

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Sarah L. Minden, M.D.
(NPI: 1629059142; PTAN: C0486101),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-1034

Decision No. CR4963

Date: November 2, 2017

DECISION

I sustain the determination of a Medicare contractor, as affirmed on reconsideration, to assign Petitioner, Sarah L. Minden, M.D., an effective date of reactivation of her Medicare billing privileges of April 17, 2017.

I. Background

The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment, asserting that there are no facts in dispute. It is unnecessary that I decide whether the criteria for summary judgment are met here because neither CMS nor Petitioner offered the testimony of a witness. An in-person hearing would serve no purpose. I decide the case based on the parties' written exchanges. CMS offered three exhibits, identified as CMS Ex. 1-CMS Ex. 3. Petitioner did not offer any exhibits but she did attach a letter to her brief (P. Br.) that contains some assertions of fact. I identify Petitioner's attachment as P. Ex. 1 and I receive both parties' exhibits into the record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor, acting on behalf of CMS, appropriately reactivated Petitioner's Medicare billing privileges effective April 17, 2017.

B. Findings of Fact and Conclusions of Law

Petitioner, like every participating Medicare supplier, is obligated to revalidate her enrollment and her participation status every five years. 42 C.F.R. § 424.515. The purpose of doing so is to assure that the information on file with the Medicare contractor concerning Petitioner's participation status is current and accurate.

The revalidation process begins with a notification from the contractor to the supplier, telling the supplier that he or she must revalidate his or her participation status. 42 C.F.R. § 424.515(a)(1). The supplier has 60 days within which to file with the contractor the appropriate form that makes current his or her information on file. 42 C.F.R. § 424.515(a)(2). CMS or the contractor may deactivate a supplier's Medicare billing privileges if the supplier fails to file timely the necessary revalidation information. 42 C.F.R. § 424.540(a)(2) and (3).

A supplier whose Medicare billing privileges are deactivated must file a new enrollment application, or at least certify that enrollment information on file with the contractor or CMS is correct, in order to reactivate his or her billing privileges. 42 C.F.R. § 424.540(b)(1). CMS treats such applications as being equivalent to participation applications for newly enrolled suppliers. *Medicare Program Integrity Manual* (MPIM), CMS Pub. 100-08, § 15.29.4.3 (effective September 16, 2016). This includes establishment of an effective Medicare participation date.

As a general rule, the *earliest* effective date for participation in Medicare is the date when the contractor receives an application for participation or reactivation of billing privileges that it determines to be acceptable. 42 C.F.R. § 424.520(d). As a matter of administrative discretion, CMS allows a participating supplier, whether a newly enrolled supplier or one whose billing privileges are reactivated, to file reimbursement claims for items or services provided up to 30 days prior to the effective participation or reactivation date.

There are instances where the regulations have the effect of precluding a supplier from qualifying for reimbursement for items or services that he or she provided to a Medicare beneficiary before the 30-day period allowed for retroactive reimbursement. That is the case here. The contractor deactivated Petitioner's billing privileges because she failed to reply within 60 days to the contractor's request that she revalidate her Medicare supplier

status. Several months later Petitioner submitted an application for revalidation (participation) that the contractor determined to be acceptable. The consequence was that Petitioner lost her right to claim reimbursement for items or services that she provided to Medicare beneficiaries between the date of deactivation of her billing privileges and 30 days prior to the effective date of reactivation of those privileges. That consequence is entirely consistent with regulatory requirements.

On June 17, 2016, the contractor sent a revalidation request to Petitioner at two addresses. One of those was returned as non-deliverable. CMS Ex. 1 at 3. Petitioner did not reply to the revalidation request. On November 3, 2017, the contractor sent a third letter to Petitioner in which it advised her that it had deactivated Petitioner's Medicare billing privileges effective October 31, 2016 due to Petitioner's failure to revalidate her enrollment record. *Id.* at 6-9. Petitioner did not file a revalidation application until April 17, 2017. CMS Ex. 2 at 1. The contractor eventually accepted this application and assigned Petitioner an effective revalidation date of April 17 (with the right to retroactive reimbursement for items or services provided up to 30 days prior to April 17).

April 17, 2017 was the earliest effective reactivation of billing privileges that the contractor could have assigned to Petitioner. Once her Medicare billing privileges were deactivated, Petitioner was not eligible for reimbursement for items or services provided more than 30 days prior to the date of reactivation of her billing privileges. That date relates directly to the date when Petitioner filed an application for reactivation as mandated by regulations – in this case, April 17, 2017.

Petitioner concedes that she failed to respond timely to the contractor's requests that she revalidate her Medicare enrollment. P. Br. at 1. She concedes also that the contractor's and CMS's actions are consistent with regulatory requirements. P. Ex. 1 at 1. She argues, however, that as a matter of fairness CMS ought to assign her an earlier effective participation date than April 17, 2017. *Id.* According to Petitioner, she made an error in failing to file timely for revalidation but she contends that she should not be penalized for what is essentially an innocent mistake on her part. She contends that assigning her an earlier effective date than April 17 would be "fair and honorable" given her long and exemplary history of providing items or services to Medicare beneficiaries. P. Ex. 1 at 4. She notes that, unlike many other suppliers, she has continued to honor a moral commitment to provide services for elderly and disabled Medicare beneficiaries and she requests some equitable relief as recognition for that. *Id.*

I have no reason to doubt that Petitioner's failure timely to revalidate her participation was due to an honest error on her part. Nor do I doubt her long history of service to Medicare beneficiaries and her moral commitment to provide items and services to beneficiaries. However, I am without authority to grant Petitioner the relief that she

seeks. Her argument is an equitable one. I am not empowered to grant equitable relief against CMS in a case such as this. *Pepper Hill Nursing & Rehab. Ctr.*, DAB No. 2395 at 10 (2011); *Cnty. Hosp. of Long Beach*, DAB No. 1938 (2004).

/s/

Steven T. Kessel
Administrative Law Judge