## **Department of Health and Human Services**

## DEPARTMENTAL APPEALS BOARD

## **Civil Remedies Division**

Brad Carlson, M.D.,

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-6

Decision No. CR2519

March 26, 2012

## DECISION DISMISSING REQUEST FOR HEARING

This matter is before me on the Motion to Dismiss that the Centers for Medicare and Medicaid Services filed on March 20, 2012. Petitioner opposes the motion. For the reasons set out below, I grant the Motion to Dismiss.

This case arises from the July 8, 2011, unfavorable redetermination affirming the Medicare contractor's, TrailBlazer Health Enterprises, LLC (TrailBlazer), determination of Petitioner's enrollment date in the Medicare program as a supplier. Petitioner is a diagnostic radiologist employed with Tulsa X-Ray Lab, Inc., located in Tulsa, Oklahoma. Petitioner started treating Medicare-eligible patients at Tulsa X-Ray Lab, Inc. on July 1, 2010. Prior to that date, Petitioner submitted to TrailBlazer two Medicare enrollment applications on June 1, 2010 - a CMS-855I application to enroll as a solo practitioner and a CMS-855R application reassigning his benefits to Tulsa X-Ray Lab, Inc. CMS Exs. 7, 8, 9, 11. TrailBlazer received the enrollment applications on June 3, 2010. TrailBlazer

<sup>\*</sup> Medicare defines "supplier" to mean "a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services" under the Medicare statute. Social Security Act (Act) § 1861(d), 42 U.S.C. § 1395x(d); *see also* 42 C.F.R. § 400.202.

subsequently determined that Petitioner was eligible for enrollment in the Medicare program as of September 21, 2010, and could retrospectively submit claims for payment as of August 23, 2010. Dissatisfied with the basis for that determination, Petitioner requested reconsideration seeking an earlier enrollment date of July 1, 2010. TrailBlazer responded with an unfavorable decision prompting Petitioner to seek review before an Administrative Law Judge (ALJ). CMS Ex. 1. Petitioner's request for hearing was received at the Civil Remedies Division and assigned to me for hearing and decision.

During the pendency of this appeal, CMS moved for summary judgment asserting that there are no material issues in dispute regarding Petitioner's effective date determination. With its motion, CMS submitted 13 exhibits and subsequently supplemented its exchange by adding an additional exhibit (CMS Exs. 1-14). Petitioner filed a response opposing CMS's motion, accompanied by a cross-motion for summary judgment. With its response and motion, Petitioner submitted two exhibits (P. Exs. 1-2).

Following review of the record, I convened a February 29, 2012 telephone conference with the parties to clarify some issues. During this conference, CMS agreed there were some concerns regarding whether TrailBlazer properly processed Petitioner's enrollment applications. CMS has since notified me that it has provided Petitioner with the retrospective billing date he seeks, July 1, 2010.

Considering Petitioner will receive the relief he had requested, and considering there is no longer an appealable initial determination at issue, I will dismiss. *See* 42 C.F.R. §§ 498.70(b) and 498.3. The parties may request that an order dismissing a case be vacated pursuant to 42 C.F.R. § 498.72.

\_\_\_\_\_/s/ Joseph Grow Administrative Law Judge