

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mumtaz Tabbaa, M.D.,
(PTAN: ZZZ30904Z),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-446
Decision No. CR4660

Date: July 14, 2016

DECISION

I sustain the determination of a Medicare contractor, as affirmed upon reconsideration and ratified by the Centers for Medicare & Medicaid Services (CMS), to reactivate the Medicare billing privileges of Petitioner, Mumtaz Tabbaa, M.D., effective September 22, 2015.

I. Background

Petitioner requested a hearing in order to challenge the contractor's determination that I describe in this decision's opening paragraph. CMS filed a brief (CMS Br.) in support of that determination plus five proposed exhibits that are identified as CMS Ex. 1 – CMS Ex. 5. I receive these exhibits into the record. Petitioner's representative, Janis Rovetti, filed a letter in support of Petitioner's arguments. Petitioner filed no proposed exhibits.

CMS argues that I should enter summary judgment in its favor. It is not necessary that I decide whether the criteria for summary judgment are met here. Neither CMS nor Petitioner offered proposed testimony and, consequently, there would be no purpose served by an in-person hearing. I decide this case based on the parties' written submissions.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor properly determined the effective date of reactivation of Petitioner's Medicare billing privileges to be September 22, 2015.

B. Findings of Fact and Conclusions of Law

This case is governed by a regulation, 42 C.F.R. § 424.540. In relevant part the regulation states:

- (a) *Reasons for deactivation.* CMS may deactivate the Medicare billing privileges of a provider or supplier for any of the following reasons:

* * *

(3) The provider or supplier does not furnish complete and accurate information and all supporting documentation within 90 calendar days of receipt of notification from CMS to submit an enrollment application and supporting documentation, or resubmit and certify to the accuracy of its enrollment information.

- (b) *Reactivation of billing privileges.* (1) When deactivated for any reason other than nonsubmission of a claim, the provider or supplier must complete and submit a new enrollment application to reactivate its Medicare billing privileges or, when deemed appropriate, at a minimum, recertify that the enrollment information currently on file with Medicare is correct.

The regulation plainly tells a provider or supplier that it will be deactivated by CMS if CMS directs it to submit an enrollment application and the provider or supplier fails to do so within 90 calendar days. Additionally, it puts the onus on the deactivated provider or supplier to submit a new Medicare enrollment application if it desires to reactivate its participation.

CMS has published guidance to its contractors concerning what effective participation date to assign to a supplier or provider that seeks to reactivate its participation. That date shall be the date when that the contractor receives a re-enrollment application that it processes to completion. Medicare Program Integrity Manual (MPIM), § 15.27.1.2. That guidance is consistent with regulatory requirements governing the effective date of participation of newly participating suppliers and providers. 42 C.F.R. § 424.520(d).

The contractor and CMS acted appropriately to assign an effective reactivation date to Petitioner consistent with the regulatory requirements and with the facts of this case. The *earliest* date that the contractor could have assigned Petitioner as an effective date of reactivation of his billing privileges, consistent with this case's undisputed facts, was September 22, 2015. 42 C.F.R. § 424.520(d).

The undisputed facts are that on August 11, 2014, a Medicare contractor sent a request for Medicare enrollment validation to Petitioner, a Part B Medicare supplier. CMS Ex. 1. Petitioner did not reply to this request and so, on February 20, 2015, the contractor deactivated Petitioner's enrollment and sent notice of this action to Petitioner. *Id.* More than seven months elapsed before Petitioner filed with the contractor an application (Form CMS-855I) for reactivation of his billing privileges. CMS Ex. 2 at 28. The contractor assigned Petitioner an effective date of reactivation of his billing privileges of September 22, 2015, based on its determination of the date of receipt of Petitioner's application for reactivation.¹ That is exactly what the regulation requires.

Petitioner argues that he is facing "unreasonable penalties" because he dealt with his Medicare patients in good faith during the period when his Medicare billing privileges were deactivated. Essentially, he argues that it would be unfair to deny him reimbursement for the care that he provided during that period inasmuch as he always acted in good faith.

I have no reason to question Petitioner's intent or good faith. However, his argument is an equitable one that I have no authority to hear or decide. *See, e.g., Oak Lawn Endoscopy*, DAB CR1187 (2004). In this case the contractor acted entirely consistently with the requirements of law, and I must sustain the contractor's determination.

/s/
Steven T. Kessel
Administrative Law Judge

¹ There is apparent confusion about the date when the contractor received this form. The contractor reactivated Petitioner's billing privileges effective September 22, 2015. CMS Ex. 5 at 2. CMS now says, however, that the contractor didn't receive the form until October 16, 2015. CMS Br. at 2 n.1. If that is so, then technically, the earliest reactivation date that Petitioner could be assigned is October 16 and not September 22. However, CMS has agreed to assign a September 22, 2015 reactivation date to Petitioner and so, I do not address the question of whether the regulations allow that.