

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Spanish Hills Wellness Center
(CCN: 29-5094),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-18-907

ALJ Ruling No. 2018-8

Date: September 10, 2018

DISMISSAL

For the reasons set forth below, I conclude that Petitioner, Spanish Hills Wellness Center, is not entitled to Administrative Law Judge review. I therefore dismiss its hearing request pursuant to 42 C.F.R. § 498.70(b).

Discussion

Petitioner has no right to a hearing because the Centers for Medicare & Medicaid Services (CMS) did not impose a remedy.

Petitioner is a skilled nursing facility located in Las Vegas, Nevada, that participates in the Medicare program as a provider of services. On February 14, 2018, the Nevada Bureau of Health Care Quality and Compliance (state agency) completed a complaint survey of the facility and found that it was not in substantial compliance with federal requirements. By letter dated March 13, 2018, the state agency advised Petitioner that, based on the survey findings, it was going to impose a denial of payment for new admissions (DPNA), effective May 14, 2018, if the facility did not return to substantial compliance by that date. Attachments to Request for Hearing, DAB E-file item #1a, at 2-3. The state agency also recommended terminating Petitioner's provider agreement

effective August 14, 2018, if the facility did not return to substantial compliance by that date. *Id.* at 3.

Petitioner requested a hearing on May 11, 2018, to contest the deficiencies cited during the February 14, 2018 survey. The case was assigned to me and I issued an Acknowledgment and Prehearing Order on May 17, 2018, in which I directed the parties to file prehearing exchanges by certain dates.

CMS moved to dismiss Petitioner's request for hearing on August 6, 2018. In support of its motion, CMS submitted a copy of its records showing that Petitioner achieved substantial compliance effective March 20, 2018. CMS Exhibit 1. CMS claims that it did not authorize a certification of noncompliance or impose any remedy as a result of the February 14, 2018 survey. The previously threatened DPNA did not go into effect and, as a result, Petitioner has no right to ALJ review. CMS also notes that Petitioner does not oppose the motion to dismiss.

The hearing rights of a long-term care facility are established by federal regulations at 42 C.F.R. Part 498. A provider dissatisfied with an initial determination is entitled to further review, but administrative actions that are not initial determinations are not subject to appeal. 42 C.F.R. § 498.3(a), (d). The regulations specify which actions are "initial determinations" and set forth examples of actions that are not. With an exception not applicable here, a finding of noncompliance that results in the imposition of a remedy specified in 42 C.F.R. § 488.406 is an initial determination for which a facility may request an ALJ hearing. 42 C.F.R. § 498.3(b)(13). But a facility has no right to a hearing unless CMS imposes one of the specified remedies. *Lutheran Home - Caledonia*, DAB No. 1753 (2000); *Schowalter Villa*, DAB No. 1688 (1999); *Arcadia Acres, Inc.*, DAB No. 1607 (1997). The remedy, not the citation of a deficiency, triggers the right to a hearing. *Schowalter Villa*, DAB No. 1688 at 3; *Arcadia Acres, Inc.*, DAB No. 1607 at 3. Where CMS withdraws the remedies or otherwise declines to impose one, Petitioner has no hearing right. *See, e.g., Fountain Lake Health & Rehab., Inc.*, DAB No. 1985 at 5-6 (2005).

Because CMS has imposed no remedies, Petitioner has no right to an ALJ hearing, and this matter must be dismissed. 42 C.F.R. § 498.70(b). I therefore grant CMS's motion.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge