Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ronald Paul Belin, DPM,
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-1181

ALJ Ruling No. 2014-42

Date: September 3, 2014

RULING DISMISSING REQUEST FOR HEARING

On my own motion and pursuant to the provisions of 42 C.F.R. § 498.70(a) and (b) I dismiss the request for hearing of Petitioner, Ronald Paul Belin, DPM.

Petitioner requested a hearing to challenge the determination of the Centers for Medicare & Medicaid Services (CMS) to deny his application to enroll in the Medicare program. In a letter dated November 20, 2013 a Medicare contractor acting on behalf of CMS advised Petitioner that it was denying his application pursuant to the provisions of 42 C.F.R. § 424.530(a)(3). It gave Petitioner this rationale for denying his application:

> On October 4, 2006 you entered a guilty felony plea. You are still within 10 years of the felony. It is for this reason your application is denied.

CMS Ex. 3 at 1. Petitioner then asked for reconsideration of this determination. On March 22, 2014, the contractor, again acting on behalf of CMS, advised Petitioner that it had denied his request for reconsideration. The contractor cited the provisions of

42 C.F.R. § 424.530(a)(3). CMS Ex. 6 at 1. The contractor then quoted the language of the regulation essentially verbatim and informed Petitioner that:

> According to our records on October 4, 2006, [Petitioner] agreed to a . . . [withheld] adjudication on one count of obtaining a controlled substance by fraud and was convicted of a felony charge. CMS has determined the offense to be detrimental to the best interest of the program and its beneficiaries.

Id. at 2. Although the reconsideration rationale expands slightly on what was said in the initial determination it says essentially the same thing: CMS denied Petitioner's enrollment application based on his conviction of a felony – obtaining a controlled substance by fraud – within the previous ten years.

Petitioner had filed a previous application for enrollment and that, too, had been denied, both initially, and on reconsideration. Petitioner requested a hearing to challenge that previous denial. Another administrative law judge issued a decision affirming the denial pursuant to the provisions of 42 C.F.R. § 424.530(a)(3). *Ronald Paul Belin*, *DPM*, DAB CR2768 (2013). In his decision, the administrative law judge relied on the provisions of 42 C.F.R. § 424.530(a)(3) and found explicitly that Petitioner had been convicted of a felony offense within the previous ten years that CMS had determined to be detrimental to the Medicare program and its beneficiaries. *Belin*, DAB CR2768, at 11–13, 18. In short, the administrative law judge's decision in the previous case involving Petitioner cites precisely the same rationale and underlying facts for denying Petitioner's application as are relied on by CMS in this case.

I directed the parties to brief the question of whether the issues in the case before me were *res judicata*. Both parties filed briefs in which they averred that the issues of law and fact are not identical. CMS argues that the law and facts are not identical because it has discretion to consider new facts each time an individual applies for enrollment and to make a de novo determination based on new facts with each new application. However, CMS has not cited any facts that it relied on to deny Petitioner's second application that are different from the facts that it relied on in the previous case.

Petitioner, not surprisingly, argues that this case is predicated on a new and different enrollment application and he asserts that both the law and facts governing this case differ from those that applied previously. Petitioner asserts, for example, that the individual who reviewed and denied Petitioner's present application is not the same person as the one who acted on the previous application. He contends, also, that there are differences in wording between the present denial and that which was made previously, both on initial determination and reconsideration.

The doctrine of *res judicata* applies to bar relitigation of issues previously heard and decided. It is essentially a doctrine of efficiency. Triers of fact should not be required to rehear cases where the outcome-determinative issues of fact and law are identical.

That is the case here, the parties' assertions notwithstanding. Close examination of the two cases shows that CMS denied Petitioner's enrollment application in both cases for identical reasons. In both instances CMS found that Petitioner had been convicted of a felony within the previous ten years. The conviction is identical in each case. In both instances CMS found that it had authority to deny Petitioner's application based on the language of 42 C.F.R. § 424.530(a).

To put it slightly differently, what are the material facts and law of this case that make it different from its predecessor? Neither CMS nor Petitioner has identified anything that makes this case different. Were I to issue a decision here I would ultimately rule on the same issues of fact and law that were addressed previously: whether Petitioner was convicted of a felony within the previous ten years and whether CMS is authorized by 42 C.F.R. § 424.530(a)(3) to deny Petitioner's enrollment application based on his felony conviction. In short, nothing distinguishes this case from its predecessor.

CMS's argument that principles of *res judicata* do not apply because it has discretion to consider new facts and to make a de novo determination is simply wrong. It is irrelevant that CMS may exercise discretion to take a new look at Petitioner's circumstances if, in fact, it ultimately relies on the same facts and law as it considered previously to deny Petitioner's enrollment a second time. The principles of *res judicata* apply here precisely because CMS relied on the same facts and law as it relied on the last time it considered Petitioner's application. CMS has not identified even one additional or materially different fact that it took into consideration in denying Petitioner's second application. It relies on the same regulation to deny each application. And, it cites the previous administrative law judge decision as providing support for its determination. CMS's pre-hearing brief and memorandum in support of its motion for summary judgment at 4.

As for Petitioner's assertions that this case is different, he does not point to anything that makes this case *materially* different from its predecessor. It is true, as Petitioner points out, that this case is based on a different application, that some facts cited by Petitioner in support of his application are different from those that he cited previously, that different people evaluated the two applications initially and on reconsideration, that the wording of the various initial and reconsideration determinations varies slightly, and that different

letters were sent on different dates in the two cases. But, none of this is relevant. The material facts and the law pursuant to which Petitioner's applications were denied have not changed.

/s/
Steven T. Kessel
Administrative Law Judge