

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Pisani's Orthotics & Prosthetics, Inc.,
(PTAN: 0333950001),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-926

Decision No. CR2941

Date: October 3, 2013

DECISION

Petitioner, Pisani's Orthotics & Prosthetics, Inc., is a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), located in Lake Worth, Florida, that, until recently, participated in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) has revoked its Medicare provider number, and Petitioner appeals. CMS now moves for summary judgment.

Neither party presents any witness testimony, so an in-person hearing would serve no purpose. This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

Because the supplier was not operational at the address it provided to the Medicare contractor, CMS properly revoked its provider number.

Background

Until its Medicare provider number was revoked, effective February 19, 2013, Petitioner participated in the Medicare program as a supplier of DMEPOS. In a letter dated March 22, 2013, the Medicare contractor, Palmetto GBA, notified Petitioner that its Medicare

supplier number was revoked effective February 19, 2013, because the contractor's site investigator found a different business located at the address the supplier had provided. As a result, the investigator could not inspect the facility to verify the supplier's compliance with supplier standards. CMS Exhibit (Ex.). 1 at 2.

In a letter dated April 2, 2013, Petitioner requested reconsideration. Petitioner's letter explains that its office relocated and, after receiving a Medicare contractor's letter requesting revalidation, it "initiated" that process. Petitioner admits that, at the times of its relocation and the attempted inspection, "the necessary change-of-address forms were not filed" CMS Ex. 3 at 1.

In a reconsideration determination, dated May 23, 2013, CMS affirmed the revocation. CMS Ex. 5. Petitioner now appeals that determination. CMS has filed a motion for summary judgment/pre-hearing brief (CMS Br.), and Petitioner has filed a pre-hearing brief (P. Br.). CMS submits 6 exhibits (CMS Exs. 1-6), and Petitioner submits 7 exhibits (P. Exs. 1-7). In the absence of any objections, I admit into evidence CMS Exs. 1-6 and P. Exs. 1-7).

Discussion

Summary Judgment. CMS has moved for summary judgment, arguing that no material facts are in dispute. To grant summary judgment, I must draw all reasonable inferences in the light most favorable to the non-moving party and find that the case presents no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 2-3 (2009); *Illinois Knights Templar Home*, DAB No. 2274, at 3-4 (2009), and cases cited therein.

But I need not reach that issue here, because neither party asks for an in-person hearing. My pre-hearing order directed the parties to file, among other submissions, a list of all proposed witnesses, and to include, as a proposed exhibit, the written direct testimony of any proposed witness. Acknowledgment and Pre-hearing Order at 3, ¶ 4(c)(iv). The order explains that an in-person hearing is necessary only if a party files a witness's admissible, written direct testimony, and the opposing party asks to cross-examine. *Id.* at 5, ¶ 10. Because neither party lists any witnesses, an in-person hearing would serve no purpose. The case can therefore be decided based on the written record.

CMS properly revoked Petitioner's Medicare enrollment. The supplier failed to meet Medicare requirements, because it did not inform the CMS contractor that it had moved its practice location, which meant that the CMS contractor could not inspect the supplier's premises.¹

¹ I make this one finding of fact/conclusion of law.

Requirements for a DMEPOS supplier's Medicare participation. 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); 42 C.F.R. § 424.505.

In order to obtain and retain its supplier number, a 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. § 424.535(a)(1). Among other requirements, the supplier must “report to CMS any changes in information supplied on the application within 30 days of the change.” 42 C.F.R. § 424.57(c)(2). The supplier must also permit CMS or its agents to conduct on-site inspections to ascertain its compliance with governing regulations. 42 C.F.R. § 424.57(c)(8). CMS may revoke billing privileges if it determines, based on an on-site review, that the supplier is no longer operational to furnish Medicare covered items or services, or is not otherwise meeting Medicare enrollment requirements. 42 C.F.R. § 424.535(a)(5).

Petitioner's relocation. Prior to January 1, 2013, Petitioner was a Medicare-enrolled DMEPOS supplier located at 3199 Lake Worth Road, Lake Worth, Florida. CMS Ex. 6 at 1; P. Exs. 1, 2. On January 1, 2013, Petitioner moved but did not report its change of address to the Medicare contractor.²

On February 19, 2013, an inspector employed by the contractor attempted an onsite inspection at the 3199 Lake Worth Road location but found that the premises were occupied by an entirely different business. CMS Ex. 6 at 7, 10, 11. She was therefore not able to inspect the supplier's premises. Immediately thereafter, the contractor sent the supplier a revalidation request, directing it to submit complete enrollment information. CMS Ex. 2; P. Ex. 2. The correspondence was returned to the contractor. CMS Ex. 2 at 4; P. Ex. 2 at 1, 3.

Petitioner has admitted that it relocated on January 1, 2013, but failed to inform the contractor of its new address. P. Ex. 1; CMS Ex. 3 at 1 (in which Petitioner writes: “[i]n the time our office relocated, and an inspection was attempted, the necessary change of address forms were not filed, and thus the inspector was not able to locate our office.”); CMS Ex. 4 (conceding that “the change of address had not been processed yet” at the time of the contractor's site visit).

² Suppliers are required to report such changes by filing form CMS-855S. Medicare Program Integrity Manual § 15.1.2; CMS Ex. 3 at 3-11; *see* 42 C.F.R. § 424.510(a).

Based on this, I find that Petitioner did not comply with the standards set forth in section 424.57(c). It was not in compliance with section 424.57(c)(2), because it did not, within 30 days, advise the CMS contractors that it changed locations. I also find that Petitioner did not comply with 42 C.F.R. § 424.57(c)(8). Because it failed to notify the CMS contractor of its new address, the contractor was unable to conduct the necessary on-site inspection.³

Conclusion

Because Petitioner did not meet the standards of 42 C.F.R. § 424.57(c), CMS properly revoked its billing privileges.

/s/
Carolyn Cozad Hughes
Administrative Law Judge

³ CMS and its contractors must, with diminishing resources, monitor the performance of a vast number of providers and suppliers and, in order to do so, it must be able to rely on the location information provided by the supplier. Sending an investigator to the wrong location depletes scarce resources and undermines the agency's ability to do its job.