

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sana'a Abubaker, M.D.,
(NPI: 1093977456)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1096

Decision No. CR3176

Date: March 27, 2014

DECISION

Palmetto GBA (Palmetto), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), determined that the effective date of enrollment in the Medicare program for Petitioner, Sana'a Abubaker, M.D., was March 19, 2013, with a retrospective billing date of February 17, 2013. Petitioner challenges the determination. For the reasons stated below, I affirm Palmetto's determination.

I. Background and Procedural History

Petitioner, a physician practicing in Nevada, applied to enroll as a supplier¹ in the Medicare program in October 2012. In a letter dated December 11, 2012, Palmetto notified Petitioner that it rejected her enrollment application because she was non-responsive to Palmetto's request for additional information. CMS Ex. 3. Petitioner electronically reapplied on March 19, 2013, Palmetto processed that application to approval, and Palmetto advised Petitioner that her effective date of enrollment in Medicare was March 19, 2013, with eligibility to bill for services she provided to Medicare beneficiaries as of February 17, 2013.

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.

By letter dated April 4, 2013, Petitioner requested that Palmetto reconsider her effective date of enrollment. CMS Ex. 6. In a reconsidered determination, Palmetto upheld its initial determination. CMS Ex. 7. On July 30, 2013, Petitioner timely requested a hearing (RFH) with the Civil Remedies Division of the Departmental Appeals Board. I issued an Acknowledgment and Pre-Hearing Order (Order) on August 8, 2013. On September 11, 2013, CMS filed its brief and a motion for summary judgment (CMS Br.), along with seven exhibits marked as CMS Ex. 1 through CMS Ex. 7. On October 11, 2013, Petitioner filed her brief and response (P. Br.), along with one exhibit marked as P. Ex. 1. There being no objection, I admit all proffered exhibits into the record.

My 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. Order ¶¶ 8-10; *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). Neither party offered the written direct testimony of any witnesses for a hearing. I find, therefore, that an in-person hearing in this case is unnecessary and base my decision on the full merits of the written record.

II. Discussion

A. Issue

The issue in this case is whether Palmetto had a legitimate basis to determine Petitioner's effective date was March 19, 2013 for Medicare enrollment and billing privileges.

B. Applicable Law

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* Social Security 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). Under the Secretary's regulations, a provider or supplier that seeks billing privileges under Medicare must “submit enrollment information on the applicable enrollment application.” 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). “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). CMS then establishes an effective date for billing privileges under the requirements stated in 42 C.F.R. § 424.520(d) and may permit limited retroactive billing as outlined in 42 C.F.R. § 424.521.

C. Findings of Fact and Conclusions of Law

1. Palmetto properly established the effective date of Petitioner’s Medicare enrollment and retrospective billing privileges based upon the receipt date of the enrollment application that Palmetto was able to subsequently process to approval.

Petitioner states that she submitted an initial enrollment application to Palmetto in October 2012. RFH at 1. Petitioner does not dispute that Palmetto rejected her initial application in December 2012 because she failed to submit a response to Palmetto’s request for complete information. Petitioner maintains, however, that Palmetto mailed a letter requesting additional information to a Desert Inn address and not directly to her or her management company. RFH at 1; P. Br. at 1. Petitioner further maintains that neither she nor her management company received Palmetto’s letter, and therefore they were unaware at the time that Palmetto needed additional information to process her October 2012 application. RFH at 1; P. Br. at 1. Petitioner also maintains that she did not find out until March 18, 2013 that Palmetto had rejected her October 2012 application.

Once informed of her rejected application, Petitioner electronically submitted, and Palmetto received transmission of, a second enrollment application on March 19, 2013. Palmetto processed the March 2013 application to approval and assigned Petitioner an effective enrollment date of March 19, 2013, with a retrospective billing date of February 17, 2013.² CMS Ex. 5, at 1. Petitioner was dissatisfied with this determination because she was unable to bill for services she provided to Medicare beneficiaries prior to her assigned February 17, 2013 retrospective billing date. RFH at 1.

² Palmetto used the term “effective date” to refer to the date when Petitioner may retrospectively bill for Medicare services. CMS Exs. 5, at 1; 7, at 1. By regulation, the “effective date” would ordinarily be the date Palmetto received Petitioner’s enrollment application that it eventually approved. *See* 42 C.F.R. § 424.520(d). CMS may, however, permit Petitioner to retrospectively bill for services for up to 30 days prior to that effective date. 42 C.F.R. § 424.521(a). To be consistent with the regulation, this decision uses “effective date” to refer to the effective date of enrollment that is established by regulation, not the date when Petitioner’s retrospective billing period begins.

The effective date of enrollment for physicians, 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.” 42 C.F.R. § 424.520(d). The “date of filing” is the date that the Medicare contractor “receives” a signed enrollment application that the Medicare contractor *is able to process to approval*. 73 Fed. Reg. 69,726, 69,769 (Nov. 19, 2008).

In addition, CMS may permit limited retrospective billing if a practitioner meets all program requirements.

Physicians, nonphysician practitioners and physician and nonphysician practitioner organizations may retrospectively bill for services when a physician or nonphysician practitioner or a physician 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 prior to the effective date [in certain emergencies not applicable here].

42 C.F.R. § 424.521(a).

Here, the earliest date that Petitioner was eligible for retrospective billing privileges was 30 days prior to March 19, 2013, the date Palmetto received an enrollment application that Palmetto was able to process to approval. Thirty days prior to March 19, 2013 is February 17, 2013. Thus, Palmetto correctly determined Petitioner’s effective date and the commencement date of Petitioner’s retrospective billing privileges.

2. Petitioner’s previously filed October 2012 enrollment application does not provide a basis for altering Petitioner’s effective date of enrollment because Palmetto rejected it.

Petitioner states that because Palmetto rejected her initial October 2012 application, it caused a 60-day delay in the effective date she could have been granted. P. Br. at 2. Petitioner argues that Palmetto erred in its rejection when it sent the letter requesting additional information to a Desert Inn address rather than her Orchard Course address. *Id.* Petitioner asks, therefore, that I remand this case to CMS with instructions for CMS

to consider Petitioner's October 2012 application in determining her effective date of enrollment in the Medicare program. In support of her request, Petitioner relies on my decision in *Alexander Eugene Istomin v. CMS*, DAB CR2346 (2011).

The record shows that on December 11, 2012, Palmetto did reject Petitioner's October 2012 application because Petitioner did not respond to Palmetto's request for additional information. CMS Ex. 3. However, CMS's decision to reject an application is not subject to appeal. 42 C.F.R. § 424.525(d). Therefore, Petitioner's previously filed application in October 2012 does not affect the effective date for her subsequently filed application in March 2013. My jurisdiction in this matter is based on Palmetto's unfavorable May 30, 2013 reconsidered determination and the appeal rights afforded Petitioner under 42 C.F.R. § 498.5(l) with regard to her March 2013 application.

Additionally, Petitioner has not provided me with a reason to remand this case to CMS. Petitioner's reliance on my decision in the *Istomin* case to support her assertions is misguided because the facts in Petitioner's case differ from those in the *Istomin* case. In *Istomin* the Medicare contractor inexplicably mailed a letter requesting additional information to an address listed as one of petitioner's practice locations in Florida instead of the New York address listed in his enrollment application as petitioner's correspondence address. *Istomin*, DAB CR2346, at 3. However, the undisputed facts in Petitioner's case before me establish a different situation. Although Petitioner here did list her Orchard Course address under Section 2B, titled "Correspondence Address," in her October 2012 CMS Form 855I application, she also listed in the same application the name of a specific contact person and provided the Desert Inn address under Section 13, titled "Contact Person." The instructions to the applicant for completing Section 13 clearly state that:

This section captures information regarding *the person you would like for us to contact regarding this application*. If no one is listed below, we will contact you directly.

CMS Ex. 1, at 23 (emphasis added). Consequently, Petitioner gave Palmetto permission to contact the designated person at the Desert Inn address that she provided to them if they needed information regarding her October 2012 application. CMS Ex. 1, at 23. The record further shows that Palmetto addressed both the November 8, 2012 request letter and the December 11, 2012 rejection letter to the individual and the Desert Inn address Petitioner identified under Section 13 of her application. CMS Exs. 2, at 1; 3, at 1. Petitioner now claims that the Desert Inn address is not one where she regularly receives mail and that Palmetto erroneously sent the two letters regarding her October 2012 application to the Desert Inn address. P. Br. at 2. However, there is no indication or allegation that Petitioner notified CMS or its contractor to change the contact information she provided on that enrollment application.

3. I am not authorized to grant Petitioner's request for equitable relief.

Petitioner argues that her effective date should be earlier based on the submission of her first enrollment application and the fact that she was treating Medicare beneficiaries for nearly a year without compensation from Medicare. RFH at 1; P. Br. at 2. Petitioner asks that I “do what is necessary and honorable to complete this process . . .” RFH. Petitioner has not shown, however, any basis in fact or in law that would legally support an earlier effective date of enrollment other than that which Palmetto has established. I am bound by the applicable statute and regulations and am not authorized to provide Petitioner with the equitable relief she seeks. *See US Ultrasound*, DAB No. 2302, at 8 (2010); *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) (“[a]n ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground . . .”).

III. Conclusion

I find that Palmetto first received an enrollment application it could process to approval from Petitioner on March 19, 2013. I therefore affirm Palmetto's determination that Petitioner's effective date of enrollment is March 19, 2013, and her retrospective billing date is February 17, 2013.

/s/

Joseph Grow
Administrative Law Judge