

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

BioniCare Medical Technologies, Inc.
(Supplier No: 4697390001),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-10-156

Decision No. CR2113

Date: April 14, 2010

DECISION

In this case, the undisputed evidence establishes that, about two years after it ceased doing business as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), the Centers for Medicare and Medicaid Services (CMS) revoked Petitioner's supplier number. Petitioner, BioniCare Medical Technologies, Inc., nevertheless appeals the revocation, complaining that Medicare contractors have refused to pay claims for services it rendered while it still had a supplier number.

The parties have filed their briefs and exhibits.¹ With its brief (CMS Br.), CMS submits four exhibits (CMS Exs. 1-4). Petitioner has filed its response (P. Br.) with ten additional exhibits (P. Exs. 1-10).

Because the parties agree that Petitioner was not operational at the time CMS revoked its supplier number, and because I have no authority to review a contractors' denials of Medicare Part B claims -- the gravamen of Petitioner's appeal -- I dismiss Petitioner's hearing request. 42 C.F.R. § 498.70.

¹ Inexplicably, CMS does not move to dismiss. However, since Petitioner limits its arguments to an issue that I cannot resolve, I may, on my own, dismiss its request. 42 C.F.R. § 498.70.

Because Petitioner admits that it was not operational, CMS properly revoked its supplier number, and I have no authority to review Petitioner's claims for reimbursement under Medicare Part B.²

To receive Medicare payments for items furnished to a Medicare-eligible beneficiary, a supplier of medical equipment and supplies must have a supplier number issued by the Secretary of Health and Human Services. Social Security Act (Act) § 1834(j)(1)(A).

To obtain and retain its supplier number, a Medicare supplier must meet the standards set forth in 42 C.F.R. § 424.57(c), and CMS may revoke its billing privileges if it fails to do so. 42 C.F.R. §§ 424.57(c)(1) and (d); 42 C.F.R. § 424.535(a)(1). Among other requirements, the supplier must permit CMS or its agents to conduct on-site inspections to ascertain its compliance with governing regulations. The supplier's location must be accessible during reasonable business hours, and it must maintain a visible sign and post its hours of operation. 42 C.F.R. § 424.57(c)(8). If, based on an on-site review, CMS determines that the supplier is no longer operational to furnish Medicare-covered items or services, or is not otherwise meeting Medicare enrollment requirements, it may revoke the supplier's billing privileges. 42 C.F.R. § 424.535(a)(5). A supplier is "operational" when 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.

Here, Petitioner once participated in the Medicare program as a DMEPOS supplier. *See* 42 C.F.R. § 424.57. Petitioner concedes that it ceased supplying such equipment and supplies to Medicare beneficiaries in July 2007, almost two years before its supplier number was revoked. P. Br. at 2. Not surprisingly, investigators working for the Medicare contractor, Palmetto GBA National Supplier Clearinghouse, found the facility closed and the premises unoccupied, when they visited in January and March 2009. CMS Exs. 1-4. Because the investigators could not inspect the premises, the contractor revoked Petitioner's supplier number effective March 17, 2009. In a decision dated September 24, 2009, a Medicare hearing officer affirmed the revocation.

Based on these disputed facts, I find that CMS properly revoked Petitioner's supplier number, because the facility was no longer operational. 42 C.F.R. § 424.535(a)(5). Moreover, Petitioner was not in compliance with all of the standards set forth in section 424.57(c), because it did not permit CMS or its agents to conduct on-site inspections, and its supplier number properly could be revoked on that basis. 42 C.F.R. §§ 424.57(c)(8) and (d).

² I make this one finding of fact/conclusion of law.

Petitioner does not really challenge the loss of its supplier number here. Instead, it complains that Medicare contractors have refused to reimburse it for items it supplied while it still had a valid supplier number. Petitioner may, in fact, be entitled to review of those denials, but not in this forum. A party dissatisfied with an initial determination regarding claims for benefits under Medicare Part B may request review and, if dissatisfied with the review determination, may request a carrier hearing. A party to the carrier hearing then has a right to a hearing before an administrative law judge, if it files a timely request and meets requirements as to the amount in controversy. Such claims are heard by administrative law judges with the Office of Medicare Hearings and Appeals. 42 C.F.R. §§ 405.803, 405.807, 405.815, 405.821, 405.855. *See* Medicare Prescription Drug Improvement and Modernization Act of 2003 (P.L. 108-173) § 931. My jurisdiction, on the other hand, stems from 42 C.F.R. § 498.3(b)(17), and my review is limited to CMS's determination to revoke Petitioner's Medicare enrollment.

Finally, I reject Petitioner's argument that revocation of Petitioner's supplier number violates the "automatic stay" provisions of the bankruptcy statute, 11 U.S.C. § 362(a). The bankruptcy statute explicitly provides that a bankruptcy petition does not stay the exclusion of the debtor from participation in the Medicare program. 11 U.S.C. § 362(b)(28). Nor is there any merit to Petitioner's claim that revocation of Petitioner's supplier number affords CMS some pecuniary advantage. Petitioner concedes that it stopped its Medicare participation years ago; revocation of its supplier number simply confirms that it may not bill for items it admits it has not supplied to any Medicare beneficiary since July 2007.

Thus, I find that CMS properly revoked Petitioner's supplier number, and I dismiss Petitioner's claims for reimbursement.

/s/
Carolyn Cozad Hughes
Administrative Law Judge