

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Steven K. Hwang, M.D.,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-202

Decision No. CR2394

Date: July 8, 2011

**DECISION REMANDING CASE AND DISMISSING HEARING REQUEST**

The Centers for Medicare and Medicaid Services (CMS) moved to remand this case to CMS and to dismiss the hearing request of Petitioner Steven K. Hwang, M.D., pursuant to 42 C.F.R. § 498.70(b), because CMS agreed to fully restore Petitioner's effective date for Medicare billing privileges. I grant CMS's Motion for Remand and Dismissal.

CMS deactivated the Medicare enrollment and billing privileges of Petitioner, an internist and infectious diseases specialist, for not billing Medicare for over 12 months. CMS's fiscal contractor, Palmetto GBA, required Petitioner to complete a new enrollment application to recertify his Medicare enrollment information. Petitioner submitted an enrollment application for reactivation of his Medicare billing privileges on April 14, 2009. CMS Ex. 1. The CMS contractor subsequently determined Petitioner's effective date for Medicare enrollment to be January 17, 2009 and stated that Petitioner would not be allowed to bill Medicare for services rendered to Medicare beneficiaries from January 1, 2008 to January 17, 2009, during the time period that Petitioner's Medicare billing number was deactivated. P. Ex. 3 (October 28, 2010 CMS determination). Petitioner appealed CMS's effective date determination to the Civil Remedies Division of the Departmental Appeals Board on January 1, 2011, and this case was assigned to me for hearing and decision. In his Hearing Request, Petitioner stated:

I disagree with CMS' determination that I am not able to bill for my medical services provided to Medicare beneficiaries between the dates that my Medicare provider number was automatically deactivated without my knowledge and the date that I was provided [a] new . . . Medicare provider number (January 17, 2009), the time interval constituting approximately the whole of calendar year 2008.

Hearing Request at 2.

On May 24, 2011, I conducted a telephone conference to discuss CMS's position regarding the merits of Petitioner's Hearing Request. CMS counsel requested the opportunity to brief the substantive issues in this case, and I granted CMS's request ordering that he address several specific issues relating to the process of deactivation and its interrelationship with Petitioner's effective date determination.

On June 21, 2011, CMS issued a notice to supersede the CMS contractor's determination of the January 17, 2009 effective date of Petitioner's Medicare enrollment. The notice states that "Dr. Hwang has provided evidence to show that he was given an incorrect effective date. Therefore, CMS will direct Palmetto GBA to correct his effective date to December 2, 2007." CMS also filed a concurrent Motion for Remand and Dismissal stating:

Upon further review, CMS has determined that procedural irregularities require that the deactivation be vacated and that Petitioner be awarded retroactive billing privileges for services furnished to Medicare beneficiaries on or after December 2, 2007. . . . Upon remand, Dr. Hwang may submit Medicare billing claims for services furnished on and after December 2, 2007. Such claims will be processed and paid in accordance with applicable Medicare policy and regulations.

CMS Motion for Remand and Dismissal at 1.

CMS contends that, because the June 21, 2011 notice provides Petitioner with full relief, Petitioner no longer has a right to hearing and requests that I remand this matter to CMS and dismiss this case.

Petitioner responded on July 5, 2011 and stated that, while he "deems CMS's proposal to be a favorable decision compared to CMS's previous redetermination which led to this current ALJ appeal, a final subject of concern remains . . . ." Petitioner then contends that CMS has referenced 42 C.F.R. § 405.922 "as the basis for determining any accrued interest to be recompensed . . . ." Petitioner expresses concern regarding the application

of 42 C.F.R. § 405.922 and requests that CMS provide him with compensation under certain guidelines suggested by Petitioner.

In this matter, Petitioner's right to an ALJ hearing is based on his challenge to the effective date of his Medicare enrollment. *See* 42 C.F.R. § 498.3(b)(15). However, when CMS deactivates the billing privileges of a Medicare supplier, he or she is not provided appeal rights in an ALJ hearing, but rather a rebuttal process in accordance with 42 C.F.R. § 405.374. *See* 42 C.F.R. § 424.545(b). Therefore, now that CMS has addressed Petitioner's effective date challenge, I am not authorized to award Petitioner the additional relief he requests because those matters are not properly before me. I encourage Petitioner and CMS to address these concerns through the appropriate process during remand.

I grant CMS's Motion to Dismiss pursuant to 42 C.F.R. § 498.70(b) because CMS adjusted its determination of Petitioner's Medicare effective date, and Petitioner no longer has a basis for a hearing. I remand this matter to CMS, pursuant to 42 C.F.R. § 498.56(d), for CMS and its contractors to correct Petitioner's effective date of Medicare enrollment to December 2, 2007.

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/s/  
Joseph Grow  
Administrative Law Judge