Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the case of: Cornerstone Family Healthcare, (CCN: 10-3913), Petitioner, - v. - Centers for Medicare and Medicaid Services.	)	Date: December 9, 2009 Docket No. C-09-271 Decision No. CR2043

DECISION

Until December 15, 2008, when its provider agreement was terminated, Petitioner, Cornerstone Family Healthcare, (Petitioner or Cornerstone) was a rural health clinic located in Umatilla, Florida that participated in the Medicare program as a provider of services. Because it determined that Cornerstone was no longer providing services to the community, the Centers for Medicare and Medicaid Services (CMS) advised Petitioner that its Medicare provider agreement was terminated. Petitioner now seeks review of that determination, and CMS has moved to dismiss Petitioner's hearing request, or, in the alternative, asks that I grant summary judgment.[1]

I deny CMS's motion to dismiss, but I grant its motion for summary judgment because the undisputed evidence establishes that Cornerstone stopped furnishing services to the community and thereby voluntarily terminated its Medicare provider agreement. 42 C.F.R. § 405.2404(a)(3).

[1] CMS has filed its motion and brief (CMS Br.), along with eight exhibits. (CMS Exs. 1-8). Petitioner filed its own brief in response (P. Br.) with six exhibits (P. Ex. 1-6).

Discussion

1. Petitioner is entitled to review because its termination is "in accordance with 42 C.F.R. § 405.2404" and is therefore a reviewable initial determination. [2]

Under sections 1866(h)(1) and 1866(b)(2) of the Social Security Act (Act), an institution or agency has a right to a hearing to challenge CMS's determination to terminate a provider agreement. Act §§ 1866(h)(1); 1866(b)(2).[3] Under the statute's implementing regulations, found 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); *Wesley Long Nursing Center*, DAB No. 1937, at 2 (2004). The regulation lists all of CMS's initial determinations. 42 C.F.R. § 498.3(b).

Here, CMS argues that Petitioner is not entitled to a hearing because the challenged determination is not among the initial determinations listed in section 498.3(b). I disagree. Section 498.3(b)(8) provides that "the termination of a rural health clinic agreement in accordance with § 405.2404" is an initial determination. Although, as discussed below, cessation of business is considered a voluntary termination by the rural health clinic, and not a termination by CMS, it nevertheless falls within section 405.2404 and Petitioner is therefore entitled to review.

2. CMS is entitled to summary judgment because the undisputed facts establish that Cornerstone stopped furnishing services to the community and thereby voluntarily terminated its Medicare provider agreement. 42 C.F.R. § 405.2404(a)(3).

Summary judgment is appropriate because this case presents no genuine issue of material fact, and its resolution turns on a question of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *Livingston Care Center v. United States Department of Health and Human Services*, 388 F.3d, 168, 173 (6th Cir. 2004). *See also*, *Illinois Knights*

---

[2] My findings of fact and conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

[3] "Provider agreement" is defined in 42 C.F.R. § 489.3 as "agreement between CMS and one of the providers specified in § 489.2(b) [which includes clinics] to provide services to Medicare beneficiaries and to comply with the requirements of section 1866 of the Act."

Templar Home, DAB No. 2274, at 3-4 (2009*), citing Kingsville Nursing Center*, DAB No. 2234, at 3-4 (2009).

A rural health clinic is a facility located in an area that is not urbanized and in which there are an insufficient number of healthcare practitioners. It is "primarily engaged" in furnishing physician and other services to outpatients. Act § 1861(aa)(1) and (2). It may participate in the Medicare program if it satisfies the statutory definition and meets certain regulatory requirements. 42 C.F.R. § 405.2402; 42 C.F.R. Part 491. A rural health clinic's Medicare agreement is valid for a term of one year, and is renewable annually by mutual consent of the Secretary of Health and Human Services (on whose behalf CMS acts) and the clinic. 42 C.F.R. § 405.2402(e). However, if the clinic "ceases to furnish services to the community," it voluntarily terminates its Medicare agreement. 42 C.F.R. § 405.2404(a)(3).

Cornerstone was a rural health clinic located at 356 N. Central Street, Umatilla, Florida. CMS Exs. 5, 6. It last submitted a claim to its Medicare fiscal intermediary (Riverbend Government Benefits Administrator) on June 25, 2008. CMS Ex. 7. On December 15, 2008, an employee of the fiscal intermediary went to 356 N. Central Street during regular business hours to conduct an appraisal visit, but found no clinic open for business. CMS Exs. 3, 8. He returned to the location on December 18, 2008. Again, the building was closed, and he saw no evidence that services were provided at the location. CMS Exs. 4, 8.

Petitioner does not claim to have been providing services, but points out that, even though its activity ceased in March 2007, it was allowed to maintain its agreement following an April 2007 change of ownership. P. Ex. 2. Petitioner asks that its agreement be reinstated so that it can again change owners. That Cornerstone previously managed to avoid voluntary termination is irrelevant to the question of whether it ceased furnishing services in 2008. Since the undisputed evidence establishes that it did, I must sustain the termination.

Conclusion

Because Cornerstone ceased providing services to the community, it voluntarily terminated its Medicare agreement. I therefore grant CMS's motion for summary judgment.

/s/
Carolyn Cozad Hughes
Administrative Law Judge