

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
Sunset Villa Care Center,)	Date: November 2, 2007
(CCN: 32-5117),)	
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-435
)	Decision No. CR1683
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION

I dismiss the hearing request of Petitioner, Sunset Villa Care Center, because it has no right to a hearing.

I. Background

Petitioner is a skilled nursing facility located in Roswell, New Mexico. It participates in the Medicare program. Its participation in Medicare is governed by sections 1866 and 1819 of the Social Security Act and by implementing regulations at 42 C.F.R. Parts 483 and 488. Also, its right to a hearing in this case is governed by regulations at 42 C.F.R. Part 498.

On March 28, 2007 (March survey), 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. It determined to impose remedies against Petitioner consisting of the termination of Petitioner's provider agreement, and a denial of payment for new admissions. CMS Exhibit (Ex.) 1.

Petitioner requested a hearing to challenge the deficiency findings that were made at the March survey and CMS's remedy determinations, and the case was assigned to me for a hearing and a decision.

However, in subsequent correspondence dated September 28, 2007, CMS notified Petitioner that it was rescinding the termination of Petitioner's provider agreement and the denial of payment for new admissions that it had determined to impose to remedy deficiencies identified at the March survey. CMS Ex. 2. As a consequence, CMS is no longer demanding that any remedies be imposed against Petitioner.

On October 3, 2007, CMS moved to dismiss Petitioner's hearing request. CMS submitted two (2) exhibits with its motion. Petitioner did not object to the exhibits nor did Petitioner object to the motion to dismiss.

In the absence of objection, I admit CMS Exs. 1-2 into the record.

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 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(d). The regulations specify which actions are "initial determinations" and set 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 a hearing before an administrative law judge. 42 C.F.R. § 498.3(b)(13). Unless the finding of noncompliance results in the imposition of a specified remedy, the finding is not an initial determination. 42 C.F.R. § 498.3(d)(10)(ii).

In the matter before me, CMS has rescinded its remedy determination, therefore, Petitioner no longer has a right to hearing because the determination that is subject to a hearing no longer exists. *Schowalter Villa*, DAB No. 1688 (1999); *Arcadia Acres*, DAB No. 1607 (1997); *Rafael Convalescent Hospital*, DAB No. 1616 (1997).

III. Conclusion

I must dismiss a hearing request where the requesting party has no legal right to a hearing. 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/

Alfonso J. Montaña
Administrative Law Judge