Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Alamo Mobility,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-189

Decision No. CR4537

Date: February 29, 2016

DECISION

I sustain the determination of a contractor for the Centers for Medicare & Medicaid Services (CMS) to deny Medicare enrollment to Petitioner, Alamo Mobility.

I. Background

Petitioner requested a hearing to contest a determination, affirmed on reconsideration, to deny it enrollment and participation in the Medicare program. CMS moved for summary judgment and Petitioner opposed the motion. CMS filed five proposed exhibits, identified as CMS Ex. 1 – CMS Ex. 5, with its motion. Petitioner filed six exhibits, identified as P. Ex. 1 – P. Ex. 6, in opposition to the motion. I receive these exhibits into the record.

It is unnecessary for me to decide whether the criteria for summary judgment are met here. Neither CMS nor Petitioner has offered witness testimony in support of its position and, thus, an in-person hearing is unnecessary. I decide this case based on the parties' written exchanges.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The sole issue is whether a CMS contractor correctly determined that Petitioner does not meet the prerequisites for participation as a Medicare supplier.

B. Findings of Fact and Conclusions of Law

Petitioner applied to participate in Medicare as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). In order to qualify for participation, a DMEPOS supplier must establish that it is accredited by a CMS-approved accrediting organization. 42 C.F.R. § 424.57(c)(22). Petitioner was unable to satisfy this criterion. As it concedes, it attempted to attain accreditation from 11 different CMS-approved accrediting organizations. All of them rejected Petitioner's application.

A DMEPOS supplier must meet and certify in its enrollment application that it meets and will continue to meet the DMEPOS supplier standards. 42 C.F.R. § 424.57(c). Petitioner's application was denied because it failed to become accredited as is required by 42 C.F.R. § 424.57(c)(22). That denial is not only appropriate, but it is the only lawful action that the contractor could take under the circumstances.

Petitioner argues that it is caught in a catch-22 situation not of its making. It asserts that it provides services that are paid for by the Texas Medicaid program and that it is certified to participate in that program. However, some of the services – consisting in the main of the labor that its staff provides in customizing certain durable medical equipment – are not paid for by the Medicaid program and will be reimbursed *only* if Medicare pays for them. Petitioner contends that none of the accrediting organizations approved by CMS recognize these services or the unique billing arrangement that exists in Texas. Thus, according to Petitioner it cannot qualify under Medicare participation regulations even though it provides valuable services that are in part reimbursed by the Texas Medicaid program.

That may be so, but Petitioner's argument offers no basis for me to direct CMS to certify it as a participating supplier. As I have stated, Petitioner cannot qualify as a supplier because it doesn't meet all regulatory criteria for participation. There is nothing in the regulations that allows me to either waive, or to direct CMS and its contractor to waive, these requirements.

At bottom, Petitioner's argument boils down to a policy dispute with CMS over the criteria that CMS uses to qualify DMEPOS suppliers. Whatever the merits of that dispute, I have no authority to order an outcome. My authority is limited only to deciding

whether CMS and its contractor acted correctly under applicable regulations. As I have stated, the only possible outcome in this case is to sustain the contractor's denial of Petitioner's application to participate in the Medicare program.

/s/
Steven T. Kessel
Administrative Law Judge