

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Joseph M. Asprec, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-266

Decision No. CR4648

Date: June 27, 2016

DECISION

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, revoked the Medicare enrollment and billing privileges of Joseph M. Asprec, M.D. (Dr. Asprec or Petitioner) based on Dr. Asprec's termination from California's Medicaid program (Medi-Cal). Petitioner requested a hearing before an Administrative Law Judge (ALJ) to dispute the revocation arguing that his termination from the Medi-Cal program has been lifted and that he is in the process of re-enrolling in the Medi-Cal program. I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges because Petitioner was terminated from California's Medicaid program at the time that CMS imposed its revocation.

I. Background and Procedural History

In 1985, the Medical Board of California (Medical Board) licensed Dr. Asprec to practice medicine in California. Petitioner Exhibit (P. Ex.) 4 at 63. In 2010, the Medical Board initiated a disciplinary case against Petitioner. P. Ex. 4 at 63. In June 2010, Petitioner signed a Stipulated Settlement and Disciplinary Order to dispose of the disciplinary case that the Medical Board initiated. P. Ex. 4 at 62-71. In the stipulated settlement, Petitioner agreed that the Medical Board could issue a disciplinary order in which it

revokes his medical license, but then stays the revocation and places Petitioner on probation for three years during which Petitioner will comply with various requirements, including completion of the Physician Assessment and Clinical Education Program (PACE). P. Ex. 4 at 65-67. Petitioner stipulated that if he failed to comply with the terms of his probation, the Medical Board could reinstate the revocation of his medical license. P. Ex. 4 at 69. In September 2010, the Medical Board adopted the Stipulated Settlement and Disciplinary Order as its decision in Petitioner's disciplinary case. P. Ex. 4 at 60-61.

In October 2013, the Medical Board sought to revoke Petitioner's probation because Petitioner failed to complete the PACE program, as required by the Stipulated Settlement and Disciplinary Order. P. Ex. 4 at 50. Petitioner did not dispute he failed to complete the PACE program, but rather provided reasons why he was unable to do so. P. Ex. 4 at 51-53. In June 2014, a California ALJ issued an order in which he vacated Petitioner's original probation, revoked his medical license, stayed the revocation, and placed Petitioner on three more years of probation with conditions. P. Ex. 4 at 56-59. However, the ALJ prohibited Petitioner from practicing medicine until he completed the PACE program. P. Ex. 4 at 56. In July 2014, the Medical Board adopted the ALJ's order and made it effective August 14, 2014. P. Ex. 4 at 48.

On January 23, 2015, the Medical Board acknowledged that Petitioner completed the PACE program. P. Ex. 4 at 46. However, on January 27, 2015, the California Department of Health Care Services terminated Petitioner's participation in the Medi-Cal program because the Medical Board prohibited Petitioner from practicing medicine effective August 14, 2014. CMS Ex. 1.

In a September 11, 2015 initial determination, CMS revoked Petitioner's Medicare enrollment and billing privileges under 42 C.F.R. § 424.535(a)(12) (termination or revocation of Medicaid billing privileges by a state Medicaid agency). CMS stated that it revoked Petitioner's billing privileges because:

[b]y letter dated January 27th, 2015, Joseph Asprec was informed that he was terminated from the California Medicaid program. California Medicaid confirmed that Joseph Asprec's appeal rights have been exhausted with respect to this termination.

CMS Ex. 2 at 1.

Petitioner requested reconsideration on September 17, 2015. CMS Ex. 3. Petitioner explained that he had completed the PACE program, had an active medical license, and was waiting for his application to participate in the Medi-Cal program again to be processed. CMS Ex. 3 at 1.

CMS issued a November 25, 2015 reconsidered determination upholding Petitioner's revocation. CMS Ex. 4.

On January 14, 2016, the California Department of Health Care Services lifted its termination of Petitioner's participation in Medi-Cal. P. Ex. 3.

On January 21, 2016, Petitioner timely requested a hearing to dispute CMS's revocation of his Medicare enrollment billing privileges. On January 29, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order) establishing deadlines for the submission of prehearing exchanges. In accordance with the Order, CMS filed its prehearing exchange, which included a brief and four exhibits (CMS Exs. 1-4). Petitioner filed a prehearing exchange consisting of a brief (P. Br.) and six exhibits (P. Exs. 1-6). CMS filed a reply brief.

II. Decision on the Record

Neither party objected to any of the proposed exhibits submitted by the opposing party. Order ¶ 7; Civil Remedies Division Procedures § 14(e). Therefore, I admit all of the proposed exhibits into the record.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested to cross-examine a witness. Order ¶¶ 8-10; Civil Remedies Division Procedures §§ 16(b), 19(b). Neither party submitted written direct testimony. Therefore, I issue this decision based on the written record. Order ¶ 11; Civil Remedies Division Procedures § 19(d).

III. Issue

Whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges under 42 C.F.R. § 424.535(a)(12).

IV. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

V. Findings of Fact, Conclusions of Law, and Analysis¹

Dr. Asprec is a physician. P. Ex. 2. Therefore, he is a supplier for purposes of the Medicare program. See 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (*compare* definition of *Supplier* and *Provider*), 410.20(b)(1). CMS may revoke the Medicare billing privileges of a supplier for any of the reasons stated in 42 C.F.R. § 424.535. Relevant to this case, CMS may revoke a supplier's Medicare billing privileges if:

(i) Medicaid billing privileges are terminated or revoked by a State Medicaid Agency.

(ii) Medicare may not terminate unless and until a provider or supplier has exhausted all applicable appeal rights.

42 C.F.R. § 424.535(a)(12).

1. Petitioner was enrolled in the Medi-Cal program; however, on January 27, 2015, the California Department of Health Care Services terminated Dr. Asprec's participation in Medi-Cal effective August 14, 2014.

Petitioner was enrolled in the Medi-Cal program. CMS Ex. 3 at 1. On January 27, 2015, the California Department of Health Care Services informed Petitioner that the Medical Board prohibited Petitioner from the practice of medicine effective August 14, 2014, and that:

As a provider of health care services, [Petitioner was] granted certain permissions to receive payment from the Medi-Cal program by operation of law with or without applying for enrollment. Pursuant to Welfare and Institutions Code, section 14043.6, the Department is required to automatically suspend these permissions in certain cases, which means that the affected individual or entity is precluded from being eligible to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to any individual or entity who has a license, certificate, or other approval to provide health care, which is revoked or suspended by a federal or state licensing, certification, or approval authority, has otherwise lost that license, certificate,

¹ My findings of fact and conclusions of law are set forth in italics and bold font.

or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending. This suspension is non-discretionary, and shall be effective on the date that the license, certificate, or approval was revoked, lost, or surrendered

Therefore . . . [Petitioner is] hereby notified that [Petitioner is] prohibited from being able to receive payment from the Medi-Cal program for an indefinite period of time, effective August 14, 2014 During the period of [Petitioner's] suspension, no person or entity, including an employer, may submit any claims to the Medi-Cal program for items or services rendered by [Petitioner]. If [Petitioner] is currently enrolled in Medi-Cal, that enrollment will be terminated.

CMS Ex. 1 at 1.

Therefore, I find that Petitioner was terminated from the Medi-Cal program effective August 14, 2014.

2. CMS had a legitimate basis for revoking Dr. Asprec's Medicare enrollment and billing privileges under 42 C.F.R. § 424.535(a)(12) because a state Medicaid agency terminated Dr. Asprec's participation in Medicaid and Dr. Asprec has no appeal of the termination pending.

a. The California Department of Health Care Services administers Medi-Cal, the California Medicaid program.

The California Department of Health Care Services terminated Dr. Asprec's Medi-Cal program participation. CMS Ex. 1. Medi-Cal is California's Medicaid program. *See Jesusa N. Romero, M.D.*, DAB CR380, at 1 n.1 (1995). The California Department of Health Care Services administers the Medi-Cal program. *See Cal. Welf. & Inst. Code* § 14000.03. Medi-Cal benefits are benefits that California provides to individuals who are eligible for Medicaid under Title XIX of the Act, which established the Medicaid program. *Cal. Welf. & Inst. Code* § 14005.60. Petitioner has not disputed that Medi-Cal is California's state Medicaid program. Therefore, I conclude that the state agency that terminated Dr. Asprec's participation in the Medi-Cal program is a state Medicaid agency within the meaning of 42 C.F.R. § 424.535(a)(12).

b. The California Department of Health Care Services terminated Dr. Asprec's Medi-Cal billing privileges.

Petitioner was enrolled in the Medi-Cal program prior to his termination from that program. CMS Ex. 3 at 1 (“I have submitted the provider enrollment application for the Medi-Cal program and am waiting for my application to be processed, so that I may once again be a participating provider in the California Medicaid program.”). The January 15, 2015 letter from the California Department of Health Care Services indicates that if Petitioner was enrolled in the Medi-Cal program, then that enrollment will be terminated. CMS Ex. 1 at 2. Petitioner confirms and admits that he was terminated from the Medi-Cal program. CMS Ex. 3 at 1.

Therefore, I conclude, for purposes of 42 C.F.R. § 424.535(a)(12), Dr. Asprec was terminated from the California Medicaid program.

c. Dr. Asprec does not have an appeal of his Medi-Cal termination pending.

The January 27, 2015 letter informing Dr. Asprec that he was being terminated from the Medi-Cal program indicated that this action was automatic and required by law. CMS Ex. 1 at 1. The letter did not indicate that there were any further appeal rights. CMS Ex. 1. Petitioner has not argued that he appealed the termination, but rather, that his termination has been lifted because he is once again licensed to practice medicine. P. Br. at 2; P. Ex. 3. Therefore, I conclude that Petitioner does not have an appeal of his Medi-Cal termination pending and that the termination may serve as a basis for a revocation under 42 C.F.R. § 424.535(a)(12).

Based on the evidence of record, CMS had a legitimate basis to revoke Petitioner's Medicare billing privileges under 42 C.F.R. § 424.535(a)(12).

3. I reject Petitioner's other arguments.

Petitioner asserts that he is now eligible to re-enroll in the Medi-Cal program and has an application presently pending. P. Exs. 3-5. Petitioner argues that I should stay this case until the Department of Health Care Services decides whether to re-enroll Petitioner in the Medi-Cal program, and asserts that this would benefit the patients he serves. P. Br. at 1-5.

A stay in this case would serve no purpose. I am not authorized to review whether CMS exercised its discretion wisely, merely whether CMS acted permissibly based on the law and facts in a case. *Letantia Bussell, M.D.*, DAB No. 2196, at 13 (2008) (“[T]he right to review of CMS's determination by an ALJ serves to determine whether CMS had the

authority to revoke . . . not to substitute the ALJ’s discretion about whether to revoke.”). Rather, “[t]he ALJ’s review of CMS’s revocation . . . is thus limited to whether CMS had established a legal basis for its actions.” *Id.* Petitioner’s potential re-enrollment in Medi-Cal is not relevant as to whether CMS legitimately revoked Petitioner’s enrollment effective October 11, 2015.

III. Conclusion

I affirm CMS’s determination to revoke Petitioner’s Medicare enrollment and billing privileges.

_____/s/_____
Scott Anderson
Administrative Law Judge