

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Steve McFarland, ACNP,

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-842

Decision No. CR2631

Date: September 28, 2012

DECISION

Steve McFarland, ACNP (Petitioner), appeals the Medicare enrollment determination of Palmetto Government Benefits Administration (Palmetto), a Medicare contractor, and argues that Petitioner's Medicare enrollment date should be effective from September, 2011. However, I grant the Centers for Medicare and Medicaid Services' (CMS) motion for summary judgment and find that Petitioner's effective date of enrollment is February 27, 2012, with a retrospective billing period starting on January 28, 2012, which is based on the date Palmetto received an enrollment Web application, February 27, 2012, from Petitioner.

I. Background

On February 27, 2012, Palmetto received Web applications¹ from Petitioner including a CMS-855I (Medicare enrollment form) and a CMS-855R (Medicare reassignment form). CMS Ex. 3, at 1. The effective date requested on the Web applications was February 9, 2012. *Id.* On March 23, 2012, Palmetto notified Petitioner that Palmetto had completed

¹ This is the term used at various places in the record to describe an application submitted electronically via the internet.

processing Petitioner's applications and that he was now approved to bill the Medicare program effective February 9, 2012. CMS Ex. 1, at 1.

Petitioner requested a reconsideration review through Petitioner's delegated official, Ms. Moore, who requested an earlier effective date. CMS Ex. 2. Ms. Moore alleged that a "paper" enrollment application dated September 9, 2011, had been submitted for Petitioner. Ms. Moore also alleged that two telephone calls were made to Palmetto to check the status of Petitioner's application: in December 2011, an unidentified clerk said that the application was being processed; and in February 2012, an unidentified clerk said there was no application on file. *Id.* at 2-3. Ms. Moore submitted two documents in support of the reconsideration request: a single page of an enrollment application bearing Petitioner's signature and the handwritten date "9/2/11" in the Certification Statement; and an insurance certificate indicating Petitioner's liability coverage was effective September 1, 2011. *Id.* at 6, 7.

On May 29, 2012, in a reconsideration letter, Palmetto informed Petitioner that the retrospective date had been adjusted to January 28, 2012, 30 days from the receipt date of the Web applications on February 27, 2012. CMS Ex. 3, at 1. On June 7, 2012, Petitioner filed a hearing request with the Civil Remedies Division. An Acknowledgment and Initial Docketing Order was sent to the parties on June 26, 2012. On July 26, 2012, CMS filed a Motion for Summary Judgment and brief (CMS Br.), accompanied by four proposed exhibits (CMS Exs. 1-4). On August 30, 2012, Petitioner filed his response (P. Response), which was a one-page letter. Absent any objection, I admit all proposed exhibits into evidence.

II. General Authority

The Social Security Act (Act) authorizes the Secretary of the Department of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. Act §§ 1102, 1866(j); 42 U.S.C. §§ 1302, 1395cc(j). Under the Secretary's regulations, a provider or supplier that seeks billing privileges under Medicare must "submit enrollment information on the applicable enrollment application. Once the provider or supplier successfully completes the enrollment process . . . CMS enrolls the provider or supplier into the Medicare program." 42 C.F.R. § 424.510(a). A "provider or supplier must submit a complete enrollment application and supporting documentation to the designated Medicare fee-for-service contractor," and the application should include "complete . . . responses to all information requested within each section as applicable to the provider or supplier type." 42 C.F.R. § 424.510(d)(1)-(2).

The effective date of enrollment for nonphysician practitioners is established as follows:

The effective date for billing privileges for a . . . nonphysician practitioner . . . 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 . . . nonphysician practitioner first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d).

In addition, CMS permits limited retrospective billing, such that:

[N]onphysician practitioners . . . and nonphysician practitioner organizations may retrospectively bill for services when a . . . nonphysician practitioner or . . . a nonphysician practitioner organization have met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to—
 (1) 30 days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries, or
 (2) 90 days [in certain emergencies.]

42 C.F.R. § 424.521(a).

III. Issue

The issue in this case is whether CMS had a legitimate basis for determining January 28, 2012 as the retrospective date for Petitioner's Medicare billing privileges.

IV. Discussion

My findings of fact and conclusions of law are set forth in italics and bold in the discussion captions of this decision.

a. This case is appropriate for summary judgment.

CMS argues that it is entitled to summary judgment. The Departmental Appeals Board (Board) explained the standard for summary judgment:

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of

material fact for trial and that it is entitled to judgment as a matter of law. . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor.

Senior Rehabilitation and Skilled Nursing Center, DAB No. 2300 at 3 (2010) (citations omitted). An Administrative Law Judge’s (ALJ) role in deciding a summary judgment motion differs from his role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Village at Notre Dame, Inc.*, DAB No. 2291 at 5 (2009). The Board has further stated, “[i]n addition, it is appropriate for the tribunal to consider whether a rational trier of fact could regard the parties’ presentation as sufficient to meet their evidentiary burden under the relevant substantive law.” *Dumas Nursing and Rehabilitation, L.P.*, DAB No. 2347, at 5 (2010).

CMS argues that it is entitled to summary judgment because this case “presents no genuine issues of material fact.” CMS Br. at 3. Petitioner has not disputed the material fact in this case, specifically, that Palmetto received a Web enrollment application on February 27, 2012. Therefore, I agree with CMS that summary judgment is appropriate.

B. Palmetto’s February 27, 2012 receipt of Petitioner’s enrollment application necessarily determines Petitioner’s effective date and retrospective billing date.

The effective date for enrollment for nonphysician practitioners, among others, 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 . . . nonphysician practitioner first began furnishing services at a new practice location.” 42 C.F.R. § 424.520(d) (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.* 69,725, 69,769 (Nov. 19, 2008). It is undisputed that Palmetto received an approvable enrollment Web application on February 27, 2012. Under the regulations, Petitioner’s effective date is February 27, 2012, and his retrospective date is January 28, 2012, 30 days before his enrollment application was received. 42 C.F.R. §§ 424.520(d) and 424.521(a)(1).

Petitioner's reconsideration request is based on a purported "paper" enrollment form submitted in September 2011. To support his request for an earlier enrollment date, Petitioner relies on a single page of an enrollment application bearing Petitioner's signature and the handwritten date "9/2/11" in the Certification Statement, and an insurance certificate indicating Petitioner's liability coverage was effective September 1, 2011. CMS Ex. 2 at 6, 7. Petitioner argues in his hearing request that a "paper" enrollment application dated September 9, 2011 was sent to Palmetto and submitted prior to the Web applications.² Petitioner states:

To further investigate the . . . paper Medicare application contact was made [sic] the mailing service . . . the mailing service does not keep a log of the mailings for each day . . . [t]he paper application was not mailed certified mail therefore there is no tracking information.

Petitioner's Response at 1.

Nothing that Petitioner submitted amounts to evidence sufficient to prove that Petitioner mailed a paper enrollment application in September 2011 to Palmetto. Palmetto asserts that it "never received any enrollment applications from Petitioner during September 2011 through January 2012, either 'paper' or otherwise." CMS Br. at 5. CMS submitted a declaration from Sandy Boyer, Provider Enrollment Manager at Palmetto. CMS Ex. 4. Ms. Boyer declares that all documents and phone calls received by Palmetto are marked, stored, and tracked with a sophisticated computer system. *Id.* at 1-2. Ms. Boyer conducted a comprehensive search of the computer system and could find no record of Palmetto receiving any documents from Petitioner during September 2011 through January 2012. *Id.* at 3. Ms. Boyer also could find no records of any telephone calls received on Petitioner's behalf before May 11, 2012. *Id.* The earliest documents Ms. Boyer found were Petitioner's February 27, 2012 Web applications. *Id.*

I note that Petitioner sent his reconsideration request by certified mail but did not, by his own admission, mail the paper application in September 2011 by certified mail. CMS Ex. 2, at 1. In the absence of evidence that Petitioner mailed his purported enrollment application in September 2011 to Palmetto, and given the declaration from Ms. Boyer that Palmetto never received this application, there are no grounds to disturb CMS's determination that Petitioner's retrospective billing date is January 28, 2012.

² Although Petitioner's hearing request relies on an enrollment application dated September 9, 2011, Petitioner's reconsideration request and the single page of an enrollment application that accompanied the reconsideration request and bore Petitioner's signature was dated September 2, 2011. CMS Ex. 2, at 2, 7.

V. Conclusion

I conclude that it is undisputed that CMS received Petitioner's Web applications on February 27, 2012. I am thereby obliged to find Petitioner's effective date of enrollment is February 27, 2012, with a retrospective billing period starting thirty days prior, on January 28, 2012. Therefore, I grant CMS's motion for summary judgment.

/s/

Richard J. Smith
Administrative Law Judge