

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the Case of:)	
)	
Gulf Pointe Specialty Hospital,)	Date: September 17, 2007
(CCN 45-2043))	
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-528
)	Decision No. CR 1651
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request of Petitioner, Gulfe Pointe Specialty Hospital because it has no right to a hearing.

I. Background

Petitioner is a hospital located in Houston, Texas. It participates in the Medicare program. Its participation in Medicare is governed by section 1866 of the Social Security Act and by implementing regulations. Also, its right to a hearing in this case is governed by regulations at 42 C.F.R. Part 498.

On March 20, 2007 Petitioner was surveyed for compliance with Medicare participation requirements. Based on the results of that survey the Centers for Medicare & Medicaid Services (CMS) determined that Petitioner no longer met participation requirements. On April 17, 2007 CMS notified Petitioner that some of Petitioner's deficiencies constituted a serious and immediate threat to patient health and safety. It warned Petitioner that its participation in Medicare would be terminated if these deficiencies were not corrected. On May 17, 2007 CMS advised Petitioner that it had determined that Petitioner had corrected those deficiencies constituting a serious and immediate threat to patient health and safety. CMS also told Petitioner that it continued to remain out of compliance with Medicare participation requirements, albeit at a level of noncompliance that did not

constitute a serious and immediate threat to patients, and it gave Petitioner until July 16, 2007 to correct those remaining deficiencies. CMS advised Petitioner that its participation in Medicare would be terminated if it did not correct the remaining deficiencies by that date.

Petitioner requested a hearing and the case was assigned to me for a hearing and a decision. I issued a pre-hearing order instructing the parties to file pre-hearing exchanges of proposed exhibits and briefs. However, on July 16, 2007, CMS notified Petitioner that it had rescinded its determination to impose remedies against it. CMS then moved to dismiss Petitioner's hearing request on the ground that no basis for a hearing continued to exist. Petitioner filed no reply to the motion.

II. Discussion

It is axiomatic that no right to a hearing exists where there is no remedy determination to contest. *Arcadia Acres*, DAB No. 1607 (1997); *Rafael Convalescent Hospital*, DAB No. 1616 (1997). Where CMS determines to impose a remedy hearing rights are created. However, those rights are extinguished if CMS determines to rescind that remedy.

I must dismiss a hearing request where the party requesting a hearing has no right to one. 42 C.F.R. § 498.70(b). Petitioner no longer has a right to a hearing in this case because the unchallenged facts are that CMS rescinded its remedy determination. Consequently, I dismiss Petitioner's hearing request.

_____/s/
Steven T. Kessel
Administrative Law Judge