

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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In the case of:)	
)	
Stephen J. Clifford, M.D., F.A.O.S.,)	Date: July 15, 2008
(Supplier No.: 08030110001),)	
)	
Petitioner,)	Docket No. C-08-359
)	Decision No. CR1817
- v. -)	
)	
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION DISMISSING REQUEST FOR HEARING

I dismiss the hearing request filed by Petitioner, Stephen J. Clifford, M.D., F.A.O.S., because he no longer has a right to a hearing.

I. Background

Petitioner is a physician and is enrolled as a supplier of durable medical equipment in the Medicare program. On February 29, 2008, the Centers for Medicare & Medicaid Services (CMS) upheld a determination to revoke Petitioner's enrollment effective January 1, 2008. Petitioner requested a hearing and the case was assigned to me for a hearing and a decision.

I held a pre-hearing conference by telephone and assigned the parties deadlines for filing pre-hearing exchanges. At the pre-hearing conference I was advised by the parties that Petitioner's enrollment as a supplier was being restored retroactively to January 1, 2008. I told the parties that they should advise me if and when that happened because the restoration of Petitioner's enrollment would obviate the need for a hearing and decision in this case.

On June 24, 2008, CMS filed a motion to dismiss Petitioner's hearing request, contending that Petitioner's Medicare supplier enrollment had been reinstated retroactive to January 1, 2008, the date on which it originally had been revoked by CMS.¹ Petitioner, in response, acknowledged his supplier enrollment had been reinstated. However, he complained that he continued to encounter problems with receiving reimbursement for the claims that he had filed due to apparent administrative errors in the processing of his claims. Thus, effectively, Petitioner refused to withdraw his request for hearing.

On July 11, 2008 I held another pre-hearing conference by telephone. At this conference counsel for CMS assured me that the administrative problems which had prevented Petitioner's claims from being processed had been rectified. Petitioner continued to express frustration about the hurdles he faced obtaining reimbursement for his claims. I advised Petitioner that he no longer had a right to a hearing inasmuch as CMS had reinstated him as a supplier retroactive to January 1, 2008. I gave Petitioner until close of business on July 12, 2008 to file a withdrawal of his hearing request and I advised him that, if he failed to do so, I would dismiss it. Petitioner has not filed anything in response.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether Petitioner continues to have a right to a hearing.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision in this case. I set forth each Finding below as a separate heading.

1. An individual does not have a right to a hearing if there is no adverse determination by CMS.

Petitioner's right to a hearing in this case is governed by regulations at 42 C.F.R. Parts 424 and 498. A supplier – such as Petitioner – has a right to a hearing to contest a determination by CMS to revoke his or her enrollment in the Medicare program. 42 C.F.R. §§ 424.545(a); 498.5(e). However, that right is contingent on there being an extant adverse determination. The right created by such a determination is extinguished if CMS determines to revoke the adverse determination and to reinstate the supplier retroactively to the effective date of the determination.

¹ For purposes of completing the record of the case, I am identifying CMS's submission as ALJ Ex. 1, and making it a part of the record.

2. Petitioner no longer has a right to a hearing inasmuch as CMS has reinstated his supplier enrollment retroactively to January 1, 2008.

The undisputed facts are that CMS has unconditionally reinstated Petitioner's supplier enrollment retroactively to January 1, 2008, the date when CMS previously determined to revoke that enrollment. ALJ Ex. 1. Consequently, there is no extant adverse determination for Petitioner to challenge. Moreover, there is no period of time during which Petitioner would have been ineligible to file reimbursement claims with Medicare inasmuch as the reinstatement was made retroactive.

The effect of CMS's reinstatement of Petitioner is to eliminate any right to a hearing that Petitioner may have had. There simply is no adverse determination that Petitioner may contest.

Petitioner has argued – bitterly at times – that, notwithstanding CMS's reinstatement of him, he continues to encounter difficulty getting his claims processed for payment. It appears that the problem encountered by Petitioner is a consequence of either inadequate communication by CMS of its reinstatement determination to those individuals who process Petitioner's reimbursement claims or failure by those individuals to implement effectively CMS's determination. I am not unsympathetic to Petitioner. Assuming that his complaints are accurate I can understand why he believes he has been given the run-around. But, Petitioner's complaints notwithstanding, I have no authority at this juncture to retain this case as an active case because CMS has rescinded its adverse determination.²

3. I must dismiss Petitioner's hearing request inasmuch as he no longer has a right to a hearing.

I must dismiss Petitioner's hearing request because he no longer has a right to a hearing. 42 C.F.R. § 498.70(b).

/s/
Steven T. Kessel
Administrative Law Judge

² As I discuss above, at the July 11, 2008 pre-hearing conference counsel for CMS assured me and Petitioner that CMS had taken administrative measures to make certain that Petitioner's claims would be processed appropriately.