Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Forest Villa Nursing and Rehabilitation, LLC, (CCN: 14-5630),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-47

Decision No. CR2297

Date: December 22, 2010

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Forest Villa Nursing and Rehabilitation, LLC, because it has no right to a hearing.

I. Background

Petitioner is a skilled nursing facility in Niles, Illinois. It participates in the Medicare program. Its participation in Medicare is governed by sections 1819 and 1866 of the Social Security Act and by implementing regulations at 42 C.F.R. Parts 483 and 488. Its hearing and appeals rights are governed by regulations at 42 C.F.R. Part 498.

On September 1, 2010, Petitioner was surveyed to determine whether it was complying with Medicare participation requirements. The agency that conducted the survey, the Illinois Department of Public Health (IDPH), determined that Petitioner was not in compliance with participation requirements and proposed to impose remedies against Petitioner. IDPH never imposed remedies nor did the Centers for Medicare and Medicaid Services (CMS). Nevertheless, Petitioner requested a hearing, and the case was assigned

to me for a hearing and a decision. CMS then moved to dismiss Petitioner's hearing request. Petitioner did not reply to CMS's motion.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue in this case is whether Petitioner has a right to a hearing.

B. Findings of Fact and Conclusions of Law

I find as follows. Under governing regulations, a skilled nursing facility, such as Petitioner, has a right to a hearing to challenge an initial determination by CMS, resulting in the imposition of a remedy against the facility. 42 C.F.R. § 498.3(b)(13). There is no right to a hearing where a final determination to impose a remedy has not been made.

In this case, CMS never determined to impose remedies against Petitioner. IDPH proposed to impose remedies, but that determination was not finalized. Consequently, Petitioner has no right to a hearing.

I may dismiss a request for a hearing where a party has no right to a hearing. 42 C.F.R. § 498.70(b). Petitioner has no right to a hearing in this case, and, therefore, I dismiss its request.

/s/ Steven T. Kessel Administrative Law Judge