

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Rachell Home Health Services Corp.,  
(NPI: 1770727133),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-82

Decision No. CR2760

Date: April 17, 2013

**DECISION**

Petitioner, Rachell Home Health Services Corp., is a home health agency (HHA) that, until recently, participated in the Medicare program as a provider of services. The Centers for Medicare & Medicaid Services (CMS) has revoked its Medicare provider number, and Petitioner appeals. The parties have filed cross-motions for summary judgment.

The uncontroverted facts establish that the HHA was not operational at the address it provided to the Medicare contractor. The contractor therefore properly revoked Petitioner's provider number. I grant CMS's motion for summary judgment and deny Petitioner's. I have no authority to review the Medicare contractor's rejection of the Petitioner's corrective action plan.

**Background**

Until its Medicare provider number was revoked on May 11, 2012, Petitioner participated in the Medicare program as an HHA in Miami, Florida.

In a letter dated July 8, 2012, the Medicare contractor, Palmetto GBA, notified Petitioner that its provider number was revoked effective May 11, 2012, pursuant to 42 C.F.R. § 424.535(a)(5)(i), because the contractor's site investigator found the HHA's premises vacant. CMS Ex. 4.

In a letter dated July 30, 2012, Petitioner declared that it was "up and running" at a new address, admitted that its staff had not submitted to the contractor the required change-of-address information, and asked the contractor to accept its corrective action plan (CAP). CMS Ex. 1. The contractor treated this letter as a request for reconsideration. In a reconsideration determination dated September 26, 2012, CMS affirmed the revocation. CMS Ex. 5. Petitioner now appeals that determination.

The parties have filed cross-motions for summary judgment. CMS has filed its motion for summary judgment and memorandum in support, with five exhibits (CMS Exs. 1- 5). Petitioner has submitted a response and counter-motion for summary judgment (P. MSJ), a pre-hearing brief (P. Br.), and eight exhibits (P. Exs. 1-8).

## Discussion

***1. The undisputed evidence establishes that, based on a May 11, 2012 on-site review, the HHA was no longer operational, so CMS properly revoked its Medicare enrollment pursuant to 42 C.F.R. § 424.535(a)(5).<sup>1</sup>***

Summary judgment is appropriate if a case presents no genuine issue of material fact, and 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.

To maintain Medicare billing privileges, a provider must resubmit and recertify the accuracy of its enrollment information every 5 years. 42 C.F.R. § 424.515. The information submitted must be complete and accurate. 42 C.F.R. § 424.515(a)(2). CMS may perform an on-site inspection to verify that the information provided is accurate and to determine the provider's compliance with Medicare enrollment requirements. 42 C.F.R. § 424.515(c). If, upon on-site review, CMS determines that the provider is no longer operational to furnish Medicare-covered items and services, it may revoke Medicare billing privileges. 42 C.F.R. § 424.535(a)(5)(i).

In this case, on April 5, 2012, Rachell Home Health submitted to CMS its revalidation application, listing its practice location as 3271 NW 7<sup>th</sup> Street, Miami, Florida. CMS Ex.

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<sup>1</sup> My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

3 at 7, 27. On May 11, 2012, an inspector visited that location and found the premises vacant. CMS Ex. 2. Petitioner concedes that it was no longer operational at that location, but claims that it moved and, in error, neglected to notify CMS of its new address. P. MSJ at 3; P. Br. at 1; P. Ex. 1; CMS Ex. 1.

Because it was not operational at the practice location given in its revalidation application, CMS properly revoked Rachell Home Health's Medicare enrollment. 42 C.F.R. § 424.535(a)(5).

***2. Rachell Home Health was not entitled to an opportunity to correct its deficiency before its billing privileges were revoked, and I have no authority to review CMS's denial of its corrective action plan.***

On July 30, 2012, Petitioner submitted a new enrollment application to CMS. That application lists a different practice location: 8180 NW 36<sup>th</sup> Street, Suite 308, Doral, Florida. P. Ex. 8 at 20.<sup>2</sup> In an accompanying memorandum, the HHA's administrator asked the Medicare contractor to accept the application as its "corrective action plan" (CAP). P. Ex. 1; CMS Ex. 1. Petitioner complains that, although the Medicare contractor offered it the opportunity "to correct the alleged deficiency by providing a CAP," it did not then conduct an on-site investigation at the new location. P. MSJ at 3.

But Petitioner was not even entitled to submit a CAP. Section 424.535(a)(1) grants all providers and suppliers the opportunity to correct their deficiencies prior to losing their billing privileges except for those whose privileges were revoked under sections 424.535(a)(2) (conduct); 424.535(a)(3) (felony convictions); or, as here, 424.535(a)(5). 42 C.F.R. § 424.535(a)(1).

Moreover, even if Petitioner had been so entitled, CMS's (or its contractor's) decision to reject the CAP is not an initial determination subject to review in this forum. 42 C.F.R. § 498.3(b); 405.874(e); *Conchita Jackson, M.D.*, DAB No. 2495, at 6-7 (2013).

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<sup>2</sup> This enrollment application is not without problems. Like Petitioner's original revalidation application, it is dated April 5, 2012. It is unsigned, although the "date signed" box is filled in: "7/30/12." P. Ex. 8 at 49.

