

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

St. Anthony's Nursing and Rehabilitation Center,
(CCN: 145387/0047126),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-317

Decision No. CR4773

Date: January 17, 2017

DECISION

On December 22, 2016, I entered partial summary judgment in favor of the Centers for Medicare Services (CMS) in which I sustained CMS's determination that Petitioner failed to comply substantially with two Medicare participation requirements: 42 C.F.R. §§ 483.25(m)(1) and 483.35(i). I sustained a \$1600 per-instance civil money penalty against Petitioner based on its noncompliance with 42 C.F.R. § 483.35(i).

I did not decide the issue of whether additional remedies proposed by CMS should be imposed against Petitioner. These remedies are civil money penalties of \$200 per day for each day of a period beginning on March 2, 2016 and running through May 3 of that year. CMS predicated these remedies on Petitioner's noncompliance with 42 C.F.R. § 483.25(m)(1) but also on Petitioner's alleged noncompliance with the requirements of 42 C.F.R. §§ 483.13(a), 483.13(c)(1)(ii)-(iii), 483.13(c), 483.20(d), 483.20(k)(1), 483.25(d), 483.25(l), and 483.65. CMS did not address these additional alleged deficiencies in its motion for partial summary judgment. However, CMS asserted that the evidence it exchanged constituted prima facie proof of Petitioner's noncompliance with these additional regulations.

Petitioner filed no arguments in opposition to CMS's assertions about the additional alleged deficiencies. In my December 22, 2016 ruling I ordered Petitioner to show cause why, given its failure to address these additional alleged deficiencies, I should not enter a final decision in favor of CMS as to those alleged deficiencies and sustain the \$200 daily penalties.

On January 6, 2017, Petitioner answered the order to show cause by stating that it had provided all of the arguments that it intended to offer.

Thus, Petitioner did not reply to CMS's arguments concerning the additional alleged deficiencies. While it did not admit these deficiencies, neither did it contest them in its pre-hearing brief. For that reason I am entering a decision in favor of CMS as to the additional alleged deficiencies. Additionally, I incorporate by reference into this decision my December 22, 2016 ruling. Consequently, I sustain CMS's findings of noncompliance as to all alleged deficiencies and I also sustain CMS's remedy determinations

_____/s/_____
Steven T. Kessel
Administrative Law Judge