

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Goldenwood Services, LLC
(NPI: 1952706384, PTAN: 410608)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-862

Decision No. CR4751

Date: December 7, 2016

DECISION

I sustain the determination of the Medicare contractor, as affirmed upon reconsideration and ratified by the Centers for Medicare & Medicaid Services (CMS) to revoke the Medicare billing privileges of Petitioner, Goldenwood Services, LLC.¹

I. Background

Petitioner filed a hearing request in order to challenge the Medicare contractor's determination to revoke Petitioner's Medicare billing privileges, as affirmed upon reconsideration and accepted by CMS. CMS moved for summary judgment, filing a brief plus 11 supporting exhibits identified as CMS Ex. 1- CMS Ex. 11. Petitioner filed a written statement in opposition to CMS's motion. I receive CMS's exhibits into the record.

¹ Petitioner's sole owner and proprietor is Jeffrey Gold, Ph.D. CMS Ex. 1 at 4, 6, 15. I refer to Petitioner throughout this decision as "it" because it was enrolled in its corporate form and because the revocation applies to the entity.

I find it unnecessary to decide whether the criteria for summary judgment are met here. Neither CMS nor Petitioner offered the testimony of any witnesses. There is no need for an in-person hearing. Consequently, I base my decision on the parties' written submissions.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether undisputed material facts establish a basis for CMS to revoke Petitioner's Medicare billing privileges.

B. Findings of Fact and Conclusions of Law

CMS alleges that there are two grounds supporting the determination to revoke Petitioner's billing privileges. First, CMS asserts that Petitioner was not operational because it failed to satisfy Medicare enrollment requirements, thereby justifying revocation of its billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(i). Second, CMS contends that it may revoke Petitioner's billing privileges pursuant to 42 C.F.R. § 424.535(a)(9) because Petitioner did not timely report to a Medicare contractor a change in its practice location as is required by 42 C.F.R. § 424.516(d)(1)(iii).

The undisputed facts plainly establish that Petitioner failed to comply with Medicare enrollment requirements by asserting a post office box as its practice location. Revocation of Petitioner's billing privileges may be imposed pursuant to 42 C.F.R. § 424.535(a)(5)(i). Moreover, Petitioner failed to report a change in its practice location as is required by regulation. Therefore, CMS and its contractor may revoke Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(9).

There is no dispute as to the following material facts. On March 22, 2015, Petitioner filed a Medicare enrollment application with a Medicare contractor in which it stated that its enrollment location was 2865 South Eagle Road, Suite 335 Newtown, PA 18940 (South Eagle Road). CMS Ex. 1 at 9, 17. The inspector found that the address was a fictitious practice location. It was not an office but was, in fact, a post office box at a commercial establishment known as "The Parcel Place." CMS Ex. 5 at 1. Petitioner misrepresented the South Eagle Road address as its practice location despite a specific instruction in the Medicare enrollment application form telling it not to report a post office box as its mailing address. CMS Ex. 1 at 16-17. That form also made it clear that, if Petitioner practiced at an assisted living facility or facilities, or if it operated in more than one practice location, it had to list the addresses of its practice locations on the application form. *Id.*

Subsequently, and in response to a request from the contractor, Petitioner filed additional documentation in which it averred that it first saw a patient at the South Eagle Road mailing address on March 22, 2015. CMS Ex. 3 at 1. That also was a false representation by Petitioner as to its practice location inasmuch as the South Eagle Road address was a post office box. It was not until May 2016 – after the contractor had revoked Petitioner’s billing privileges – that Petitioner acknowledged that it treated patients at addresses other than the South Eagle Road address. CMS Ex. 7 at 1. It did not submit to the contractor documentation of its actual practice locations until June 2016. CMS Ex. 8; CMS Ex. 9 at 1.

A participant in Medicare is non-operational and may have its billing privileges revoked if, among other things, it fails to satisfy all Medicare participation requirements. 42 C.F.R. § 424.535(a)(5)(ii). Those requirements include the requirement that an applicant for enrollment submit complete, accurate, and truthful responses to information requested in the enrollment application. 42 C.F.R. § 424.510(d)(2)(i). Petitioner plainly failed to comply with this requirement and consequently, CMS may revoke its billing privileges.

The undisputed facts establish that Petitioner misrepresented its practice location(s) not once, but more than once, by telling the contractor that its practice location was at South Eagle Road, a post office box. It did so not only in its initial application, but also in subsequent correspondence with the contractor. It did so in the face of specific written instructions telling it *not* to list a post office box as its practice location and telling it also that it had to list each location where it provided items or services to beneficiaries. Indeed, I infer that Petitioner knew that it was misrepresenting its practice location to the contractor from the fact that it originally listed its practice location as a “suite” rather than as a post office box. CMS Ex. 1 at 6, 17. Petitioner’s use of the word “suite” strongly suggests that it was attempting to mislead the contractor into believing that the South Eagle Road address was an actual office rather than a mail drop.

A participating provider or supplier must report within 30 days any change in practice location. 42 C.F.R. § 424.516(d)(1)(iii). Failure to do so may be grounds for revocation of billing privileges. 42 C.F.R. § 424.535(a)(9). The undisputed facts prove unequivocally that Petitioner failed to comply with regulatory requirements in not reporting its actual practice locations within 30 days of establishing them. Consequently, the contractor and CMS may revoke Petitioner’s billing privileges.

I note that in this case, it is not just that Petitioner failed to report its practice locations to the contractor as is required by regulations. In fact, Petitioner actually misrepresented its practice locations by averring more than once that it was treating patients at an address that is a post office box.

Petitioner does not deny any of the facts as I have stated them. Nor does it disagree that CMS has the authority, pursuant to regulations, to revoke its billing privileges. Petitioner contends, however, that CMS is acting unduly harshly for what Petitioner characterizes as a simple and good faith error. It asserts that if it is guilty of anything, it is guilty only of “an enrollment form screw up and nothing more than that.” Petitioner’s statement at 2.

That argument, effectively, challenges CMS’s exercise of discretion to revoke Petitioner’s billing privileges. That is not an argument that I have the authority to hear and decide. *Abdul Razzaque Ahmed, M.D.*, DAB No. 2261 at 19 (2009); *aff’d, Ahmed v. Sebelius*, 710 F. Supp. 2d 167 (D. Mass. 2010). Similarly, Petitioner contends that a two-year revocation of its billing privileges is unreasonable in light of the facts. That is also a challenge to CMS’s exercise of discretion that I am without authority to hear and decide.

Petitioner also seems to be making an equitable argument that, considerations of discretion aside, it is unfair to revoke its billing privileges based on what it contends to be a mere “screw up.” I do not have the authority to grant equitable relief in a case such as this one. *U.S. Ultrasound*, DAB No. 2302 at 8 (2010).

I would not find that equities preponderate in Petitioner’s favor even if I had the authority to consider its equitable arguments. The facts belie Petitioner’s assertion that the false information that it provided in its enrollment application consisted of mere error on its part. As I find above, it misrepresented its mailing address as a “suite” rather than a post office box, almost certainly to convince the contractor that the address it gave consisted of an actual office. It subsequently perpetrated that misrepresentation by telling the contractor that it saw patients at the Eagle Road address, an obvious falsehood.

_____/s/_____
Steven T. Kessel
Administrative Law Judge