Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Lorrie Laurel, PT,
(NPI: 1760444657),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-56

Decision No. CR2724

Date: March 13, 2013

DECISION

Petitioner, Lorrie Laurel, is a physical therapist who practices in the State of Florida. Until recently, she participated in the Medicare program as a supplier of services. In 2006, Petitioner Laurel pled guilty in a Florida circuit court to grand theft. Based on that guilty plea, which it considers a felony conviction, the Centers for Medicare & Medicaid Services (CMS) has revoked her Medicare billing privileges. Petitioner appeals.

The parties have filed cross motions for summary judgment. For the reasons explained below, I find that no material facts are in dispute and that the Medicare statute and regulations authorize revoking Petitioner's billing privileges. I therefore grant CMS's motion and deny Petitioner's.

I. Background

By letter dated May 4, 2012, the Medicare contractor, First Coast Services Options, advised Petitioner that her Medicare billing privileges were revoked effective November 17, 2006. The contractor took this action pursuant to 42 C.F.R. § 424.535(a)(3) because, on October 11, 2006, in the Circuit Court for Holmes County, Florida, Petitioner Laurel

pled guilty to one count of grand theft, a felony. The contractor imposed a three-year bar on re-enrollment. CMS Ex. 1.

Petitioner requested reconsideration. In a reconsidered determination, dated September 10, 2012, the contractor upheld the revocation. Petitioner timely appealed, and that appeal is now before me. CMS Exs. 2, 3.

CMS moves for summary judgment and has filed a supporting brief (CMS Br.) as well as four proposed exhibits (CMS Exs. 1-4). Petitioner files a cross-motion for summary judgment and supporting brief (P. Br.). CMS filed a response brief opposing Petitioner's motion for summary judgment (CMS Response).

II. Discussion

CMS is entitled to summary judgment because the undisputed evidence establishes that Petitioner was convicted of a felony offense detrimental to the best interests of the Medicare program and its beneficiaries.[1]

Statute and regulations. CMS, acting on behalf of the Secretary of Health and Human Services, may revoke a supplier's billing privileges if, within the preceding ten years, she was convicted of a federal or state felony offense that CMS "has determined to be detrimental to the best interests of the [Medicare] program and its beneficiaries." 42 C.F.R. § 424.535(a)(3); *see* Social Security Act (Act) §§ 1842 (h)(8) (authorizing the Secretary to revoke the enrollment of a practitioner who has been convicted of a felony offense that the Secretary determines is "detrimental to the best interests of the program or program beneficiaries") and 1866(b)(2)(D) (authorizing the Secretary to revoke a supplier's billing privileges after she ascertains that the practitioner was convicted of a felony that she "determines is detrimental to the best interests of the program or program beneficiaries").

Offenses for which billing privileges may be revoked include financial crimes such as "extortion, embezzlement, income tax evasion, insurance fraud, and other similar crimes for which the individual has been convicted, including guilty pleas and adjudicated pretrial diversions." 42 C.F.R. § 424.535(a)(3)(i)(B). Once CMS revokes a supplier's billing privileges, she cannot participate in Medicare from the effective date of the revocation until the end of the re-enrollment bar. *Id.* § 424.435(c). A re-enrollment bar must be for a minimum of one year, but cannot exceed three years. *Id.* After the re-enrollment bar has expired, a revoked supplier may reapply to the program. *Id.* § 424.535(d).

[1] I make this one finding of fact/conclusion of law.

Summary judgment. Summary judgment is appropriate if the case presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300 at 3 (2010); *see* CMS Br. at 1, 6; P. Br. at 7.

Here, no material facts are in dispute.[2] Petitioner Laurel pled guilty in the Circuit Court of Holmes County, Florida, to one count of second degree grand theft, admitting that she stole more than $20,000 from her hospital employer. Specifically, she admitted to the following charge:

> Lorrie Laurel[,] between the dates of January 2002 and December 2002 . . . did knowingly obtain or use, or endeavor to obtain or use of a value of $20.000,00 or more, which was the property of Doctor's Memorial Hospital or any other person not the defendant(s) with the intent to permanently or temporarily deprive or any other person not the defendant(s) of the property or benefit therefrom or to appropriate the property to the use of Lorrie Laurel or to the use of any person not entitled thereto, contrary to Florida Statute 812.014(1) and (2)(b).

CMS Ex. 4 at 8, 10. In a ruling dated December 28, 2006, *nunc pro tunc* (now for then, i.e., retroactive to) November 8, 2006, the state judge accepted her plea but withheld adjudication.[3] He sentenced her to five years supervised probation, ordered her to perform 150 hours of public service work, and ordered her to pay restitution as well as court costs. P. Br. at 2; CMS Ex. 4 at 9, 10. She was neither incarcerated nor fined. CMS Ex. 4 at 8-10; P. Br. at 2.

Petitioner argues that her billing privileges are not subject to revocation under section 424.535(a)(3), because she was not "convicted" of a felony. Ultimately, the state court judge did not sentence her to jail time or impose a fine, which suggests that she successfully completed her period of probation. In Petitioner's view, she was not convicted under Florida state law, because the court ultimately withheld the adjudication

[2] Petitioner challenges some of the allegations set forth in her arrest warrant and other criminal court documents. However, none of these challenged facts are material to my decision. P. Br. at 11-12. I rely solely on the fact of Petitioner's guilty plea and the specific charge to which she admitted guilt.

[3] I recognize the discrepancy between these dates and those cited by CMS as the dates of the guilty plea (October 11, 2006) and the court's judgment (November 17, 2006). Petitioner, however, does not challenge the CMS's dates, so I also accept them.

of guilt.[4] Here, however, federal regulations control. The regulatory definition of "conviction" explicitly includes "guilty pleas and adjudicated pretrial diversions." 42 C.F.R. § 424.535(a)(3)(i)(B).

Thus, the plain language of the regulation compels me to find that, for purposes of her Medicare participation, Petitioner Laurel was convicted of a felony, notwithstanding the provisions of state law. In a related context (exclusions from federal health care program participation under section 1128 of the Act), the Departmental Appeals Board has characterized as "well established" the principle that the term "conviction" includes "diverted, deferred and expunged convictions, regardless of whether state law treats such actions as a conviction." *Henry L. Gupton*, DAB No. 2058 at 8 (2007). In *Gupton*, the Board acknowledged that the federal definition of "conviction" often differs from many state criminal law definitions:

> The rationale for the different meanings of "conviction" for state criminal law versus federal exclusion law purposes follows from the distinct goals involved. The goals of criminal law generally involve punishment and rehabilitation of the offender, possibly deterrence of future misconduct by the same or other persons, and various policy goals [footnote omitted]. Exclusions imposed by the [Inspector General], by contrast, are civil sanctions, designed to protect the beneficiaries of health care programs and the federal fisc, and are thus remedial in nature rather than primarily punitive or deterrent. . . . In the effort to protect both beneficiaries and funds, Congress could logically conclude that it was better to exclude providers whose involvement in the criminal system raised serious concerns about their integrity and trustworthiness, even if they were not subjected to criminal sanctions for reasons of state policy.

Gupton, DAB No. 2058 at 7-8. Inasmuch as CMS, like the Inspector General, acts to protect program beneficiaries and funds, I find that the Board's sound reasoning in *Gupton* applies to revocations based on felony convictions.

Petitioner also argues that she is not subject to revocation because CMS has not alleged that she violated any Medicare condition of participation. According to Petitioner, because section 424.535 allows CMS to revoke Medicare enrollment based on a

---

[4] CMS argues, convincingly, that Petitioner's guilty plea constitutes a conviction under Florida law, citing provisions of Florida's Criminal Punishment Code, which define conviction as "a determination of guilt resulting from a plea or trial, regardless of whether adjudication was withheld." Fla. Stat. § 921.0021(2); *Montgomery v. State*, 897 So.2d 1282, 1287 (2005) (finding clear legislative intent to consider as convictions all determinations of guilt, "even where adjudication had been withheld.") I need not resolve the question of state law, however, because federal law controls.

supplier's failure to meet all Medicare conditions of participation, it may not revoke for other reasons, such as disputes over reimbursement ("conditions of payment"). P. Br. at 6-8. I find this argument confusing and Petitioner's reasoning faulty. Section 424.535 allows CMS to revoke a supplier's Medicare enrollment and billing privileges for failing to comply with enrollment requirements (42 C.F.R. § 424.535(a)(1)). In defining enrollment requirements, that subsection incorporates the other provisions of section 424.535(a), including the provision regarding felonies (424.535(a)(3)).[5] Moreover, even if it did not, section 424.535(a)(3) provides an independent basis for revocation.

Nor does the regulation require that the financial crimes be related to the Medicare program. As CMS points out, the regulations' drafters intended to protect the Medicare program and its beneficiaries from fraudulent and abusive providers and suppliers, and they singled out, as threats to the program, those convicted of felonious financial crimes. 71 Fed. Reg. 20,754, 20,768 (Apr. 21, 2006).

Petitioner does not deny that grand theft – taking money from a hospital – is a financial crime, as, plainly, it is. By regulation, financial crimes are detrimental to the best interests of the Medicare program and its beneficiaries. 42 C.F.R. § 424.535(a)(3); *Letitia Bussell, M.D.* DAB No. 2196 at 9 (2008). CMS is therefore authorized to revoke Petitioner's Medicare enrollment and billing privileges.

Petitioner also attacks the timing of the revocation, complaining that CMS "waited almost six years after Laurel's plea agreement to revoke her Medicare participation." P. Br. at 8. Because, a revocation based on a felony conviction is effective the date of that conviction (42 C.F.R. § 424.535(g)), any Medicare payments Petitioner received following her conviction will likely be denied retroactively. Petitioner argues that "CMS impermissibly utilizes [section] 424.535(a)(3) as a "retrospective 'Condition of Payment' remedy." P. Br. at 9. If, in fact, Petitioner had been out of compliance with a "condition of payment," according to Petitioner, it would have been subject to a six-year statute of limitations. I find this argument puzzling, inasmuch as CMS imposed the revocation by letter dated May 4, 2012, revoking billing privileges effective November 17, 2006, six months shy of any purported six-year deadline.

Nor does any such deadline apply here. Petitioner cites, as support for her position, 28 U.S.C. § 2801, which requires that claims *against* the United States be brought within six years, but does not apply to actions brought *by* the United States. Although some provisions of the Act impose a six-year statute of limitations for various actions,

---

[5] In fact, a deficient provider/supplier is generally given the opportunity to correct its deficiencies "except for those imposed under paragraphs (a)(2), (a)(3), or (a)(5)" of section 424.535(a). 42 C.F.R. § 424.535(a)(1). So, not only can CMS revoke the felon's Medicare enrollment, it may do so without offering the supplier an opportunity to correct (which, in any event, probably could not be done).

including civil money penalties, assessments and exclusions (Act §1128A(c)(1)), this action is brought pursuant to a regulation that authorizes CMS to act within 10 years of a felony conviction. 42 C.F.R. § 424.535(a)(3).

Finally, if Petitioner failed to report the conviction timely, she can hardly complain that the Medicare contractor failed to act expeditiously. She alleges, generally, that the contractor was "timely notified. . . via standard interagency reciprocity" (whatever that is), but she does not claim that she ever reported the conviction, much less that she reported it within 30 days, as required by the regulations. 42 C.F.R. § 424.516(d).

III. Conclusion

Because the undisputed evidence establishes that Petitioner Laurel was, within the last ten years, convicted of a felony offense detrimental to the best interests of the Medicare program and its beneficiaries, CMS is entitled to judgment as a matter of law. I therefore grant CMS's motion for summary judgment. Petitioner's cross-motion is denied.

/s/
Carolyn Cozad Hughes
Administrative Law Judge