

**Department of Health and Human Services**  
**DEPARTMENTAL APPEALS BOARD**  
**Appellate Division**

Howard M. Sokoloff, DPM, MS, Inc.  
Petition for Reopening of Decision No. 2972  
Ruling No. 2020-2  
November 1, 2019

**RULING ON PETITION FOR  
REOPENING OF BOARD DECISION**

On October 30, 2019, Petitioner Howard M. Sokoloff, DPM, MS, Inc. filed a “response” to *Howard M. Sokoloff, DPM, MS, Inc.*, DAB No. 2972 (2019) (Board Decision 2972). Board Decision 2972 affirmed the 2018 decision of an Administrative Law Judge (ALJ), which upheld a determination by the Centers for Medicare & Medicaid Services (CMS) that the effective date of reactivation of Petitioner’s Medicare billing privileges is May 10, 2017. The Board concluded that the ALJ’s decision was supported by substantial evidence in the record and free from legal error. The Board also explained that Petitioner’s arguments did not provide grounds for the Board to set an earlier date for reactivation of billing privileges or to authorize Medicare reimbursement for services furnished during the gap period between the deactivation and reactivation of billing privileges. We construe Petitioner’s filing as a timely request to reopen, but deny the request for the reasons set out below.<sup>1</sup>

**Discussion**

The regulation in 42 C.F.R. § 498.100 authorizes the Board, on its own motion or at the request of a party, to reopen a decision within 60 days of the date of notice of the decision. Section 498.100 does not specify the circumstances in which the Board may reopen a decision. In appeals under 45 C.F.R. Part 16, the Board may “reconsider” a decision when a party “promptly alleges a clear error of fact or law.” 45 C.F.R. § 16.13. The Board has held that this clear-error standard is “reasonably applied” in deciding whether to reopen a decision in an appeal (such as Petitioner’s case) brought under 42 C.F.R. Part 498. *Experts Are Us, Inc.*, DAB No. 2342, at 2 (2010).<sup>2</sup> Reopening a

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<sup>1</sup> Petitioner does not expressly ask the Board to “reopen” or “reconsider” Board Decision 2972. However, we have determined that it is reasonable to construe Petitioner’s filing – which was uploaded to DAB E-File on October 30, 2019, within the 60-day period for requesting reopening – as a request for reopening.

<sup>2</sup> Board decisions and rulings cited herein are available on the Board Decisions webpage at <https://www.hhs.gov/about/agencies/dab/decisions/board-decisions/board-decisions-by-year/index.html>.

decision is not a routine step in the administrative appeal process but, rather, an opportunity for the parties to identify “any errors that make the decision clearly wrong.” *Id.*; see also *Peter McCambridge, C.F.A.*, DAB Ruling No. 2010-1, at 1 (Feb. 2, 2010); *BioniCare Med. Techs., Inc.*, DAB Ruling No. 2011-3, at 1 (Dec. 2, 2010).

In its brief filing, Petitioner expresses dissatisfaction with the Board Decision because Petitioner believes that the Board should have issued its decision sooner. Petitioner asserts that the “egregious lapse of time” between its last (August 2018) filing in support of its appeal and the date of the issuance of the Board Decision warrants a reversal of the Board Decision and “immediate[ ] release” of “monies owed to” Petitioner, which we understand as a request that we order CMS (or its Medicare Administrative Contractor) to reimburse Petitioner for services furnished to Medicare beneficiaries during the gap period between deactivation and reactivation of Petitioner’s Medicare billing privileges.

On a request to reopen a Board decision, the central inquiry is whether the party requesting reopening has articulated a clear error of fact or law in the Board’s decision. The central issue on appeal was whether the effective date of reactivation of Petitioner’s billing privileges was correctly determined. Petitioner identifies no factual or legal error in the Board’s decision.

Moreover, the relief sought is, in essence, rooted in equity. As we stated, the Board has no authority to grant equitable relief. Board Decision 2972, at 9 (citing *Amber Mullins, N.P.*, DAB No. 2729, at 6 (2016)). In any case, the requested relief concerns matters over which the Board has no jurisdiction. See *Horace Bledsoe, M.D. & Bledsoe Family Med.*, DAB No. 2753, at 11 n.13, 14 (2016) (Medicare coverage and payment for items or services provided to Medicare beneficiaries are not matters properly before the Board), *appeal dismissed, Bledsoe v. Price*, No. 3:17-cv-00442 (D.S.C. May 4, 2017).

**Conclusion**

We deny Petitioner's request to reopen Board Decision 2972.

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/s/  
Christopher S. Randolph

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/s/  
Constance B. Tobias

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/s/  
Susan S. Yim  
Presiding Board Member