Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Advanced Care Medical Center, Inc.
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1383

Decision No. CR3124

Date: February 20, 2014

DECISION

The Centers for Medicare & Medicaid Services (CMS) revoked Petitioner's Medicare enrollment. Petitioner, Advanced Care Medical Center, Inc., appeals. As discussed below, the uncontroverted facts compel revocation of Petitioner's enrollment because it allowed an individual to improperly use its billing number. Therefore, I affirm the decision to revoke Petitioner's billing privileges.

I. Background

The following facts are not disputed. Advanced Care Medical Center, Inc. enrolled in the Medicare program as a clinic/group practice. CMS Ex. 5, at 3. Apparently, an investigation by the Office of the Inspector General for the U.S. Department of Health and Human Services revealed that Petitioner entered into a contract with a doctor, allowing him to bill for services under Petitioner's billing number in exchange for a set reimbursement, and the doctor submitted bills under Petitioner's billing number. CMS Exhibits (Exs.) 1 and 2. However, the doctor did not reassign his benefits to Petitioner. CMS Ex. 5, at 5.

On June 28, 2013, Wisconsin Physicians Service (WPS), the Medicare contractor, notified Petitioner that it was revoking its billing privileges pursuant to 42 C.F.R.

§ 424.535(a)(7) for a period of two years, effective July 28, 2013, for misuse of its billing number.[1]

On July 11, 2013, Petitioner submitted, by separate letters, a corrective action plan (CAP) and an identically worded request for reconsideration before a Medicare Hearing Officer. CMS Exs. 2 and 3. In the requests, Petitioner's owner did not deny the existence of the improper arrangement but stated --

> I am sorry that a mistake was occurred on my behalf this time but I assure you that it is not going to happen again. I would like to give you a detail about this incident. I provided the same detail to special agent . . . . I am in business since 2000. If you look at my record it is clean. There are no wrong doings. [The doctor] met me on May 22, 2013 and told me that he is going to put doctors under my company and expand the operation of my company. In the mean time he also mentioned that he has some billing which he would like to do under my company by using the modifier Q5 and Q6. I checked the AMA book and found out that we can do the billing. I did not go in detail to find out about Q5 and Q6 modifiers till I met special agent . . . who showed me the detail of Q5 and Q6 usage. By looking at the detail description, I agree with you that I made a mistake. This is my first mistake in my thirteen years of business and I assure you that it is not going to happen again. Secondly, as soon as I came to know I cancelled the contract and did not do any more billing.

CMS Exs. 2 and 3.

On August 5, 2013, WPS notified Petitioner that it was rejecting its CAP. CMS Ex. 6. On August 14, 2013, WPS hearing officer issued an unfavorable reconsideration decision and upheld the revocation of Petitioner's Medicare enrollment. CMS Ex. 7.

By submission filed September 16, 2013, Petitioner requested a hearing of the reconsideration determination with the Civil Remedies Division of the Departmental

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[1] This subsection states: "(a) *Reasons for revocation*. CMS may revoke a currently enrolled provider or supplier's Medicare billing privileges and any corresponding provider agreement or supplier agreement for the following reasons: . . . (7) *Misuse of billing number.* The provider or supplier knowingly sells to or allows another individual or entity to use its billing number. This does not include those providers or suppliers who enter into a valid reassignment or benefits as specified in § 424.80 or a change of ownership as outline in § 489.18 of this chapter."

Appeals Board.[2] With its hearing request, Petitioner attached a copy of the August 14, 2013 reconsideration decision. This case was assigned to me for decision.

On November 8, 2013, CMS filed its prehearing exchange and brief supporting its motion for summary judgment together with seven exhibits, CMS Exs. 1-7. On December 12, 2013, we received Petitioner's one page response together with copies of its bank statements for May, June, July, August, September and October 2013.

II. Applicable Law

Medicare payments for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.[3] The Social Security Act (Act) §§ 1835(a) (42 U.S.C. § 1395n(a); 1842(h)(1)(42 U.S.C. § 1395u(h)(1)). The Act requires the Secretary of Health and Human Services to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review of certain enrollment determinations. Act § 1866(j) (42 U.S.C. § 1395cc(j)).

A provider or supplier is prohibited from selling its Medicare billing number or allowing another individual or entity to use its Medicare billing number. 42 C.F.R. § 424.550(a). CMS may revoke a currently enrolled provider or supplier's Medicare billing privileges for misuse of its billing number if the "provider or supplier knowingly sells to or allows another individual or entity to use its billing number." 42 C.F.R. § 424.535(a)(7).

Suppliers who have had their billing privileges revoked "are barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar," which is "a minimum of 1 year but not greater than 3 years depending on the severity of the basis for revocation." 42 C.F.R. § 424.535(c).

III. Issue

The issue is whether CMS had a legitimate basis to revoke Petitioner's Medicare billing privileges.

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[2] The rejection of a CAP is not an appealable initial determination. *Pepper Hill Nursing & Rehab. Ctr*, DAB No. 2395, at 9 (2011); 42 C.F.R. § 498.3(b).

[3] A "suppler" furnishes services under Medicare, and the term supplier applies to physicians and other non-physician practitioners and facilities that are not included within the definition of the phrase "provider of services." Act § 1861(d) (42 U.S.C. § 1395x(d)).

IV. Findings of Fact and Conclusions of Law

A. This case is appropriate for summary judgment.

CMS filed a Motion for Summary Judgment. The applicable standard for summary judgment is as follows:

> Summary judgment is appropriate when 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. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . 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. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

Senior Rehab. & Skilled Nursing Ctr., DAB No. 2300, at 3 (2010) (citations omitted). The role of an ALJ in deciding a summary judgment motion differs from the ALJ's role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Vill. at Notre Dame*, DAB No. 2291, at 4-5 (2009). Here, Petitioner does not dispute that it allowed the doctor to bill under its Medicare billing number. Moreover, Petitioner does not dispute that it did so without an active Medicare reassignment of benefits from the doctor to Petitioner.

B. CMS had a legitimate basis to revoke Petitioner's Medicare enrollment and billing privileges.

The sole issue before me is whether CMS had a legitimate basis for revoking Petitioner's Medicare enrollment and billing privileges. The applicable law is abundantly clear, CMS may revoke a currently enrolled supplier's Medicare billing privileges if it knowingly allows another individual or entity to use its billing number. 42 C.F.R. § 424.535(a)(7). Petitioner admits that it allowed the doctor to bill under its billing number and that no exception to the regulatory prohibition applied. Therefore, CMS had a legitimate basis to revoke Petitioner's billing privileges.

C. I am unauthorized to grant Petitioner's requests for equitable relief.

Petitioner makes various arguments for equitable relief even though it admits that it allowed the doctor to use its Medicare billing number in violation of the enrollment

requirement. Petitioner requests leniency and claims: it made an innocent mistake which will never happen again, it immediately cancelled the contract with the doctor and did not do anymore billing, and its bank statements from May through October 2013 show it did not receive funds from Medicare. However, I am without authority to order CMS to provide an exemption to Petitioner under the circumstances because Petitioner's equitable arguments give me no grounds to restore Petitioner's billing privileges. *See US Ultrasound*, DAB No. 2302, at 8 (2010) ("[n]either the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements."). Moreover, I have no authority to declare statutes or regulations invalid or ultra vires. *1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) ("[a]n ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground.").

V. Conclusion

I find Petitioner was not in compliance with Medicare enrollment requirements when it allowed a doctor to improperly use its Medicare billing number. I therefore grant CMS's motion for summary judgment and sustain the revocation of Petitioner's Medicare billing privileges, effective July 28, 2013. Accordingly, Petitioner is barred from re-enrolling for two years from the effective date of its revocation.

/s/
Joseph Grow
Administrative Law Judge