Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Sonoma Prosthetic Eyes
Docket No. A-15-24
Decision No. 2622
March 3, 2015

FINAL DECISION ON REVIEW OF ADMINISTRATIVE LAW JUDGE DECISION

Sonoma Prosthetic Eyes (Sonoma), a California company that was enrolled in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), requests review of the November 12, 2014 decision of the Administrative Law Judge (ALJ). *Sonoma Prosthetic Eyes*, DAB CR3455 (2014) (ALJ Decision). The ALJ sustained the revocation of Sonoma's Medicare billing privileges by the Centers for Medicare & Medicaid Services (CMS) for noncompliance with the DMEPOS supplier standards in 42 C.F.R. § 424.57(c)(7)(i)(C) (requiring that the supplier be accessible and staffed during posted hours of operation) and 42 C.F.R. § 424.57(c)(7)(i)(D) (requiring the supplier to post hours of operation). For the reasons stated below, we affirm the ALJ's conclusion that CMS lawfully revoked Sonoma's billing privileges, but confine our decision to revocation based on a finding of noncompliance with 42 C.F.R. § 424.57(c)(7)(i)(D). We also hold that the effective date of revocation is November 27, 2013, and not November 12, 2013, the effective date imposed by the ALJ.

Legal Background

Section 1834(j)(1)(A) of the Social Security Act and 42 C.F.R. § 424.505 require a DMEPOS supplier to be enrolled in the Medicare program and be issued a valid supplier number to bill and receive Medicare payment for covered DMEPOS items provided to Medicare beneficiaries. In order to enroll in the Medicare program and receive a DMEPOS supplier number, a supplier must meet the standards in 42 C.F.R. § 424.57(c). Once enrolled, the supplier must continue to remain compliant with the section 424.57(c) standards. Under section 424.57(c)(7) (commonly known as Supplier Standard 7), a DMEPOS supplier is required to maintain "a physical facility on an appropriate site." An "appropriate site" must be "accessible and staffed during posted hours of operation." 42 C.F.R. § 424.57(c)(7)(i)(C). The supplier's place of business also must have posted hours of operation. *Id.* § 424.57(c)(7)(i)(D).

CMS, through its contractors, performs on-site inspections to verify compliance with the supplier standards and other Medicare requirements. 42 C.F.R. §§ 424.57(c)(8), 424.517. CMS is authorized to revoke a DMEPOS supplier's billing privileges for the failure to meet the supplier standards. *Id.* § 424.57(d). The effective date of revocation for noncompliance with any of the section 424.57(c) standards is thirty (30) days after the supplier is sent notice of the revocation. *Id.* § 424.57(e).[1]

CMS is also authorized to revoke a supplier's billing privileges for any of the reasons in section 424.535(a). (Section 424.535 applies to all types of Medicare providers and suppliers, not just DMEPOS suppliers.) One such reason is when, upon on-site review, the Part B supplier is found not to be operational to furnish Medicare covered items or services. 42 C.F.R. § 424.535(a)(5)(ii). A supplier is "operational" if it 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 items and services. *Id.* § 424.502.

Factual and Procedural Background[2]

Sonoma was a Medicare DMEPOS supplier effective August 30, 2013. CMS Ex. 5, at 1; P. Ex. 2, at 2.[3] At 10:30 a.m. on October 1, 2013, an inspector from Overland Solutions, Inc., which is contracted with National Supplier Clearinghouse (NSC), a division of Palmetto GBA, a CMS contractor, visited Sonoma's business address, as stated in Sonoma's enrollment application, to perform an inspection. CMS Ex. 4, at 1 (Site Verification Survey Form). As the Site Verification Survey Form indicates, the inspector knocked on the locked door twice and waited, but no one answered, and the lights in the office were off. *Id.* The inspector returned at 1:00 p.m. on October 4, 2013, again knocked on the locked door twice and waited, but no one answered. Again the lights

[1] The editorial note following section 424.57 in the Code of Federal Regulations states that a January 2, 2009 final rule (74 Fed. Reg. 198) re-designated paragraph (d) of section 424.57 as paragraph (e), but that this and other changes to section 424.57 were not incorporated into the codified text of the regulations because of an "inaccurate amendatory instruction." As we explain later, we apply the re-designated section 424.57(e) to determine the effective date of revocation.

[2] The factual information in this section, unless otherwise indicated, is drawn from undisputed findings of fact in the ALJ Decision and undisputed facts in the record and is presented to provide a context for the discussion of the issues raised on appeal. Nothing in this section is intended to replace, modify, or supplement the ALJ's findings of fact.

[3] Citations to the evidence are to CMS's exhibits to its Pre-Hearing Brief and Motion for Summary Judgment dated September 22, 2014 (CMS Ex.) and Sonoma's exhibits to its Brief dated November 2, 2014 (P. Ex.).

were off. *Id.* In both instances the inspector also determined that Sonoma did not have its hours of operation posted. *Id.*[4] On the Site Verification Survey Form the inspector marked the box designated "N" for No in response to the question "Does the facility appear to have employees/staff present?" *Id.*

By letter dated October 28, 2013, NSC, on behalf of CMS, notified Sonoma that its Medicare supplier billing privileges were being revoked retroactive to October 4, 2013, the date CMS determined Sonoma was not operational (i.e., the date of the second inspection attempt), and that Sonoma was barred from re-enrolling in Medicare for two years from the date of revocation. CMS Ex. 3, at 1. The letter stated that Sonoma's billing privileges were revoked for noncompliance with the supplier standards in section 424.57(c) and quoted section 424.57(c) in full. *Id.* at 1-2. The letter also stated that Sonoma was "not operational" in violation of 42 C.F.R. § 424.535(a)(5)(ii). *Id.* at 2.

Sonoma requested reconsideration of the revocation. CMS Ex. 2; P. Ex. 6. By letter dated December 24, 2013, the NSC hearing officer notified Sonoma that the revocation was being upheld for noncompliance with Supplier Standard 7 (that is, the failure to maintain a physical facility in accordance with section 424.57) based on two unsuccessful attempts to inspect Sonoma. CMS Ex. 1.

Sonoma asked for a hearing before an ALJ. CMS moved for summary judgment in its favor, asserting that there was no need for a hearing because the case requires only application of the authorities to the undisputed material facts which establish that Sonoma's billing privileges were properly revoked. The ALJ decided that there was no need to determine whether the criteria for summary judgment were met because neither CMS nor Sonoma offered written direct testimony and, consequently, no need to convene an in-person hearing to permit the cross-examination of witnesses. ALJ Decision at 2.

The ALJ stated that he would not reach the issue of whether revocation under 42 C.F.R. § 424.535(a)(5)(ii) is proper. *Id.* at 4. The ALJ upheld the revocation for noncompliance with section 424.57(c)(7), the sole basis cited in the reconsidered determination, because "[t]he facts plainly establish grounds for revoking [Sonoma's] enrollment for noncompliance with the requirements of 42 C.F.R. § 424.57(c)(7)." *Id.* at 2, 4. Sonoma

[4] CMS Exhibit 4, page 2 is a black-and-white reproduction of six photographs of the Sonoma facility presumably taken by the inspector who attempted the inspections in October 2013. The date-and-time stamp information on three of the six photographs is legible and indicates the year 2012 (stamped "10.01.2012 10:35"; "10.04.2012 12:57"; and "10.04.2012 12:58"). Two of these three photographs are close-ups of the front door of the Sonoma facility. While a telephone number is on the door, the hours of operation are not (stamped "10.01.2012 10:35" and "10.04.2012 12:58"). We presume that the date-and-time stamp information on the photographs inaccurately reflects 2012 instead of 2013, when the inspections of Sonoma were attempted. Sonoma did not raise any objection concerning the photographs, which the reconsidered decision (CMS Ex. 1) and CMS's Pre-Hearing Brief and Motion for Summary Judgment, page 3, stated were evidence of the failure to have hours of operation posted on the attempted inspection dates.

was "obligated to post its hours of operation and, moreover, it was obligated to be accessible during whatever hours it posted." *Id.* at 2. But Sonoma "failed in both respects based on the facts offered by CMS." *Id.* Specifically, the ALJ found that, at the time of the NSC inspector's visits on October 1 and October 4, 2013, "the site was dark and no one answered the door [and Sonoma] did not have a visible sign posting its hours of operation." *Id., citing* CMS Ex. 4. The ALJ concluded that revocation was mandatory under these circumstances pursuant to 42 C.F.R. § 424.57(d), which provides that the effective date of revocation for noncompliance with paragraphs (b) and (c) of section 424.57 is 15 days after the notice of revocation is sent to the supplier. *Id.* at 3, 5-6. Accordingly, the ALJ determined that the effective date of revocation was November 12, 2013, 15 days after October 28, 2013, the date of the notice of revocation. *Id.* at 5-6.

Sonoma timely requested review of the ALJ Decision by the Board.

Standard of Review

The standard of review on a disputed factual issue is whether the ALJ decision is supported by substantial evidence in the record as a whole. The standard of review on a disputed issue of law is whether the ALJ decision is erroneous. *Guidelines – Appellate Review of Decisions of Administrative Law Judges Affecting a Provider's or Supplier's Enrollment in the Medicare Program* (*Guidelines*). The Guidelines are available at http://www.hhs.gov/dab/divisions/appellate/guidelines/prosupenenrolmen.html.

Analysis

1. The ALJ correctly concluded that CMS was authorized to revoke Sonoma's Medicare billing privileges for noncompliance with 42 C.F.R. § 424.57(c)(7).

As discussed below, the ALJ correctly concluded that the record established that Sonoma did not have its hours of operation posted when the NSC inspector attempted to visit on October 1 and October 4, 2013 and, therefore, that CMS was authorized to revoke Sonoma's DMEPOS supplier billing privileges based on its noncompliance with section 424.57(c)(7)(i)(D).

Sonoma does not dispute the ALJ's findings that at the time of the NSC inspector's visits on October 1 and October 4, 2013, "the site was dark and no one answered the door [and Sonoma] did not have a visible sign posting its hours of operation." ALJ Decision at 2, *citing* CMS Ex. 4. However, Sonoma takes issue with the following statements, on page 3 of the ALJ Decision:

> [Sonoma] asserts that it was open "by appointment only" and that CMS's contractor was aware of that. [Sonoma's] brief at 2. It contends that it was available immediately by telephone and that it "scheduled . . . appointments at the earliest convenient time for the inspector and in both instances gave prompt and unlimited access to the office." *Id.* I infer from this assertion that [Sonoma] is asserting that it had made appointments with the inspector to be open for inspection and that the Medicare contractor knew that [Sonoma's] office was open only by appointment. But, [Sonoma] has not explained why – if appointments were made – the inspector arrived to find a dark and un-staffed facility.

Sonoma asserts that, contrary to what the ALJ indicated in these statements, its brief before the ALJ was not referring to the two October 2003 visits, but to two *earlier, scheduled* site inspections of Sonoma performed on March 26, 2013 and July 31, 2013. Sonoma takes the position that CMS (or the NSC) recognized when it scheduled the latter site visits that Sonoma was authorized to be open only by appointment. Request for Review (RR) at 2.[5] Sonoma then argues that the failure to contact Sonoma in advance to schedule an inspection in October 2013 was a violation of the "Social Security Act, Medicare regulations, Medicare Program Integrity Manual and/or CMS manual instructions for enrollees with open By Appointment Only status." *Id.* In effect, Sonoma's argument is that the revocation was unlawful because it was based on the findings from an unscheduled inspection.

It appears that the ALJ may have misunderstood Sonoma's argument because Sonoma's brief below did identify two pre-October 2013 inspections, on March 26, 2013 and July 31, 2013, and asserted that they were scheduled inspections. Moreover, CMS acknowledges that Sonoma, a custom prosthetics supplier, is exempt under 42 C.F.R. § 424.57(c)(30) (commonly known as Supplier Standard 30) from the requirement that Sonoma be open to the public a minimum thirty (30) hours per week, and that this exemption may allow Sonoma to operate by appointment only, consistent with what Sonoma claims was its status. Response Br. at 6.

However, even assuming Sonoma was authorized to operate by appointment only, that is ultimately irrelevant. Section 424.57(c)(7) requires a supplier to post its hours of operation, as well as to be accessible and staffed during posted hours. Sonoma points to no reason why a supplier that is authorized to be open by appointment only could not post its hours. In its enrollment application, Sonoma indicated that its hours of operation

[5] Sonoma's request for review is in the form of a five-page brief, which is not paginated.

would be 9:00 a.m. to 5:00 p.m., Monday through Saturday, by appointment only. CMS Ex. 6, at 3. Thus, Sonoma could have met the requirement to post its hours of operation by posting that information. Sonoma does not dispute the ALJ's finding that it did not have a visible sign posting its hours of operation. Because the undisputed evidence supports a finding that Sonoma did not have its hours of operation posted as required by section 424.57(c)(7)(i)(D), we have a sufficient basis on which to uphold the revocation. Accordingly, we need not reach the question whether a scheduled inspection was required to determine whether Sonoma was accessible and staffed during posted hours.[6]

Sonoma also takes exception to the ALJ's statement, "[Sonoma] alleges that it was not provided an opportunity to file a corrective action plan." ALJ Decision at 3. The ALJ proceeded to hold that the regulations governing participation by DMEPOS suppliers do not provide for such an opportunity, but instead make mandatory the revocation of a supplier's billing privileges for noncompliance with section 424.57(c). *Id.* The ALJ wrote, "A corrective action plan, had [Sonoma] submitted one, would have been irrelevant." *Id.* Sonoma states that the ALJ mischaracterized its statements about the lack of prior opportunity to submit a corrective action plan before the revocation of billing privileges. Sonoma apparently reads the ALJ's decision to mean that the ALJ found that Sonoma specifically asserted that it "should have been" afforded an opportunity redress the deficiency and was wronged in not having been given such an opportunity. Sonoma states that it was merely affirming that it was not in fact allowed to file a corrective action plan. RR at 3.[7]

We read the language in page 3 of the ALJ Decision ("[Sonoma] alleges that it was not provided an opportunity to file a corrective action plan.") as simply a restatement of Sonoma's position. We observe that Sonoma is not entirely clear or consistent on its position on the opportunity to file a corrective action plan. While Sonoma did not

[6] Sonoma submitted with its reply to CMS's brief in opposition to Sonoma's request for review a one-page printout of a December 2014 email communication between Sonoma and NSC, the content of which purportedly memorializes NSC's acknowledgment that Sonoma's "by appointment only" status means that inspections of Sonoma must be scheduled in advance. This evidence is not admissible because the Board decides supplier enrollment appeals like the instant case based on the evidentiary record on which the ALJ based his or her decision. *See* 42 C.F.R. § 498.86(a); *Guidelines*. In any event, even if this evidence were admitted, it would not alter our conclusion that Sonoma was not in compliance with section 424.57(c)(7).

[7] Sonoma surmises, with no foundation, that the ALJ's misstatements about Sonoma's position on the corrective action plan and on the two prior scheduled inspections indicate the ALJ's bias against Sonoma. RR at 3. We find no basis for disqualifying the ALJ based on bias. *See Beatrice State Developmental Ctr.*, DAB No. 2311, at 9-12 (2010) (holding, in part, that alleged ALJ bias, to be disqualifying, must have resulted from the ALJ's reliance on an extrajudicial source, and not from what the ALJ learned while presiding over the case).

expressly assert before the ALJ that Sonoma was wronged in not having been provided such an opportunity, it seems to assert before the Board that it was indeed wronged. Sonoma now states that a corrective action plan "could have allowed an officer to come back and point out directly what deficiency of signage (if any) needed to be resolved . . . Without question [Sonoma] would have been able to remedy this in time to save [Sonoma's] office." RR at 5. In so stating Sonoma relies on 42 C.F.R. § 424.535 as applicable authority, quoting a part of the language in section 424.535(a)(1). *Id.* at 4. Section 424.535(a)(1) states, in pertinent part:

> All providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges, except for those imposed under paragraphs (a)(2), (a)(3), or (a)(5) of this section.

Sonoma's reliance on this provision is misplaced. As the ALJ noted, the initial determination cited as the basis for revocation for noncompliance both sections 424.57(c)(7) and 42 C.F.R. § 424.535(a)(5), but the reconsidered determination that was appealed to the ALJ cited only the former. The ALJ therefore declined to reach the issue of noncompliance with the latter and upheld the revocation based only on noncompliance with section 424.57(c)(7). ALJ Decision at 4. The ALJ then found that the regulations do not mandate CMS to allow a noncompliant supplier an opportunity to submit a corrective action plan before revoking the supplier's billing privileges for noncompliance with section 424.57(c)(7). *Id.* at 3. The ALJ rightly did not consider (nor do we) whether Sonoma should have been given an opportunity to file a corrective action plan in accordance with the language of section 424.535(a)(1) on which Sonoma relies because the ALJ did not review and uphold the revocation based on noncompliance with section 424.535(a)(5)(ii).[8]

Sonoma also states that its billing privileges were "green lighted" based on the prior inspections allegedly performed in March and July 2013 and that Sonoma continued to maintain "all aspects of the physical location witnessed and documented during previous scheduled visits . . . ." RR at 5; P. Ex. 2, at 2. Compliance with participation requirements as determined based on prior inspections, even if established as fact, ultimately is irrelevant here. Under 42 C.F.R. § 424.517(a), CMS reserves the right, "when deemed necessary," to perform on-site review of a supplier to verify that the enrollment information submitted to CMS or its agents is accurate and to determine compliance with Medicare enrollment requirements. Under 42 C.F.R. §§ 424.516(a)(1)

[8] Quoting the ALJ's statement that he would not reach the issue of whether revocation under 42 C.F.R. § 424.535(a)(5)(ii) is proper, Sonoma states it was "erroneously cited with non operational violation 42 C.F.R. § 424.535(a)(5)(ii)." RR at 2-3. But Sonoma does not specifically assert that the ALJ's decision to *decline* to rule on this issue and rule only on noncompliance with Supplier Standard 7 was itself improper.

and (a)(2), CMS must verify that a supplier "meets, and continues to meet," applicable program requirements, to include "[c]ompliance with title XVIII of the [Social Security] Act and applicable Medicare regulations" and "[c]ompliance with Federal and State licensure, certification, and regulatory requirements, as required, based on the type of services or supplies the provider or supplier type will furnish and bill Medicare." In addition, section 424.517(a) authorizes CMS, "when deemed necessary," to perform on-site review to determine, and verify, the supplier's compliance. These regulations clearly contemplate that CMS, through a contracted inspector, will conduct inspections from time to time to ensure that a supplier continues to meet the applicable participation requirements. Thus, the Board cannot simply infer that Sonoma was in compliance and remained so based on Sonoma's repetitive assertions that it remained compliant following successful inspections in March and July 2013 when undisputed documentary evidence supports a finding of noncompliance with section 424.57(c)(7)(i)(D) (requiring the posting of hours of operation) on two inspection attempts in October 2013. CMS Ex. 4, at 1-2.

That brings us to the final point of dispute. Sonoma states that the October 28, 2013 notice of revocation was the "only notice" Sonoma ever received and that Sonoma did not learn about the alleged "misconduct" until it received mail in July 2014, about eight months later. RR at 5; Reply Br. at 5. Sonoma does not clearly explain to the Board what mail was purportedly received late. Nor did it make its position clear before the ALJ.

We note, however, that Sonoma's exhibits below included a copy of the front side of an envelope from NSC addressed to Sonoma and bearing a postmark date of July 12, 2014. P. Ex. 3. In pages 3 and 4 of Sonoma's brief to the ALJ, Sonoma stated that the envelope included a copy of NSC's November 29, 2013 letter acknowledging Sonoma's reconsideration request and a copy of the December 24, 2013 reconsidered determination. Sonoma asserted that it "never" received these notices because they were sent to an "incorrect" address. Apparently, Sonoma was asserting that it "never" received these notices because they were sent to Sonoma's *business* address and not Sonoma's *mailing* address. Nov. 2, 2014 Brief by Petitioner at 4; CMS Ex. 6 (enrollment application stating both business and mailing addresses). The ALJ did not specifically discuss Sonoma's contentions concerning the late delivery of mail, but rejected as meritless "additional arguments that add up to a complaint that [Sonoma] was denied due process by CMS." ALJ Decision at 3. Possibly, Sonoma is reasserting its contention concerning the delivery of mail before the Board because Sonoma believes that the ALJ Decision did not address it specifically.

There is no dispute that Sonoma was sent the October 28, 2013 revocation notice by certified mail, return receipt requested. CMS Ex. 3, at 1. There is also no question that Sonoma received the revocation notice shortly thereafter, because Sonoma then appealed it, as evident on Sonoma's request for reconsideration. P. Ex. 2, at 2. The Board

therefore questions how Sonoma can then assert that it did not learn about the alleged "misconduct" until much later, in July 2014. As for the allegedly late delivery of NSC's November 29, 2013 letter acknowledging the reconsideration request and a copy of the December 24, 2013 reconsidered determination, it is simply not true that Sonoma "never" received these notices. Sonoma received them, even if, as Sonoma asserts, they did not reach Sonoma until July 2014. Sonoma itself offered the ALJ a copy of NSC's November 29, 2013 letter acknowledging the reconsideration request. P. Ex. 6. As for the December 24, 2013 reconsidered determination, Sonoma received it, even if late, because Sonoma then appealed that determination to the ALJ.

As far as we can determine, Sonoma's underlying point on all of this discussion is that allegedly late delivery of mail somehow infringed on Sonoma's right to "full and fair access to the administrative process" (RR at 5) and caused Sonoma to miss an opportunity to "keep [its] patient base from being extinguished" and to "save" its "business" (Reply Br. at 5). But Sonoma was not deprived of its right to appeal the notice of revocation. It availed itself of its right to appeal. And, delayed delivery of NSC's or Palmetto GBA's subsequent notice(s) to Sonoma, even if true as alleged, did not actually harm Sonoma's position on its appeal to the ALJ. Sonoma stated in its request for ALJ hearing that it received a "duplicate notice" in July 2014 as an explanation of why it was appealing the reconsidered determination late. The ALJ did not dismiss Sonoma's appeal for untimeliness. Sonoma does not articulate how, specifically, notice(s) from NSC or Palmetto GBA, if received earlier, would have enabled Sonoma to stop or delay revocation. To the extent that Sonoma may be referring to advance opportunity to correct a cited deficiency, we have addressed this issue above.

Based on the foregoing reasons and bases, the Board sustains the ALJ's determination that Sonoma's DMEPOS supplier billing privileges were properly revoked for noncompliance with 42 C.F.R. § 424.57(c)(7) and, specifically, the requirement in section 424.57(c)(7)(i)(D) to have hours of operation posted.

2. The effective date of revocation based on noncompliance with 42 C.F.R. § 424.57(c)(7) is November 27, 2013, thirty (30) days after the date on which CMS issued its initial revocation determination.

Since we, like the ALJ, sustain the revocation of Sonoma's billing privileges based on a finding of noncompliance with section 424.57(c)(7), the effective date of revocation should be determined in accordance with the effective date provisions of section 424.57. The ALJ determined that the effective date of revocation based on these provisions was November 12, 2013, 15 days after the date of notice of revocation. The Board, however, determines that the effective date of revocation is November 27, 2013, 30 days after the date of notice of revocation.

As it currently appears in the Code of Federal Regulations, paragraph (d) of section 424.57 states that the effective date of revocation based on a violation of section 424.57(c) is "*15 days* after the [supplier] is sent notice of the revocation" (italics added). The ALJ erroneously relied on this text in determining that the effective date of Sonoma's revocation should be November 12, 2013. ALJ Decision at 5-6. As we noted above, the regulation's editorial note states that a January 2, 2009 final rule (74 Fed. Reg. 198) re-designated paragraph (d) of section 424.57 as paragraph (e) but that this and other changes to section 424.57 were not incorporated into the codified text of the regulation because of an "inaccurate amendatory instruction." On August 27, 2010, CMS published a final rule in the Federal Register which revised paragraph (e) – that is, the re-designated paragraph (d) – to extend the effective date of a revocation based on section 424.57(c) *from 15 to 30 days* after the supplier is notified of the revocation. 75 Fed. Reg. at 52,648-52,649. CMS indicated that it was making this change "[i]n order to be consistent with [its] regulations at [42 C.F.R.] § 424.535(g)," which states a general rule that the effective date of a revocation is 30 days from the date CMS mails the supplier notice of its revocation determination. *Id.* at 52,645. As re-designated and amended by the January 2, 2009 and August 27, 2010 final rules, the effective date provision in section 424.57 now provides in relevant part:

> (e) Failure to meet standards — (1) Revocation. CMS revokes a supplier's billing privileges if it is found not to meet the standards in paragraphs (b) and (c) of this section. Except as otherwise provided in this section, the revocation is effective 30 days after the entity is sent notice of the revocation, as specified in § 405.874 of this subchapter. . . .

Id. at 52,648.[9]

In multiple decisions issued before Sonoma appealed CMS's decision to revoke to the ALJ, the Board described the history of section 424.57's effective date provision and applied the 30-day rule to determine the effective date. *Norpro Orthotics & Prosthetics, Inc.*, DAB No. 2577 (2014), *Benson Ejindu, d/b/a Joy Medical Supply*, DAB No. 2572 (2014), and *Neb Group of Arizona LLC*, DAB No. 2573 (2014) are three such decisions. Consistent with the analysis in these decisions, we conclude that the 30-day provision applies and, thus, find that the effective date of Sonoma's revocation is November 27, 2013, which is 15 days later than the date the ALJ determined was the effective date.

[9] The reference to section 405.874 in section 424.57(e) is outdated. The relevant portions of that regulation have been moved to 42 C.F.R. § 405.800(b). *See* 77 Fed. Reg. 29,002, 29,016-29,017 (May 12, 2012). Section 405.800(b)(2) presently states that "[t]he revocation of a provider's or supplier's billing privileges is effective 30 days after CMS or the CMS contractor mails notice of its determination to the provider or supplier, except if the revocation is based on a Federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contractor not to be operational."

Conclusion

For the reasons stated above, we affirm the ALJ's determination that CMS was authorized to revoke Sonoma's Medicare billing privileges, but we reverse the ALJ's determination that the effective date of the revocation was November 12, 2013. We hold that the effective date of the revocation is November 27, 2013.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Susan S. Yim
Presiding Board Member