

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Gulf South Medical & Surgical Institute, Inc. and
Kenner Dermatology Clinic,

Petitioners

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-27

Decision No. CR2345

Date: April 1, 2011

DECISION

For the reasons set forth below, I grant the motion of the Centers for Medicare and Medicaid Services (CMS) for summary judgment. Pinnacle Business Solutions, Inc. (Pinnacle), the CMS contractor, had an undisputed and legitimate basis to revoke Petitioner's enrollment and billing privileges as a supplier in the Medicare program for non-compliance with Medicare enrollment requirements under section 42 C.F.R. § 424.535(a)(1).

I. Background

Petitioner Gulf South Medical & Surgical Institute, Inc.,¹ is a corporation solely owned

¹ Kenner Dermatology Clinic is also a corporation solely owned by Dr. Farber. Although this case was not originally captioned to include Kenner Dermatology Clinic, as Petitioner's Hearing Request did not reference this entity, the Hearing Officer's September 30, 2010 reconsideration decision clearly addressed both corporations. In the interests of efficiency and clarity, I have addressed both corporations in this decision and have amended the case caption to reflect this.

by George A. Farber Sr., M.D. (Dr. Farber), that participated as a supplier in the Medicare program. Hearing Request (HR). On November 17, 2009, the Louisiana State Board of Medical Examiners notified Pinnacle that Dr. Farber had his state medical license revoked and cancelled, effective October 20, 2009. CMS Ex. 2. After learning of the revocation of Dr. Farber's medical license from the Louisiana State Board of Medical Examiners, on November 30, 2009, Pinnacle notified Petitioner that it was revoking the Medicare Provider Transaction Access Numbers (PTANs) associated with the National Provider Identifier (NPI) for Dr. Farber effective October 20, 2009. CMS Ex. 1. Specifically, Pinnacle articulated that Petitioner was not in compliance with the Medicare enrollment requirements set forth in 42 C.F.R. § 424.535(a)(1). The letter further noted that Petitioner failed to comply with the reporting requirements in 42 C.F.R. § 424.516(d)(1)(ii), which requires that a physician report any adverse legal action within 30 days. *Id.*

Subsequently, Petitioner requested that the contractor reconsider his revocation and reinstate his billing privileges. On September 30, 2010, Pinnacle issued its unfavorable determination, finding that the contractor properly revoked Petitioner's enrollment and billing privileges in the Medicare program. CMS Ex. 3. Pursuant to 42 C.F.R. § 498.40, Petitioner timely filed a request for an Administrative Law Judge (ALJ) hearing by letter dated October 7, 2010.

I issued an Acknowledgement and Pre-Hearing Order on October 19, 2010. On November 23, 2010, CMS filed a motion for summary judgment and exchange of evidence and argument (CMS Br.). CMS accompanied its submission with three exhibits (CMS Exs. 1-3). On December 23, 2010, my office received Petitioner's exchange of evidence and argument and counter motion for summary judgment (P. Br.). Petitioner also included three exhibits (P. Exs. 1-3). In the absence of objection, I receive into the record of this case P. Exs. 1-3 and CMS Exs. 1-3.

II. Applicable Standard

The Board stated the standard for summary judgment:

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the

reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

Senior Rehab. & Skilled Nursing Ctr., DAB No. 2300, at 3 (2010) (citations omitted). The role of an ALJ in deciding a summary judgment motion differs from the ALJ's role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Vill. at Notre Dame, Inc.*, DAB No. 2291, at 5 (2009).

III. Issue

The issue in this case is whether a basis exists for CMS to revoke Petitioner's enrollment as a supplier in the Medicare program.

IV. Findings of Fact, Conclusions of Law, and Discussion

I make a single finding and conclusion set out below:

A legitimate basis exists for CMS to revoke Petitioner's enrollment in Medicare.

There is no dispute that Dr. Farber had his medical license revoked and cancelled effective October 20, 2009 and that CMS subsequently revoked Petitioner's enrollment in Medicare. CMS Exs. 1 and 2. Gulf South Medical & Surgical Institute, Inc. and Kenner Dermatology Clinic are Louisiana corporations solely owned by Dr. Farber. P. Br. and CMS Ex. 3, at 6.

The undisputed facts establish that CMS was authorized to revoke Dr. Farber's Medicare enrollment because he ceased to comply with applicable requirements due to the revocation of his license to practice medicine. CMS may revoke the billing privileges of a participating Medicare provider for noncompliance with Medicare enrollment requirements. 42 C.F.R. § 424.535(a)(1). Such noncompliance includes the revocation of a physician's license to practice medicine. Medicare will pay for a physician's services to its beneficiaries *only* where the physician is licensed to practice medicine in the State where he provides them. 42 C.F.R. § 410.20(b). Thus, a physician who has his license revoked, such as Petitioner, is not in compliance with Medicare enrollment requirements.

Dr. Farber argues "that [Gulf South] is a corporation separate and independent from its owner, that is in full compliance with its enrollment requirements, that it provides Part B medical services through the employment of physicians, nurse practitioners and physician assistants other than Dr. Farber . . . and that [Gulf South], as a separate and independent entity from its sole shareholder, did not suffer any reportable adverse legal action." P. Br. at 3. However, Dr. Farber is admittedly the principal and sole owner of Gulf South

Medical & Surgical Institute, Inc. and Kenner Dermatology Clinic, and when CMS revokes a supplier from the Medicare program, CMS automatically reviews all other related Medicare enrollment files that the revoked supplier has an association with (for example, as an owner) to determine if the revocation warrants an adverse action of the associated Medicare supplier. *See* 42 C.F.R. § 424.535(f).

Further, the Medicare Program Integrity Manual (MPIM), Ch. 10, § 4.20 C clearly states that, when a physician solely owns a practice and has his billing privileges revoked, the practice is automatically dissolved for purposes of Medicare enrollment, and all reassignments to the practice are automatically terminated as well. Thus, the revocation of Dr. Farber's state medical license does constitute enumerated grounds for CMS to revoke the PTAN numbers and Medicare billing privileges of corporations that Dr. Farber solely owns, including Gulf South Medical Surgical Institute, Inc. and Kenner Dermatology Clinic.

Additional grounds to revoke Petitioner's enrollment in Medicare may also exist due to Petitioner's failure to report his change in circumstances. Regulations require a participating physician to report to Medicare within 30 days an adverse legal action. 42 C.F.R. § 424.516(d)(1)(ii). However, because CMS may revoke Dr. Farber's enrollment based on his noncompliance with Medicare enrollment requirements, I need not further discuss Dr. Farber's failure to timely report his change in circumstances. *See Houston v. CMS*, DAB CR2071, at 4 (2010) ("License suspension and failure to inform CMS of a change in circumstances are independent grounds for revocation of enrollment. Either basis, standing alone, is sufficient authority for CMS to revoke Petitioner's enrollment.").

V. Conclusion

CMS had authority to revoke Petitioner's enrollment and billing privileges for noncompliance with Medicare enrollment requirements under 42 C.F.R. § 424.535(a)(1). I therefore grant the CMS motion for summary judgment and deny Petitioner's counter motion for summary judgment.

/s/
Joseph Grow
Administrative Law Judge