

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Wayne Memorial Hospital,
(CCN: 39-0125),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-1185

Decision No. CR3407

Date: October 8, 2014

DECISION

The request for hearing filed by Petitioner, Wayne Memorial Hospital, is dismissed pursuant to 42 C.F.R. § 498.70(b), because Petitioner has no right to a hearing in this forum.

I. Procedural Background

Petitioner is a rural community hospital operating in Wayne, Pennsylvania that is enrolled in the Medicare program. On March 26, 2013, Petitioner submitted a request to Novitas Solutions, Inc. (Novitas), a Medicare contractor for the Centers for Medicare & Medicaid Services (CMS), for designation as a sole community hospital (SCH) in accordance with the requirements at 42 C.F.R. § 412.92. CMS Exhibit (Ex.) 4. Novitas granted Petitioner SCH classification with an effective date of December 8, 2013. CMS Ex. 1 at 1.

Petitioner was dissatisfied with the effective date of December 8, 2013, and requested reconsideration, specifically arguing for an effective date of July 1, 2013 or, at the latest, an effective date of October 1, 2013. Petitioner's Exhibit (P. Ex.) 5. CMS informed Petitioner on April 7, 2014, that it would not change the effective date of Petitioner's

SCH classification and, if Petitioner was dissatisfied with the determination, it had 60 days to request a hearing before an administrative law judge (ALJ) at the Departmental Appeals Board (the Board). CMS Ex. 7.

Petitioner filed a request for hearing before an ALJ dated May 19, 2014, that was received at the Civil Remedies Division (CRD) of the Board on May 21, 2014. Petitioner requests an earlier effective date of either July 1 or October 1, 2013, for its SCH classification. The case was assigned to me on June 3, 2014, and an Acknowledgment and Prehearing Order was issued at my direction.

On July 2, 2014, CMS filed a motion to dismiss or, in the alternative, a motion for summary judgment (CMS Br.) with CMS Exs. 1 through 5. CMS also filed a motion for leave to file its motion to dismiss out-of-time. On July 3, 2014, CMS filed CMS Exs. 6 and 7. Petitioner filed its opposition (P. Br.) on July 18, 2014, with P. Exs. 1 through 8. CMS filed a reply brief (CMS Reply) on July 25, 2014, and Petitioner advised me by letter dated August 1, 2014, that it would not be filing a sur-reply. CMS Exs. 1 through 7 and P. Exs. 1 through 8, are admitted.

II. Discussion

A. Issue

Whether Petitioner has a right to a hearing?

B. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold text followed by my findings of fact and analysis.

- 1. Petitioner does not have a right to a hearing in this forum.**
- 2. Pursuant to 42 C.F.R. § 498.70(b), dismissal of a hearing request is authorized when the requesting party has no right to a hearing.**
- 3. Petitioner's request for hearing is dismissed.**

Petitioner filed its request for hearing before an ALJ at the CRD based on the instructions Petitioner received from CMS in its April 7, 2014 reconsidered determination. The reconsidered determination advised Petitioner that if it was dissatisfied with the reconsidered determination, Petitioner could request a hearing before an ALJ pursuant to 42 C.F.R. § 498.40. CMS Ex. 7. However, after Petitioner filed its May 19, 2014 request for hearing, Novitas sent Petitioner a letter dated June 30, 2014, that advised Petitioner that a request for review of the effective date of Petitioner's SCH classification

determination should be submitted to Novitas pursuant to 42 C.F.R. §§ 405.1809 through 405.1833, or the Provider Reimbursement Review Board (PRRB) pursuant to 42 C.F.R. §§ 405.1835 through 405.1883, depending on the amount in controversy. CMS Ex. 1. CMS sent Petitioner a letter dated July 1, 2014, which withdrew its April 7, 2014 letter that advised Petitioner of the reconsidered determination. The CMS letter further advised Petitioner that the April 7, 2014 letter incorrectly advised Petitioner that it had a right to request review by an ALJ of the Board. The July 1 letter further stated that “[s]ince the effective date of SCH status impacts the amount [Petitioner] can claim on its Medicare cost report, [Petitioner’s] appeal rights on this issue are governed by 42 C.F.R. 405 Subpart R, Provider Reimbursement Determinations and Appeals.” CMS Ex. 2.

CMS moved to dismiss this case for lack of jurisdiction. CMS Br. at 1, 3-4; CMS Reply at 1, 3-4. Petitioner maintains that I do have jurisdiction to decide its SCH classification effective date. P. Br. at 4-5. However, Petitioner does not cite any authority to support its assertion, nor do I find any. I conclude that Petitioner does not have a right to ALJ review in this forum and dismissal of its request for hearing is appropriate.

SCH classification is defined by section 1886(d)(5)(D)(iii) of the Act (42 U.S.C. § 1395ww(d)(5)(D)(iii)). Congress required that the Secretary of Health and Human Services (the Secretary) promulgate standards for determining whether a hospital meets criteria for SCH classification. Act § 1886(d)(5)(D)(iv). The Act does not specifically establish a right to review by an ALJ, the Board, or the courts of the determination as to whether or not a hospital meets the criteria for SCH classification. The Act also does not specifically require that the Secretary establish regulations according a right to review of the SCH classification determination by an ALJ.

The Secretary has promulgated regulations at 42 C.F.R. pt. 412, subpt. G. The regulations, particularly 42 C.F.R. § 412.92, establish requirements, application procedures, and criteria for SCH classification, including the criteria for determining the effective date of the SCH classification. The regulations authorize CMS to adjust rates payable for inpatient operating costs for a hospital considered to be a SCH due to such factors as isolated location, weather conditions, travel conditions, or the absence of other hospitals, which make the SCH the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. 42 C.F.R. §§ 412.90(a), 412.92. Classification as a SCH may benefit a hospital by permitting an increased payment to the hospital for inpatient operating costs. 42 C.F.R. § 412.92(b)(2)(iv) and (d). A hospital that desires SCH classification must submit its request to its fiscal intermediary, in this case Novitas. 42 C.F.R. § 412.92(b)(1). The fiscal intermediary reviews the request and sends the request with its recommendation to CMS. 42 C.F.R. § 412.92(b)(1)(iv). CMS reviews the request and the fiscal intermediary’s recommendation and then advises the fiscal intermediary whether CMS approves or disapproves the request for SCH classification. 42 C.F.R. § 412.92(b)(1)(v). The effective date of SCH classification is 30 days after the

date of the CMS written notice of approval of SCH classification. 42 C.F.R. § 412.92(b)(2)(i). The regulation provides an exception to the effective date determination. The exception applies only if the following requirements are met:

- A hospital is classified as a Medicare-dependent, small rural hospital (MDH) under 42 C.F.R. § 412.108;
- The MDH applies for SCH classification because its MDH status is expiring;
- The MDH requests SCH classification during the 30 days prior to expiration of its MDH classification;
- The MDH specifically requests that SCH classification be effective upon expiration of its MDH classification; and
- SCH classification is approved.

If all the requirements for the exception are met, the effective date of the SCH classification is the day after the expiration of the MDH classification. 42 C.F.R. § 412.92(b)(2)(v). The Secretary's regulations establishing the procedures for determining whether or not a hospital qualifies for SCH classification do not establish any right to review by an ALJ, the Board, or the courts. 42 C.F.R. § 412.92.

CMS argues that a hospital's right to a hearing and review of its SCH status is established by section 1878(a) of the Act and by regulations at 42 C.F.R. § 405.1835 - .1871. Section 1878 of the Act establishes the PRRB. The jurisdiction of the PRRB appears to be limited to reviewing provider claims related to costs and reimbursements or payments under the Act. The regulations governing the PRRB proceedings do not specifically mention SCH classification or state that the determination of SCH status is subject to PRRB review. 42 C.F.R. pt. 405, subpt. R. However, it is not necessary for me to extensively explore the jurisdiction of the PRRB. The scope of PRRB jurisdiction and whether that jurisdiction includes review of the effective date of SCH classification is for the PRRB to decide, not me. The issue I must decide is whether I have jurisdiction to review the determination of the effective date of SCH classification. I conclude that I have no jurisdiction.

ALJs of the Board are not granted general jurisdiction to decide all issues related to Medicare. ALJs are delegated authority by statutes or regulations to render decisions in certain types of case. Sections 205, 1866, 1869, and 1886 of the Act do not state that determinations related to SCH classification or the effective date of such classification are matters subject to ALJ review. The Secretary's regulations in Titles 42 and 45 of the C.F.R. also do not state that determinations related to SCH classification or the effective date of SCH classifications are matters subject to ALJ review. Petitioner points to no statutory or regulatory authority by which Congress or the Secretary delegated authority to me to decide whether or not an entity should be granted SCH classification or the effective date of such classification.

