

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Ambulatory EEG Recordings, LLC,  
(NPI: 1306892922),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-661

Decision Number: CR3718

Date: March 20, 2015

**DECISION**

I grant summary judgment sustaining the determination of the Centers for Medicare & Medicaid Services (CMS) revoking the Medicare billing privileges and enrollment of Petitioner, Ambulatory EEG Recordings, LLC.

**I. Background**

Petitioner is an independent diagnostic testing facility (IDTF) that participated as a supplier in the Medicare program. CMS revoked Petitioner's Medicare enrollment and billing privileges based on a determination that Petitioner had not complied with regulations governing IDTFs. Subsequently, this determination was affirmed upon reconsideration. Petitioner requested a hearing.

CMS moved for summary judgment. At first, Petitioner failed to file a response to the motion. I sent Petitioner an order to show cause in which I ordered it either to file a response or to explain why it had not done so. It then filed a response.

With its motion CMS filed six exhibits that it identified as CMS Ex. 1 – CMS Ex. 6. Petitioner responded with two unidentified exhibits that appear to consist of unsigned statements by unnamed individuals. I am identifying these two exhibits as P. Ex. 1 and P. Ex. 2. I receive all of the parties' exhibits into the record for purposes of deciding this case.

## **II. Issue, Findings of Fact and Conclusions of Law**

### **A. Issue**

The issue is whether CMS was authorized to revoke Petitioner's Medicare enrollment and billing privileges.

### **B. Findings of Fact and Conclusions of Law**

A participating IDTF supplier is obligated to comply with Medicare regulations governing the terms of its participation. Among these is the requirement that the supplier permit CMS and any of its agents or its contractors to conduct unannounced on-site inspections of the supplier's facility. 42 C.F.R. § 410.33(g)(14). Failure by an IDTF to grant access to its facility for inspection is grounds for revocation of its Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(1) because it constitutes noncompliance with the requirement of 42 C.F.R. § 410.33(g)(14).

The undisputed facts of this case establish that Petitioner refused access to a CMS contractor who sought to conduct an unannounced inspection of Petitioner's facility. That refusal is a violation of 42 C.F.R. § 410.33(g)(14) and is a basis for revocation of Petitioner's Medicare enrollment and billing privileges.

On February 27, 2014, Olga Kravets, an inspector for a CMS contractor, attempted to conduct an on-site inspection of Petitioner's facility. CMS Ex. 4 ¶ 4. The inspector entered the facility and informed the receptionist that she was there to conduct an inspection on CMS's behalf. *Id.* The receptionist informed Ms. Kravets that the office manager was not available at that time. Ms. Kravets began to leave the office but was informed by the receptionist that the manager had become available. *Id.* Ms. Kravets then met with Petitioner's office manager. The manager refused to permit Ms. Kravets to conduct an inspection. CMS Ex. 4 ¶ 5.

Petitioner has not denied any of these facts. It admits that it denied Ms. Kravets admission to its facility "because the agent for CMS was not able to identify the organization she was working for and did not look like the person on the badge that she presented." However, it concedes that Ms. Kravets showed Petitioner's office manager an identification badge and a clipboard with information on it. P. Ex. 1, P. Ex. 2.

