

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Amit Wasudeo Bhandarkar, M.D.  
(NPI: 1962711937 / PTAN: A400113185<sup>1</sup>)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-915

Decision No. CR4770

Date: January 12, 2017

**DECISION**

The request for hearing of Petitioner, Amit Wasudeo Bhandarkar, M.D., is dismissed pursuant to 42 C.F.R. § 498.70(a) and (b).<sup>2</sup>

**I. Procedural History**

National Government Services (NGS), a Medicare administrative contractor, mailed Petitioner a letter dated April 14, 2016, notifying Petitioner of the initial determination enrolling Petitioner in the Medicare program effective March 12, 2016. The notice informed Petitioner that he had a right to request reconsideration by a contractor hearing officer and that a written request for reconsideration had to be filed within 60 calendar days of the postmark of the NGS initial determination letter. CMS Ex. 1 at 1, 5-6.

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<sup>1</sup> This is the PTAN listed on Petitioner's request for hearing. Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 1 lists Petitioner's PTAN as F40028041. Either or both may be correct. However, it is not necessary to make that determination as Petitioner is sufficiently identified based on his National Provider Identifier (NPI).

<sup>2</sup> Citations are to the 2015 revision of the Code of Federal Regulations (C.F.R.), unless otherwise indicated.

Petitioner sent NGS a letter dated July 5, 2016, that was received by NGS on July 11, 2016. Petitioner requested in the letter that the effective date of enrollment for Petitioner be reconsidered and changed to January 11, 2016. CMS Ex. 1 at 8. NGS advised Petitioner by letter dated July 19, 2016, that the request for reconsideration was denied because it was not filed within 60 days of April 14, 2016, the date of the initial determination. CMS Ex. 1 at 1.

On September 14, 2016, Petitioner requested review by an administrative law judge (ALJ). The case was assigned to me for hearing and decision. I issued an Acknowledgment and Prehearing Order on October 4, 2016.

On October 24, 2016, CMS filed a motion to dismiss with CMS Exs. 1 and 2. Petitioner failed to timely respond to CMS's motion to dismiss. On December 14, 2016, I ordered Petitioner to show cause why this case should not be dismissed for abandonment or as a sanction. I also ordered Petitioner to respond to CMS's motion to dismiss not later than January 3, 2017, if Petitioner did not intend to abandon the request for hearing. Petitioner filed a response (P. Response) with no exhibits. Petitioner did not object to my consideration of CMS Exs. 1 and 2 and they are admitted as evidence.

## **II. Applicable Law**

A provider or supplier may request reconsideration of an initial determination by CMS that affects the provider's or supplier's ability to participate in the Medicare program. 42 C.F.R. § 498.5(a), (b), (d), and (l). CMS or its contractor reconsiders an initial determination if there is a written request for reconsideration that complies with 42 C.F.R. § 498.22(b) and (c). The request for reconsideration must be filed in writing with CMS or its contractor, either directly by the provider/supplier or through the provider's or supplier's designated legal representative or authorized official, within 60 days of receipt of the notice of the initial determination.<sup>3</sup> 42 C.F.R. § 498.22(b). The date of receipt of the initial determination is presumed to be five days after the date on the notice from CMS or its contractor, unless there is a showing that it was received earlier or later. 42 C.F.R. § 498.22(b). Pursuant to 42 C.F.R. § 498.5(l)(2), CMS, a CMS contractor, and a prospective or existing provider or supplier dissatisfied with a reconsidered determination are entitled to a hearing before an ALJ.

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<sup>3</sup> The statement in the initial determination that a request for reconsideration had to be filed within 60 days of the postmark of the initial determination is a legal error. In this case I find no prejudice to Petitioner due to the erroneous advice. However, CMS and its contractors should exercise caution to ensure that official notices accurately reflect the law.

### III. Findings of Fact, Conclusions of Law, and Analysis

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

**A. Petitioner has no right to a hearing before an ALJ because there has been no reconsidered determination.**

**B. Dismissal is required because Petitioner has no right to a hearing.**

The pertinent facts are not disputed.

NGS notified Petitioner by letter dated April 14, 2016, of its initial determination enrolling Petitioner in Medicare and establishing an effective date of enrollment of March 12, 2016. CMS Ex. 1 at 4-6. The NGS notice clearly advised Petitioner that if he disagreed with the initial determination, he could request reconsideration before a contractor hearing officer, in writing, and within 60 calendar days of the postmark of the April 14 notice letter. The NGS notice provided a mailing address for any reconsideration request and a telephone number for any questions. CMS Ex. 1 at 5-6. Pursuant to 42 C.F.R. § 498.22(b)(3), Petitioner was presumed to have received the April 14, 2016 notice on April 19, 2016.

Petitioner filed a request for reconsideration by letter dated July 5, 2016, that was received by NGS on July 11, 2016. Petitioner's letter was dated 77 days after April 19, 2016, the presumed date of receipt. Petitioner did not explain why the reconsideration request was not timely filed or request an extension of the time pursuant to 42 C.F.R. § 498.22(b)(3).

Petitioner's request for reconsideration was denied by NGS on July 19, 2016, because it was not timely filed. CMS Ex. 1 at 1-3.

The law is clear in this matter. Pursuant to 42 C.F.R. § 498.20(b)(1) the NGS initial determination became final and binding when Petitioner failed to timely request reconsideration and reconsideration was denied. I may dismiss a request for hearing for cause when a prior determination on the same issue has become final because the affected party did not timely request reconsideration. 42 C.F.R. § 498.70(a). CMS has requested dismissal and dismissal is appropriate on this basis.

But, as CMS also notes, Petitioner has no right to an ALJ hearing because there was no reconsideration and dismissal is required for that reason. The regulations clearly provide Petitioner a right to ALJ review only when there is a reconsidered determination or a revised reconsidered determination. 42 C.F.R. § 498.5(l)(2). Since Petitioner's reconsideration request was denied as untimely there is no reconsidered determination

within the meaning of 42 C.F.R. §§ 498.5(l)(2) or 498.24, and no right to ALJ review. Petitioner cites no statutory or regulatory provision that grants a right to ALJ review of a determination of CMS or its contractor to deny reconsideration and there is none. Accordingly, dismissal is required by 42 C.F.R. § 498.70(b) because Petitioner has no right to a hearing.

Petitioner argues that his is “a small practice with possibly insufficient recourses [sic] to comprehend and respond to this very laborious process.” P. Response. However, that is no excuse for Petitioner’s failure to comply with the clear instructions in the initial determination regarding the timely filing of a request for reconsideration. If Petitioner’s arguments are viewed as requesting equitable relief, I have no authority to grant such relief. ALJs and the Departmental Appeals Board (Board) are bound by and may not ignore properly promulgated and applicable regulatory requirements. *US Ultrasound*, DAB No. 2302 at 8 (2010) (“Neither the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements.”). I am bound to follow the Act and regulations and have no authority to declare statutes or regulations invalid. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009) (“An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground.”).

#### **IV. Conclusion**

For the foregoing reasons, Petitioner’s request for hearing is dismissed.

\_\_\_\_\_/s/\_\_\_\_\_  
Keith W. Sickendick  
Administrative Law Judge