

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Advanced Diabetic Solutions, LLC,
(PTAN: 56638600040),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-796

Decision No. CR2987

Date: November 7, 2013

DECISION

I grant the motion of the Centers for Medicare & Medicaid Services (CMS) for summary disposition and sustain the CMS revocation of Petitioner Advanced Diabetic Solutions, LLC's enrollment as a supplier in the Medicare program.¹

I. Background

Prior to the revocation at issue in this case, Petitioner was enrolled in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). In a letter dated February 1, 2013, National Supplier Clearinghouse (NSC), the CMS contractor, informed Petitioner that its billing number was revoked retroactively, effective January 7, 2013. CMS Exhibit (Ex.) 1. The letter stated that an NSC inspector twice attempted to conduct a site visit of Petitioner's business location, but was unsuccessful because the facility was closed during the posted hours of operation, in violation of 42 C.F.R. §§ 424.57(c) and 424.535(a)(5)(ii). CMS Ex. 1. On February 7, 2013, Petitioner requested reconsideration. CMS Ex. 4. In its

¹ A "supplier" is a "physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." 42 C.F.R. § 400.202.

reconsideration request, Petitioner acknowledged that the facility was closed on those days, but offered explanations as to why its facility was not open on those two occasions. CMS Ex. 4. The Medicare hearing officer issued an unfavorable reconsideration decision on March 22, 2013. CMS Ex. 6. Petitioner timely filed a request for hearing (RFH) before an administrative law judge (ALJ) by letter dated May 20, 2013, and I issued an Acknowledgment and Initial Docketing Order (Order).

Pursuant to the Order, on June 5, 2013 CMS filed a Motion for Summary Judgment and accompanied it with a memorandum (CMS Motion). CMS proffered six exhibits in support of its Motion. On June 24, 2013, Petitioner filed its Response to the CMS Motion (P. Response) and proffered two copies of its employee handbook that I reference as P. Ex. 1. In the absence of objection from either party, I admit all the proffered exhibits into the record.

II. Controlling Statutes and Regulations

Pursuant to section 1834(j)(1)(A) of the Social Security Act, a DMEPOS supplier may not be reimbursed for items provided to an eligible Medicare beneficiary unless the supplier has a supplier number issued by the Secretary of the U.S. Department of Health & Human Services. To receive a supplier number, a DMEPOS supplier must meet and maintain each of the supplier enrollment standards set forth in 42 C.F.R.

§§ 424.57(c)(1)-(30). Among other things, a DMEPOS supplier must maintain a physical facility on an appropriate site which is in a location that is accessible to the public, staffed during posted hours of operation, and maintained with a visible sign and posted hours of operation. 42 C.F.R. § 424.57(c)(7). Also, a DMEPOS supplier must permit CMS or its agent to conduct on-site inspections to determine supplier compliance with each of the enrollment standards. 42 C.F.R. § 424.57(c)(8). CMS will revoke a currently-enrolled Medicare supplier's billing privileges if CMS or its agent determines that the supplier is not in compliance with any supplier enrollment standard. 42 C.F.R. § 424.57(d); *see also 1866ICPayday.com*, DAB No. 2289, at 13 (2009) (“[F]ailure to comply with even one supplier standard is a sufficient basis for revoking a supplier's billing privileges.”).

In addition, if an on-site visit reveals that a supplier is no longer operational, or otherwise fails to meet one of the supplier standards, CMS may revoke the supplier's Medicare billing privileges. 42 C.F.R. § 424.535(a)(5)(ii). A provider or supplier is operational if it “has a qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked . . . to furnish these items or services.” 42 C.F.R. § 424.502. The effective date of revocation is the date CMS determines the supplier was no longer operational. 42 C.F.R. § 424.535(g).

III. Issues, Findings of Facts and Conclusions of Law

A. Issue

The issue before me in this case is whether CMS or its contractor had a basis to revoke Petitioner's enrollment as a supplier in the Medicare program.

B. Findings of Facts and Conclusions of Law

CMS is entitled to summary disposition because the undisputed facts establish that Petitioner was not operational in violation of 42 C.F.R. § 424.57(c)(7).

Summary disposition is appropriate when a case presents no issue of material fact, and its resolution turns on questions of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The Departmental Appeals Board (Board) has stated that, “[w]hile the Federal Rules of Civil Procedure (FRCP) are not binding in this administrative appeal, we are guided by those rules and by judicial decisions on summary judgment” *Senior Rehabilitation and Skilled Nursing Center*, DAB No. 2300, at 3 (2010) (internal citation omitted). The party moving for summary judgment carries the initial burden of showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Id.* If the moving party carries its burden, then the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Id.*

Furthermore, in determining whether there are genuine issues of material fact, I must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. *Id.* (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). Finally, the Board has instructed that for purposes of summary judgment, an ALJ should not engage in assessing credibility or evaluating the weight of conflicting evidence. *Holy Cross Village at Notre Dame*, DAB No. 2291, at 5 (2009).

I find that summary disposition is appropriate in this case because there are no material facts in dispute, and because this case turns entirely on questions of law. I conclude that CMS's position is correct as a matter of law.

In this case, the material and dispositive facts are not in dispute. Petitioner was a DMEPOS supplier that participated in the Medicare program. Petitioner's posted hours of operation were Monday through Friday, 9:00 a.m. through 4:30 p.m. CMS Exs. 2-3. On December 24, 2012, at approximately 12:32 p.m., an NSC site inspector attempted to inspect Petitioner's facility, but found the facility closed and unoccupied. *Id.* The site inspector attempted a second site visit on January 7, 2013, at approximately 10:20 a.m., but again Petitioner's facility was closed and unoccupied. *Id.*

