

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Stanley Beekman, D.P.M.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-1531

Decision No. CR3532

Date: December 23, 2014

DECISION

CGS Administrators LLC (CGS), an administrative contractor for the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Stanley Beekman, D.P.M. (Petitioner) on the basis of a felony conviction, the suspension of his medical license, and his failure to report his conviction and the suspension of his medical license within 30 days. In its reconsidered determination, CGS affirmed the revocation. Petitioner appealed. Both parties now move for summary judgment. I find the material facts surrounding Petitioner's conviction undisputed and that CMS had a basis for the revocation. Therefore, I grant summary judgment in favor of CMS.

I. Case Background and Procedural History

On March 9, 2011, the United States Attorney for the Northern District of Ohio filed an information charging Petitioner with conspiracy to submit false information and documents, bank fraud, mail fraud, and wire fraud. CMS Exhibit (Ex.) 1. The information alleged that Petitioner:

[U]nlawfully, willfully, and knowingly did conspire, confederate and agree . . . to violate the laws of the United States, to wit: submission of false information and documents to a bank in applying for a loan, in violation of Title 18 United States Code, Section 1014; bank fraud, in violation of Title 18, United States Code, Section 1344; mail fraud, in violation of Title 18, United States Code, Section 1341; and wire fraud, in violation of Title 18, United States Code, Section 1343.

CMS Ex. 1, at 1-2.

Petitioner entered a guilty plea on April 6, 2011, to count one of the information for conspiring to commit bank fraud, mail fraud, wire fraud and making false statements to a bank in applying for a loan. CMS Ex. 2, at 2, 6. On May 14, 2013, the United States District Court for the Northern District of Ohio (District Court) sentenced Petitioner to five years of probation and ordered him to pay \$976,533 in restitution. CMS Ex. 3, at 2, 4.

In a notice letter dated February 18, 2014, CGS revoked Petitioner's Medicare billing privileges effective May 23, 2013, imposed a three year re-enrollment bar, and assessed an overpayment of \$52,126.08. CMS Ex. 7. The notice letter cited 42 C.F.R. § 424.535(a)(1), (a)(3), and (a)(9) as the bases for the revocation. Specifically, the notice letter stated that Petitioner was no longer eligible to practice medicine because his license was suspended; Petitioner was convicted of conspiracy to commit bank fraud, false statements to influence a bank to make a loan, mail fraud, and wire fraud; and Petitioner failed to report his license suspension and felony conviction within 30 days. CMS Ex. 7, at 1.

Petitioner requested reconsideration in an April 2, 2014 request. CMS Ex. 8. On May 21, 2014, CGS denied Petitioner's request for reconsideration and upheld the revocation based on 42 C.F.R. § 424.535(a)(1), (a)(3), and (a)(9). CMS Ex. 11. CGS again cited 42 C.F.R. § 424.535(a)(1), (a)(3), and (a)(9) as the bases for the revocation and sustained the revocation because Petitioner was "convicted of a felony, [his] Ohio medical license was suspended and [he] failed to notify CGS timely." CMS Ex. 11, at 2.

Petitioner timely requested a hearing (RFH) before an Administrative Law Judge (ALJ), and I issued an Acknowledgment and Pre-Hearing Order (Pre-Hearing Order) to the parties. In accordance with the terms of the Pre-Hearing Order, CMS submitted its motion for summary judgment and supporting brief (CMS Br.), and eleven proposed exhibits (CMS Exs. 1-11). After reviewing CMS's exchange, Petitioner filed a cross-motion for summary judgment and a supporting brief (P. Br.). Petitioner did not submit any additional exhibits. Absent objections, I enter all proposed exhibits into the record.

II. Discussion

A. Issues

1. Whether summary judgment is appropriate; and
2. Whether CMS had a legal basis to revoke Petitioner's Medicare enrollment and billing privileges.

B. Findings of Fact and Conclusions of Law

1. *Summary judgment in favor of CMS is appropriate.*

Summary judgment is appropriate if “the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.” *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300, at 3 (2010) (citations omitted). The moving party must show that there are no genuine issues of material fact requiring an evidentiary hearing and that it is entitled to judgment as a matter of law. *Id.* If the moving party meets its initial burden, the non-moving party must “come forward with ‘specific facts showing that there is a genuine issue for trial’” *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). “To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact — a fact that, if proven, would affect the outcome of the case under governing law.” *Senior Rehab.*, DAB No. 2300, at 3. To determine whether there are genuine issues of material fact for hearing, an ALJ must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. *Id.*

Here, CMS moved for summary judgment and provided documentary evidence that sufficiently establishes the material facts of the case. CMS Br. at 1; CMS Exs. 1-11. CMS proffered documentary evidence showing Petitioner pled guilty to a felony financial crime and that the felony financial crime was similar to other felony financial crimes that CMS has determined are detrimental to the best interests of the Medicare program and its beneficiaries. CMS Exs. 1-3.

Petitioner does not dispute that he pled guilty to conspiracy to commit bank fraud, wire fraud, mail fraud, and making false statements to a bank. *See* RFH at 3; CMS Ex. 8, at 4-5 (“. . . Dr. Beekman . . . entered into an agreement on April 7, 2011 to plead guilty to charges of Conspiracy to Commit Bank Fraud, False Statements to Influence a Bank to Make a Loan, Mail Fraud, and Wire Fraud[.]”). Petitioner has filed a cross-motion for summary judgment and has argued that his felony conviction does not constitute a financial crime under 42 C.F.R. § 424.535(a)(3) for which CMS may revoke his

Medicare participation.¹ P. Br. at 5. Thus, I find that there is no genuine issue of disputed material fact. The only issue I need to resolve in this case is a matter of law, which, as discussed below, I must decide in CMS's favor. Summary judgment is therefore appropriate.

2. *Petitioner does not dispute that he pled guilty to a felony for conspiring to commit bank fraud, mail fraud, wire fraud, and making false statements to a bank in applying for a loan and that his guilty plea was within ten years of his Medicare revalidation.*

Petitioner concedes that he pled guilty to a felony in April of 2011. RFH at 3. CMS has established, and Petitioner does not contest, that Petitioner pled guilty to a conspiracy to commit bank fraud, making false statements to influence a bank to make a loan, mail fraud, and wire fraud, all in violation of 18 U.S.C. § 371. *See* CMS Exs. 1-3. The facts underlying Petitioner's guilty plea demonstrate that he knowingly took part in a "mortgage fraud scheme" with an "economic predator." CMS Ex. 8, at 8. Petitioner engaged in a conspiracy to act as a "straw buyer" by executing loan applications in which he inflated his income and other financial information, falsely asserted that he would be responsible for mortgage payments, and falsely asserted that the properties in question would serve as his second residences. CMS Ex. 1, at 2-5. The District Court accepted Petitioner's plea on April 6, 2011, and entered judgment against him on May 23, 2013. CMS Ex. 2, at 3, 6.

Petitioner does not contest that his guilty plea occurred within the ten years preceding revalidation of his Medicare enrollment. Petitioner submitted CMS Form 855I on December 19, 2012, in order to revalidate his Medicare enrollment. CMS Ex. 4, at 27. CMS acknowledged receiving Petitioner's enrollment application on February 20, 2013. CMS Ex. 5, at 3. Because Petitioner pled guilty to a felony offense on April 6, 2011, and sought revalidation of his Medicare billing privileges on December 19, 2012, his guilty plea fell within the ten years preceding his revalidation.

3. *CMS was authorized to revoke Petitioner's enrollment under 42 C.F.R. § 424.535(a)(3).*

CMS may revoke a currently enrolled provider or supplier's Medicare billing privileges and any corresponding provider agreement or supplier agreement for several enumerated reasons, including:

¹ Petitioner also challenges CMS's authority to revoke his Medicare participation under 42 C.F.R. § 424.535(a)(1) and (a)(9). P. Br. at 5, 8-9. Because I find CMS properly revoked Petitioner's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(3), I need not reach the issues of whether 42 C.F.R. § 424.535(a)(1) and (a)(9) also authorized CMS to revoke Petitioner's Medicare billing privileges.

(3) *Felonies*. The provider, supplier, or any owner of the provider or supplier, within the 10 years preceding enrollment or revalidation of enrollment, was convicted of a Federal or State felony offense that CMS has determined to be detrimental to the best interests of the [Medicare] program and its beneficiaries.

(i) Offenses include—

* * * *

(B) Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversion.

42 C.F.R. § 424.535(a)(3)(i)(B); *see also* Social Security Act (Act) § 1842(h)(8) (authorizing the Secretary of Health and Human Services to revoke the enrollment of a physician or supplier convicted of a federal or state felony offense the Secretary “determines is detrimental to the best interests of the program or program beneficiaries”). Revocation based on a felony conviction is effective on the date of the conviction. 42 C.F.R. § 424.535(g). After CMS revokes provider or supplier billing privileges, the provider or supplier cannot participate in Medicare from the effective date of the revocation until the end of the re-enrollment bar. The re-enrollment bar must last for a minimum of one year but cannot exceed three years. 42 C.F.R. § 424.535(c).

a. Petitioner’s felony conviction was a financial crime within the plain meaning of 42 C.F.R. § 424.535(a)(3)(i)(B).

The undisputed facts of Petitioner’s conviction support CMS’s determination that Petitioner pled guilty to a felony “financial crime” covered by section 424.535(a)(3)(i)(B). In reaching this conclusion, I need to examine the conduct and circumstances underlying Petitioner’s offense and consider whether it is similar to a named crime. *Abdul Razzaque Ahmed, M.D.*, DAB No. 2261, at 7 (2009), *aff’d*, *Ahmed v. Sibelius*, 710 F. Supp. 2d 167 (D. Mass 2010).

In perpetrating his crimes, Petitioner sought to “become financially independent” by participating in a mortgage fraud scheme. CMS Ex. 8, at 3. He conspired with an “economic predator.” CMS Ex. 8, at 8. Petitioner executed false loan applications in order to secure mortgage loans in the amounts of \$540,000, \$612,000, and \$364,000. CMS Ex. 1, at 3-4. He “inflated [his] income, bank account balances, and assets” on

mortgage loan applications. CMS Ex. 1, at 5. Petitioner's felony created a total loss in the amount of \$976,533, and the District Court ordered him to make restitution in that amount. CMS Exs. 1, at 6; 3, at 4.

Petitioner also concedes that his offense was a "financial crime." P. Br. at 4. However, Petitioner argues that because the crime was not related to the practice of medicine, Medicare, or his patients, it is not detrimental to Medicare and cannot be a basis to revoke his billing privileges. P. Br. at 7. For purposes of summary judgment, I will assume that the facts surrounding Petitioner's conviction do not relate to his practice of medicine, Medicare, or his patients. Nonetheless, Petitioner's felony conviction, perpetrated to enrich himself and causing a significant monetary loss, plainly constitutes a "financial crime" within the meaning of 42 C.F.R. § 424.535(a)(3)(i)(B). *See Lorrie Laurel, PT*, DAB No. 2524, at 4-5 (2013) (finding that an individual's guilty plea to felony grand theft constitutes a "financial crime" that can be used as a basis to revoke enrollment and billing privileges regardless of a direct relation to the Medicare program).

b. Petitioner's felony conviction was similar to insurance fraud, an offense CMS has determined is detrimental to the best interests of the Medicare program and its beneficiaries pursuant to 42 C.F.R. § 424.535(a)(3).

Petitioner pled guilty to an offense similar to insurance fraud, one of the offenses listed in 42 C.F.R. § 424.535(a)(3)(i)(B). CMS has already determined that "financial crimes, such as . . . insurance fraud *and other similar crimes*" are detrimental per se to the Medicare program. *Dinesh Patel, M.D.*, DAB No. 2551, at 5-6 (2013) (emphasis added) (citations omitted).

"Insurance fraud involves a false statement or misrepresentation in connection with a claim or application for insurance or insurance benefits." *Ahmed*, DAB No. 2261, at 9. Insurance fraud generally includes offenses where an individual, "with an intent to defraud an insurance company, present[s] a written or oral statement in support of a claim for payment knowing that the statement contains false, incomplete, or misleading information concerning a fact material to such claim . . ." 44A Am. Jur. 2d *Insurance* § 2060 (2014). Several elements of insurance fraud are present in the facts the government alleged and to which Petitioner pled guilty. Petitioner submitted numerous false statements on mortgage loan applications. CMS Ex. 1, at 3-5. Petitioner misrepresented his income, bank account balances, and assets in order to induce banks to approve mortgage loans. He likewise misrepresented to these banks that certain properties would be his second residences, though he had no plans to live in the properties. CMS Ex. 1, at 5. In short, Petitioner knowingly made false written statements of material fact regarding his financial situation and intent with respect to properties for which he sought mortgage loans in order to induce certain banks to make

those loans. Therefore, his offense was similar to insurance fraud. *See Ahmed*, DAB No. 2261, at 9-10.

Petitioner argues that CMS erred in revoking his billing privileges pursuant to 42 C.F.R. § 424.535(a)(3)(i)(B) because his offense is not one of the offenses the regulation specifically names, and therefore it is not detrimental per se to the Medicare program. P. Br. at 6. As a result, he argues, CMS was required to find that his offense was detrimental to Medicare *and* similar to one of the offenses listed in section 424.535(a)(3)(i)(B). He argues that CMS failed to find that his offense was detrimental to the Medicare program and that, in fact, his offense was not detrimental to the Medicare program. P. Br. at 6-7.

I do not find Petitioner's argument persuasive. Where, as here, CMS establishes that Petitioner committed a felony and that the felony is similar to one of the offenses listed in section 424.535(a)(3)(i)(B), then it may revoke his billing privileges. *Ahmed*, DAB No. 2261, at 13-14. CMS was within its discretion, and I may not review its decision to exercise its authority to revoke Petitioner's billing privileges. *Id.* at 18.

Petitioner argues that CMS has only deemed "extortion, embezzlement, income tax evasion, [and] insurance fraud" to be detrimental to the Medicare program. P. Br. at 6. Petitioner omits, however, a crucial clause to the complete list of offenses CMS has deemed to be detrimental to the Medicare program: "[f]inancial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud, *and other similar offenses.*" 42 C.F.R. § 424.535(a)(3)(i)(B) (emphasis added); *see also Patel*, DAB No. 2551, at 11 (observing that subparagraph (B) of section 424.535(a)(3)(i) specifies "certain felonies . . . that the Secretary has determined are per se detrimental to the best interest of the Medicare program and its beneficiaries). CMS has deemed not only the four named offenses to be detrimental, but it has deemed *all* financial crimes, including the four named offenses *and other similar offenses*, to be detrimental to the Medicare program and its beneficiaries. Here, Petitioner was convicted of a crime similar to one of the offenses listed in section 424.535(a)(3)(i)(B), and therefore of an offense CMS has deemed detrimental to the Medicare program. I must reject his argument that his offense was not detrimental in fact to the Medicare program. P. Br. at 6-7.

Petitioner also makes several arguments that are outside my review authority. He argues that CMS did not provide him with sufficient notice when it imposed an overpayment assessment of \$52,126.08. P. Br. at 10. He argues that the sanctions that CMS has imposed on him are disproportionate to his offense. He also argues that CMS lacked authority to impose an overpayment assessment on him because it lacked a basis on which to revoke his billing privileges. P. Br. at 10-11. Finally, Petitioner asserts that CMS failed to take into consideration several equitable factors, including that Petitioner took responsibility for his crime, cooperated with law enforcement, self-reported his

offense to the Ohio Medical Board, and that Petitioner's revocation will negatively impact his patients. P. Br. at 11-12.

My review authority is limited to reviewing initial determinations "to deny or revoke a provider or supplier's Medicare enrollment in accordance with . . . § 424.535." 42 C.F.R. § 498.3(b)(17). I may only review whether CMS has established a legal basis for its determination to deny Petitioner's enrollment. *Letantia Bussell, M.D.*, DAB No. 2196, at 12-13 (2008) (concluding that an ALJ review of revocation of enrollment for felony offenses under section 1842(h) of the Act is "limited to whether CMS had established a legal basis for its actions."). I also do not have the ability to consider retroactive payment consequences that CMS takes into consideration when exercising its discretion. *Lorrie Laurel*, DAB No. 2524, at 7-8. Petitioner cites no authority permitting me to reverse a re-enrollment bar or overpayment assessment.² Where CMS proves that Petitioner was convicted of an offense applicable to 42 C.F.R. § 424.535(a)(3)(i)(B), I must sustain the revocation. I must do so "regardless of other factors, such as the scope or seriousness of the supplier's criminal conduct and the potential impact of revocation on Medicare beneficiaries, that CMS might reasonably have weighed in exercising its discretion." *Fady Fayad, M.D.*, DAB No. 2266, at 16 (2009), *aff'd*, 803 F. Supp. 2d 699 (E.D. Mich. 2011).

III. Conclusion

Based upon the undisputed facts, CMS was authorized under 42 C.F.R. § 424.535(a)(3)(i)(B) to revoke Petitioner's billing privileges effective May 23, 2013, and I am required to sustain CMS's determination. Petitioner is barred from re-enrolling in the Medicare program for three years from the date of the revocation. Petitioner must submit a new enrollment application after the termination of the enrollment bar in order to request re-enrollment. 42 C.F.R. § 424.535(d)(1).

/s/
Joseph Grow
Administrative Law Judge

² Even if I could review the re-enrollment bar and overpayment assessment, Petitioner has not presented any arguments or facts to show that CMS acted outside the plain language of 42 C.F.R. § 424.535(c) (requiring CMS to impose a re-enrollment bar of between one and three years on any individual whose billing privileges it revokes) and 42 C.F.R. § 424.565 (requiring CMS to impose an overpayment "back to the date of the final adverse action," in this case, Petitioner's conviction on May 23, 2013).