

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
Corpus Christi Nursing &)	
Rehabilitation (CCN:67-6107),)	Date: June 26, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-302
)	Decision No. CR1616
Centers for Medicare & Medicaid)	
Services.)	
_____)	

**DECISION DISMISSING
REQUEST FOR HEARING**

In this case, the Centers for Medicare & Medicaid Services (CMS) has moved to dismiss the hearing request of Petitioner, arguing that all remedies have been rescinded, and thus, Petitioner has no right to a hearing. Petitioner does not oppose this motion. I therefore grant CMS's motion to dismiss pursuant to 42 C.F.R. § 498.70(b).

I. Background

Petitioner, Corpus Christi Nursing & Rehabilitation, is a skilled nursing facility located in Corpus Christi, Texas, certified to participate in the Medicare and Medicaid programs as a provider of services. On September 29, 2006, the Texas Department of Aging and Disability Services (State Survey Agency) completed a Health Safety Code Survey of Petitioner and found noncompliance. P. Ex. A. In a notice letter dated January 10, 2007, CMS informed Petitioner that it would impose a Civil Monetary Penalty (CMP) of \$2250.00. *Id.* Petitioner filed its request for a hearing on March 8, 2007. On April 10, 2007 CMS notified Petitioner that the CMP was rescinded. (CMS Ex. 2).

On June 1, 2007, CMS filed its motion to dismiss. By letter dated June 11, 2007, Petitioner advised me that it did not oppose the motion to dismiss.

II. Discussion

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 CMS's initial determinations is entitled to further review, but administrative actions that are not initial determinations are not subject to appeal. 42 C.F.R. § 498.3(d). The regulations specify which actions are "initial determinations" and sets forth examples of actions that are not. 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 administrative law judge (ALJ) hearing. 42 C.F.R. § 498.3(b)(13). No right to a hearing exists pursuant to 42 C.F.R. § 498.3(b)(13), unless CMS actually imposes one of the specified remedies. *Schowalter Villa*, DAB No. 1688 (1999). Where CMS rescinds its remedy determination, Petitioner no longer has a right to a hearing. *Fountain Lake Health & Rehabilitation, Inc.*, DAB No. 1985 (2005) and cases cited therein.

The April 10, 2007 letter from CMS to Petitioner clearly states that the remedies were rescinded. (CMS Ex. 2).

III. Conclusion

CMS has rescinded its remedy determination, and consequently, Petitioner no longer has a right to an ALJ hearing. An ALJ may dismiss a hearing request where a party has no right to a hearing. 42 C.F.R. § 498.70(b). Accordingly, I order that this case be dismissed.

/s/

Carolyn Cozad Hughes
Administrative Law Judge