 2009. CMS Ex. 6, at 12. The effective date assigned to Dr. Munim is May 29, 2009. *Id.* at 2. Here, the actual effective date was properly determined under 42 C.F.R. § 424.520(d) to be the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. In a letter dated August 18, 2009, CMS states that the effective date is changed to April 30, 2009, which reflects that Petitioner was granted a 30-day period of retrospective billing to April 30, 2009. *Id.* at 7.

Petitioner did not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was "regrettably unaware" of it, with the result that the physicians began treating patients "in good faith" beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services

rendered was properly set at April 30, 2009, thirty days prior to the date of filing of Petitioner's enrollment application.

6. The effective date of Petitioner Izuchukwu Obi, M.D. was properly determined.

The enrollment application for Dr. Obi is date-stamped received on May 26, 2009. CMS Ex. 7, at 6. The "effective date" assigned to Dr. Obi is April 27, 2009. *Id.* at 2. Here, the actual effective date under 42 C.F.R. § 424.520(d) is May 26, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. The date set in CMS's letter dated June 10, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to April 27, 2009. *Id.*

Petitioner does not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was "regrettably unaware" of it, with the result that the physicians began treating patients "in good faith" beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at April 27, 2009, thirty days prior to the date of filing of Petitioner's enrollment application.

7. The effective date of Petitioner Vitalis Ojiegbe, M.D. was properly determined.

The enrollment application for Dr. Ojiegbe is date-stamped received on June 11, 2009. CMS Ex. 8, at 6. The "effective date" assigned to Dr. Ojiegbe is May 13, 2009. *Id.* at 2. Here, the actual effective date under 42 C.F.R. § 424.520(d) is June 11, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. The date set in CMS's letter dated June 17, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to May 13, 2009. *Id.*

Petitioner did not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee failed to inform the physicians of the situation and Hospitalist was "regrettably unaware" of it, with the result that the physicians began treating patients "in good faith" beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at May 13, 2009, thirty days prior to the date of filing of Petitioner's enrollment application.

8. The effective date of Petitioner Olalekan Olufemi, M.D. was properly determined.

The enrollment application for Dr. Olufemi is date-stamped received on June 11, 2009. CMS Ex. 9, at 6. The "effective date" assigned to Dr. Olufemi is May 13, 2009. *Id.* at 2. Here, the actual effective date under 42 C.F.R. § 424.520(d) is June 11, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. The date set in CMS's letter dated June 17, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to May 13, 2009. *Id.*

Petitioner did not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was "regrettably unaware" of it, with the result that the physicians began treating patients "in good faith" beginning March 19, 2009.

I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at May 13, 2009, thirty days prior to the date of filing of Petitioner's enrollment application.

9. The effective date of Petitioner Abdul Tak, M.D. was properly determined.

None of the pages of Petitioner Abdul Tak, M.D.'s enrollment application included in the record are date-stamped with the date of receipt of Petitioner's application. *See* CMS Ex. 10, at 6-7. CMS submitted a letter dated June 5, 2009 from CMS to Petitioner confirming the receipt of Petitioner's "Medicare enrollment application(s) to update or change an existing enrollment." CMS Ex. 10, at 2. However, that letter does not indicate that June 5, 2009 is the date Petitioner's application was received. In a letter dated June 8, 2009, HMS assigned Dr. Tak the "effective date" of April 27, 2009. *Id.* at 3. Based on that "effective date" given to Petitioner, and the fact that the Medicare contractor has repeatedly and consistently incorporated the 30-day retroactive billing period as the "effective date," I can reasonably infer that the contractor received Petitioner's

enrollment application on May 26, 2009.⁶ *Id.* Thus, the actual effective date under 42 C.F.R. § 424.520(d) is May 26, 2009, the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor. Therefore, I conclude that the “effective date” of April 27, 2009 reflects that Petitioner was granted a 30-day period of retrospective billing to April 27, 2009.

Moreover, Petitioner did not allege that an approvable application was received by the contractor at any earlier date. Instead, Hospitalist acknowledges that the applications of this Petitioner, and the other physician Petitioners, were not submitted timely to the contractor. HR. According to the reconsideration request, an employee responsible for submitting the application failed to inform the physicians of the situation and Hospitalist was “regrettably unaware” of it, with the result that the physicians began treating patients “in good faith” beginning March 19, 2009.

As mentioned above, the date set in CMS’s letter dated June 8, 2009 reflects that Petitioner was granted that 30-day period of retrospective billing to April 27, 2009. *Id.* I simply do not have the authority to grant a longer retrospective billing period than that allowed by statute and regulation regardless of the good intentions expressed by Petitioners. Thus, the date from which Petitioner may retrospectively bill for services rendered was properly set at April 27, 2009, thirty days prior to the date of filing of Petitioner’s enrollment application.

Based on my analysis, I conclude that these Petitioners have identified no genuine dispute of fact material to the determination of their effective dates and that those dates are required by law to be set as indicated by CMS.

I therefore grant CMS’s motion for summary judgment as to these Petitioners.

C. I remand the cases of Petitioners Hospitalist and Suresh Malik, M.D. to CMS to determine whether their effective dates were properly determined because the parties have not filed enough documentation for me to make such determinations.

The reconsideration decision letter dated February 23, 2010 reads:

Although I am unable to render an official decision, I have reviewed all pertinent documentation, and I concur with HMS’ decision to assign the

⁶ This inference is further supported by the fact that CMS does not argue that the effective date assigned to Petitioner is incorrect despite asserting in its brief that the application was received on June 5, 2009. CMS Br. at 6, 10. In addition, the effective date cannot be earlier than May 22, 2009, the date next to Petitioner’s signature on the application. CMS Ex. 10, at 6. It follows that it is reasonable to conclude that the contractor did in fact receive Petitioner’s application on May 26, 2009.

Medicare effective billing date of April 27, 2009 to Hospitalist Medicine Physicians of Prince George's County, PC as well as the decision to assign the following members their Medicare effective dates: . . . Suresh Malik, MD 4/27/09 . . .

CMS Ex. 12, at 2. Neither Petitioners nor CMS have provided me with sufficient documentation to conclude whether these effective dates were properly determined.

As to Dr. Malik, CMS submitted an approval letter dated June 11, 2009 setting the effective date of April 27, 2009. CMS Ex. 4, at 2. The supporting documentation, however, belonged to a different physician. *Id.* at 6-11. Despite inquiry by my office, CMS was not able to timely produce documentation relating to Dr. Malik. Petitioner did not submit any documentation relevant to establishing the correct effective date for Dr. Malik.

The reconsideration decision indicates that the Hospitalist group was assigned an "effective billing date" of April 27, 2009, but provides no other information about when the group's enrollment application was received. CMS Ex. 12, at 2. Neither party submitted any documentation relevant to establishing the correct effective date for Hospitalist.

Therefore, I must remand the cases of Hospitalist and Dr. Malik to CMS to review and determine whether their effective dates were properly determined in accordance with 42 C.F.R. §§ 424.520(d) and 424.521(a). If a dispute remains after those determinations are issued, Hospitalist and Dr. Malik may file a new appeal.

IV. Conclusion

I grant summary judgment in favor of CMS as to Petitioners Ronald Casey, M.D.; Ronnie Jacobs, M.D.; Rukmini Konatalapalli, M.D.; Ali Mirebrahimi-Tafreshi, M.D.; Abdul Mumin, M.D.; Izuchukwu Obi, M.D.; Vitalis Ojiegbe, M.D.; Olalekan Olufemi, M.D.; and Abdul Tak, M.D. These Petitioners have identified no genuine dispute of fact material to the determination of their effective dates and those dates are required by law to be set as indicated by CMS.

I remand the cases of Petitioners Hospitalist and Suresh Malik, M.D. to CMS for determination of whether their effective dates were properly determined in accordance with 42 C.F.R. §§ 424.520(d) and 424.521(a).

/s/
Leslie A. Sussan
Board Member

APPENDIX

<u>Petitioner Name</u>	<u>Docket No.</u>	<u>PTAN</u>	<u>NPI</u>
Hospitalist Medicine Physicians of Prince George's County, P.C.	C-10-664	152473	
Ronald Casey, M.D.	C-10-665		1720025695
Ronnie Jacobs, M.D.	C-10-666		1205898483
Rukmini Konatalapalli, M.D.	C-10-667		1053500074
Suresh Malik, M.D.	C-10-668		1447466552
Ali Mirebrahimi-Tafreshi, M.D.	C-10-669		1295860732
Abdul Munim, M.D.	C-10-670		1215960703
Izuchukwu Obi, M.D.	C-10-671		1710150362
Vitalis Ojiegbe, M.D.	C-10-672		1689684177
Olalekan Olufemi, M.D.	C-10-673		1851340517
Abdul Tak, M.D.	C-10-674		1306899968