

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Craig Kuesel, DO and Craig Kuesel, DO PLLC,  
(PTANs: M17591001, M17591),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-1218

Decision No. CR5023

Date: February 6, 2018

**DECISION**

I sustain the determination of a Medicare contractor, as affirmed upon reconsideration, establishing an effective date of May 25, 2017 of reactivation of Medicare billing privileges for Petitioners Craig Kuesel, DO and Craig Kuesel, DO PLLC.

**I. Background**

Petitioners requested a hearing in order to challenge the effective date of reactivation of their Medicare billing privileges. CMS moved for summary judgment, filing a brief and seven exhibits that are identified as CMS Ex. 1-CMS Ex. 7. Petitioners did not file a brief in opposition or exhibits but elected to rely on the arguments that they made in their hearing request.

It is unnecessary that I decide whether the criteria for summary judgment are met here inasmuch as Petitioner has not objected to my receiving CMS's proposed exhibits. I receive CMS Ex. 1-CMS Ex. 7 into the record and decide the case based on the parties' written exchanges.

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

### A. Issue

The issue is whether a Medicare contractor properly determined May 25, 2017 to be the effective date of reactivation of Petitioners' Medicare billing privileges.

### B. Findings of Fact and Conclusions of Law

Petitioner Craig Kuesel, DO (Petitioner Kuesel), is a physician who is affiliated with two practices, Petitioner Craig Kuesel, DO PLLC, and Munson Medical Center. He participates in the Medicare program as a supplier and has reassigned his Medicare payments to both entities. CMS Ex. 2 at 49, 56-57. In January 2017, a Medicare contractor sent letters to Petitioner Kuesel requesting that he revalidate his Medicare participation information. CMS Ex. 5.

Petitioner Kuesel filed an enrollment application with the contractor on March 18, 2017. CMS Ex. 4 at 38-71. The contractor found this application to be incomplete. *Id.* at 36-37. On April 12, 2017, it sent a request to Petitioner Kuesel, asking him to supply additional information in order to complete his application. *Id.* On May 4, 2017, Petitioner Kuesel filed additional information with the contractor. *Id.* at 7-35. The contractor also found this information to be incomplete and insufficient. *Id.* at 5-6. On May 12, 2017, the contractor notified Petitioner Kuesel advising him that it had rejected Petitioner's revalidation application and that his Medicare billing privileges were deactivated effective May 11, 2017. *Id.* at 1-6.

On May 25, 2017, Petitioner Kuesel filed a new Medicare enrollment application. CMS Ex. 2 at 42-74. The contractor subsequently approved that application and reactivated Petitioner Kuesel's billing privileges effective May 25, 2017. *Id.* at 1-6. The additional effect of this determination was that Petitioner, Craig Kuesel, DO, PLLC – the assignee of Petitioner Kuesel's Medicare reimbursement payments – could also begin again receiving reimbursements for services provided on or after May 25, 2017.

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:

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(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.

42 C.F.R. § 424.540. A contractor's decision to reject an enrollment application (or an application for revalidation of billing privileges) or to deactivate a provider's reimbursement privileges are not determinations that give hearing rights to the affected individual or entity. *See* 42 C.F.R. §§ 498.3(b) and (d). Consequently, Petitioners may not appeal the contractor's decision to reject Petitioner Kuesel's March 18, 2017 application for revalidation nor may they appeal the decision to deactivate Petitioner Kuesel's billing privileges.

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 the contractor receives a re-enrollment application that it processes to completion. Medicare Program Integrity Manual (MPIM), Ch. 15 § 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); *Willie Goffney Jr., M.D.*, DAB No. 2763 (2017).

Given that, the only question I may consider is whether the contractor properly assigned Petitioner Kuesel an effective reactivation date of May 25, 2017 based on the application for reactivation that the contractor received on that date. The propriety of the contractor's action is governed by 42 C.F.R. § 424.520(d). The regulation states that:

- (d) The effective date for billing privileges for physicians . . . is the later of -
- (1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or
  - (2) The date that the supplier first began furnishing services at a new practice location.

42 C.F.R. § 424.520(d). The effective reactivation date of May 25, 2017 that the contractor assigned to Petitioner was the *earliest possible* effective date that Petitioners could have received inasmuch as the contractor received Petitioner Kuesel's application for reactivation on that date.

Petitioners acknowledge that the application for revalidation of Petitioner Kuesel's billing privileges was "not perfect." Petitioner's Request for Hearing. They assert that Petitioner Kuesel's staff responded to the contractor's information requests to the best of their ability. But, they characterize the requests to be "confusing and out of context for us," asserting, in effect, that they were misled by information requests that were either not well phrased or that were beyond the ability of Petitioner Kuesel's staff to comprehend. *Id.* Petitioners also seem to argue that they were in some way denied the ability to communicate with representatives of the contractor in order to clarify the allegedly confusing requests for information. *Id.*

I cannot consider Petitioners' arguments inasmuch as they constitute a challenge to the contractor's decision to reject Petitioner Kuesel's application for reactivation of his billing privileges and to deactivate those privileges. Petitioners' arguments also seem to add up to a contention that the contractor treated them unfairly, and that as a matter of fairness, they should be entitled to claim reimbursement for services that they provided earlier than May 25, 2017. This is an equitable argument that I have no authority to hear and decide. My authority is limited in this case to deciding whether CMS or its contractor acted consistent with regulatory authority in determining to reactivate Petitioner Kuesel's billing privileges effective May 25, 2017. *US Ultrasound*, DAB No. 2302 at 8 (2010).

\_\_\_\_\_/s/\_\_\_\_\_  
Steven T. Kessel  
Administrative Law Judge