

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

RT Specialists Corporation
(PTAN: 0946210001),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-419

Decision No. CR3729

Date: March 27, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor, the National Supplier Clearinghouse (NSC) of Palmetto GBA, revoked the Medicare billing privileges of Petitioner, RT Specialists Corporation, based on a failure to comply with durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) Supplier Standard 22 (accreditation by a CMS-approved organization). Petitioner requested a hearing to dispute the revocation. For the reasons stated below, I affirm the revocation.

I. Background and Procedural History

Petitioner was enrolled in the Medicare program as a DMEPOS supplier. In a May 7, 2014 initial determination, NSC revoked Petitioner's Medicare billing privileges effective 30 days from the postmarked date on the initial determination. CMS Exhibit (Ex.) 1 at 1. Relevant to this proceeding, NSC stated that Petitioner was not in compliance with Supplier Standard 22. CMS Ex. 1 at 1-2; *see also* 42 C.F.R. § 424.57(c)(22). Specifically, NSC wrote that “[a]ccording to the Joint Commission, [Petitioner’s]

accreditation expired on January 11, 2014.”¹ CMS Ex. 1 at 2. NSC cited 42 C.F.R. §§ 405.800, 424.57(e), 424.535(a)(1), and 424.535(g) as its authority for revoking Petitioner’s billing privileges. CMS Ex. 1 at 1. NSC advised Petitioner that if it believed it could correct the cited deficiency, it could submit a corrective action plan (CAP) within 30 days of the postmark on the initial determination. CMS Ex. 1 at 2.

Petitioner submitted a CAP on June 5, 2014, in which it explained, among other things, that its accreditation was removed in error and that it was attempting to rectify The Joint Commission’s mistaken removal of its accreditation. *See* CMS Ex. 6 at 1. NSC rejected the CAP on July 14, 2014, finding that Petitioner was still not in compliance with Supplier Standard 22. CMS Ex. 7. The CAP decision stated that Petitioner had until August 14, 2014, to request reconsideration of the revocation.

Petitioner submitted its request for reconsideration on August 13, 2014, and argued that NSC should not have rejected Petitioner’s earlier CAP because it was evident Petitioner was working with The Joint Commission to regain its accreditation. CMS Ex. 8 at 2. Petitioner provided NSC with copies of various correspondence between itself and The Joint Commission as well as evidence of an upcoming survey of Petitioner’s location by The Joint Commission. *See* CMS Ex 8 at 2. Petitioner did not argue that it was accredited at the time of revocation; Petitioner merely asserted that the loss of accreditation was in error and that NSC should provide Petitioner “the opportunity to complete the CAP and obtain accreditation from The Joint Commission, and that the decision to terminate its Medicare billing privileges be reversed once such accreditation is finally reinstated.” CMS Ex. 8 at 2.

On September 25, 2014, an NSC hearing officer issued a reconsidered determination upholding the revocation of Petitioner’s billing privileges. CMS Ex. 9. The hearing officer found that Petitioner was “non-compliant” with Supplier Standard 22, stating that a review of Petitioner’s argument and supporting exhibits “does not provide documentation that [Petitioner] had maintained accreditation as required.” CMS Ex. 9 at 2. Further, in response to Petitioner’s argument that it should be permitted additional time to regain accreditation, the hearing officer stated that “Medicare guidelines do not allow for an extension of time to obtain accreditation.” CMS Ex. 9 at 2.

¹ The Joint Commission is an independent, not-for-profit national body that oversees the safety and quality of health care and other services in accredited organizations. CMS Ex. 10 at 2. CMS approved The Joint Commission to accredit DMEPOS suppliers who seek enrollment or are enrolled in the Medicare program. *See* Medicare New Deemed Accreditation Organizations for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) (March 2013), <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/DMEPOSAccreditation.html> (last visited Mar. 18, 2015); *see also* 42 C.F.R. § 424.58.

Petitioner requested a hearing to dispute the revocation. In response to my November 20, 2014 Acknowledgment and Pre-hearing Order (Order), CMS filed a motion for summary judgment and supporting brief (CMS Br.) as well as 11 proposed exhibits (CMS Exs. 1-11). Petitioner filed an opposition to summary judgment (P. Br.) and nine proposed exhibits (P. Exs. 1-9). CMS objected to the admission of several of Petitioner's exhibits. It also offered one additional exhibit as rebuttal (CMS Ex. 12). CMS did not offer the written direct testimony of any witnesses. Petitioner offered the written direct testimony of Alok Manchanda (P. Ex. 3); CMS stated it did not intend to cross-examine that witness. CMS Objections at 3.

II. Evidentiary Rulings and Decision on the Record

Petitioner did not object to the admission of CMS Exs. 1-11; therefore, I admit them into the record.

CMS objects to the admission of P. Exs. 1, 2, 5, 6, 7, and 9 as duplicative of documents that CMS already offered as exhibits. CMS Objections at 1. The record does not need to contain multiple copies of the same documents. *See Civil Remedies Division Procedures* § 9 (eff. 2009) ("Parties . . . should not file as an exhibit a document already filed as an exhibit by the opposing party."). Therefore, I sustain CMS's objection to P. Exs. 1, 2, 5, 6, 7, and 9, and I exclude these exhibits from the record. In the absence of further objection, I admit P. Exs. 3, 4, and 8.

CMS offered CMS Ex. 12 as rebuttal evidence. That exhibit is an Accreditation Quality Report by The Joint Commission, stating that The Joint Commission accredited Petitioner as of September 30, 2014. CMS offered this exhibit to rebut P. Ex. 8, which is a letter from The Joint Commission, stating that Petitioner's "accreditation cycle" is effective as of August 27, 2014. P. Ex. 8 at 1. As discussed below, the effective date of Petitioner's accreditation, whether August 27 or September 30, is not relevant in this proceeding, which is limited to Petitioner's accreditation status at the time of revocation. However, because CMS offered CMS Ex. 12 to rebut P. Ex. 8, which I have already admitted, I will admit CMS Ex. 12.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would be necessary only if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10. CMS did not submit any written direct testimony. Petitioner submitted written direct for one witness (P. Ex. 3), but CMS did not request to cross-examine the witness. Therefore, a hearing in this case is unnecessary and I issue this decision based on the written record. Order ¶ 11.

III. Issue

Whether CMS had a legitimate basis to revoke Petitioner's Medicare billing privileges based on the loss of its accreditation from The Joint Commission.

IV. Jurisdiction

I have jurisdiction to hear and decide this case because Petitioner timely filed a request for hearing following the issuance of a reconsidered determination upholding the revocation of Medicare billing privileges. 42 C.F.R. §§ 498.5(l)(2), 498.40(a); *see also* 42 U.S.C. § 1395cc(j)(8); 42 C.F.R. §§ 405.803(a), 424.545(a), 498.3(b)(17), 498.25(a)(3).

V. Findings of Fact, Conclusions of Law, and Analysis²

For a DMEPOS supplier to receive Medicare payments for items and services furnished to a Medicare beneficiary, the Secretary of Health and Human Services (Secretary) must first issue a supplier number to that supplier. 42 U.S.C. § 1395m(j)(1)(A). The Social Security Act sets forth basic requirements for DMEPOS suppliers and authorizes the Secretary to create additional DMEPOS supplier requirements. *Id.* § 1395m(j)(1)(B)(ii). The Secretary promulgated regulations establishing DMEPOS supplier enrollment standards that a DMEPOS supplier must meet to enroll and to remain enrolled. 42 C.F.R. § 424.57(c). Specifically, Supplier Standard 22 requires a DMEPOS supplier to, among other things, "be accredited by a CMS-approved accreditation organization in order to receive and retain a supplier billing number." 42 C.F.R. § 424.57(c)(22); *see also* 42 U.S.C. § 1395m(a)(20)(A), (F) (directing the Secretary to implement quality standards to be used by independent accrediting organizations, and requiring suppliers of DMEPOS to submit evidence of accreditation in order to receive and maintain Medicare billing privileges).

1. Petitioner's accreditation by The Joint Commission ceased in July 2013 following the transfer of its stock from the Doctors' Hospital of Michigan to its new owner, and Petitioner did not receive accreditation from The Joint Commission again until either August 27, 2014, or October 1, 2014.

Prior to July 2013, Oakland Physicians Medical Center, LLC, doing business as Doctors' Hospital of Michigan (Doctors' Hospital), was the sole shareholder of Petitioner. P. Ex. 3 ¶ 1. The Joint Commission accredited Doctors' Hospital to provide durable medical equipment (DME) through Petitioner. According to the Joint Commission, it did not

² My findings of fact and conclusions of law in this case are set forth in italics and bold font.

independently accredit Petitioner at that time, but instead considered Petitioner to be a “home care service of a hospital.” See CMS Ex. 3 at 1. This is because, upon evaluation of Doctors’ Hospital and Petitioner, The Joint Commission concluded that Doctors’ Hospital and Petitioner were “so organizationally and functionally integrated, that, per Joint Commission policy, they needed to be accredited as one organization.” CMS Ex. 3 at 1. The Joint Commission conducted surveys for accreditation in 2004, 2007, 2010, and 2013. CMS Ex. 3 at 1. The 2013 survey occurred in April 2013 and “took place at the same time The Joint Commission surveyed [Doctors’] Hospital.” P. Ex. 3 ¶ 2.

On July 10, 2013, Doctors’ Hospital transferred all of its stock in Petitioner to Alok Manchanda. P. Ex. 3 ¶ 3. On August 2, 2013, Mr. Manchanda sent a letter to the Joint Commission’s Accreditation and Certification Operations, which served to notify The Joint Commission of the transfer of Petitioner’s stock from Doctors’ Hospital to him. CMS Ex. 4; P. Ex. 3 ¶ 5. Mr. Manchanda received verbal verification that The Joint Commission received his August 2 letter. P. Ex. 3 ¶ 5. The Joint Commission did not respond to Mr. Manchanda, but instead contacted Doctors’ Hospital, which confirmed that it no longer held ownership interest over Petitioner. CMS Ex. 3 at 1-2; P. Ex. 3 ¶ 5. The Joint Commission then “removed DME services from the hospital’s application . . . [which] in turn, generated a weekly report to [NSC], and the now unaccredited hospital DME service, known as ‘RT Specialists,’ became listed as unaccredited.” CMS Ex. 3 at 2. The Joint Commission’s General Counsel later told Petitioner that it never contacted Mr. Manchanda “because he was not listed as an authorized contact of the accredited organization, the hospital.” CMS Ex. 3 at 1.

Mr. Manchanda believed that The Joint Commission had independently accredited Petitioner and stated that the first he knew of The Joint Commission’s position that Petitioner was not accredited was when Mr. Manchanda received NSC’s May 7, 2014 initial determination.³ P. Ex. 3 ¶¶ 4, 5. Petitioner’s owner and counsel both communicated with The Joint Commission to seek clarification as to Petitioner’s accreditation status, eventually learning that Petitioner needed to apply for accreditation because Petitioner was not accredited. CMS Exs. 3, 5; P. Ex. 3 ¶¶ 8-10. Petitioner initiated the accreditation process, obtaining The Joint Commission accreditation by either August 27, 2014 or October 1, 2014. CMS Exs. 10, 12; P. Ex. 3 ¶ 11; P Ex. 8.

2. CMS was authorized to revoke Petitioner’s Medicare enrollment and billing privileges because Petitioner failed to be in compliance with Supplier Standard 22 after it lost its accreditation following the transfer of Petitioner’s stock to a new owner in July 2013.

³ The Joint Commission’s General Counsel stated that even if Petitioner had been accredited separately from the Doctors’ Hospital, “Joint Commission accreditation would not have automatically transferred along with a stock transfer to Mr. Manchanda” CMS Ex. 3 at 2.

Supplier Standard 22 requires DMEPOS suppliers to be “accredited by a CMS-approved accreditation organization in order to . . . retain a supplier billing number.” 42 C.F.R. § 424.57(c)(22). As stated above, Petitioner’s accreditation ceased following the transfer of its shares from Doctors’ Hospital to a new owner on July 10, 2013. CMS Ex. 3. Further, Petitioner did not obtain accreditation until August 27, 2014, at the earliest. Although Petitioner did not realize that it had lost its accreditation following the transfer of stock to a new owner and disputes that The Joint Commission properly removed its accreditation, Petitioner does not, in these proceedings, dispute the loss of accreditation. Request for Hearing at 2; P. Br. at 7-9.

The record is unclear why NSC stated in the initial determination that Petitioner’s accreditation expired on January 11, 2014; however, the evidence of record is sufficient to establish that Petitioner was not accredited as of January 11, 2014 (i.e., the date NSC alleged Petitioner’s accreditation expired),⁴ and still not accredited on May 7, 2014 (i.e., the date NSC informed Petitioner that NSC was revoking Petitioner’s Medicare billing privileges). Therefore, I conclude that Petitioner failed to comply with Supplier Standard 22, which was required “in order to . . . retain a supplier billing number.” 42 C.F.R. § 424.57(c)(22).

As indicated above, Petitioner argues that The Joint Commission erred when it removed Petitioner’s accreditation. *See* P. Br. at 6-9; P. Ex. 3 at ¶ 8. Further, Petitioner repeatedly asserts in this forum and has consistently asserted before the contractor that The Joint Commission should have accredited Petitioner because it continued to meet all of the standards for accreditation during the period when it was not accredited. *See* P. Br. at 6-9; CMS Ex. 8 at 2; P. Ex. 3 at ¶¶ 3-5. Although CMS has the authority to oversee the accrediting organizations, 42 C.F.R. § 424.58(c)-(d), I do not have jurisdiction to review The Joint Commission’s decision to remove Petitioner’s accreditation because an accreditation decision is not an “initial determination” subject to review under the procedures in 42 C.F.R. Part 498. *See Riverview Psychiatric Ctr.*, DAB No. 2586, at 9-10 (2014).

Petitioner also asserts that it was not provided an opportunity to complete its CAP. Petitioner asserts that it notified NSC in its CAP that it was “working with” the Joint Commission to correct its accreditation status, but NSC did not afford Petitioner the

⁴ The Joint Commission’s General Counsel explained that after The Joint Commission removed Petitioner from Doctors’ Hospital’s accreditation, a weekly report was sent to NSC that listed Petitioner as non-accredited. CMS Ex. 3; *see also* 42 C.F.R. § 424.58(c)(1). The letter from the General Counsel does not state when that report was first generated and sent to NSC. NSC’s initial determination does not explain how NSC determined the date when Petitioner’s accreditation “expired.” *See* CMS Ex. 1 at 2; CMS Ex. 3.

opportunity to do so. P. Br. at 9. Petitioner argues that I should reverse the revocation because NSC did not give Petitioner a “full opportunity to come into compliance.” P. Br. at 10. Petitioner also claims that The Joint Commission did not respond in any way to Alok Manchanda’s letter regarding the stock transfer or notify Petitioner of its true accreditation status, and that the first notification of its non-accredited status was through NSC’s initial determination letter. P. Br. at 9; P. Ex. 3 at ¶¶ 5, 8. Under Petitioner’s position, the 30-day period that NSC provided to demonstrate compliance through a CAP was unreasonable because Petitioner could not regain accreditation from the Joint Commission in that time. *See* P. Br. at 9-10.

However, NSC provided Petitioner an opportunity to correct its noncompliance through the submission of a CAP. CMS Ex. 1 at 2. As stated above, NSC denied the CAP that Petitioner submitted. CMS Ex. 7. Further, CMS’s decision to deny a CAP is not an initial decision and, therefore, is not a matter over which I have jurisdiction. 42 C.F.R. § 405.809(b)(2); *DMS Imaging, Inc.*, DAB No. 2313, at 4 (2010). NSC provided Petitioner 30 days to demonstrate compliance, which Petitioner could not do. Petitioner was not reaccredited until August 27, 2014, at the earliest. P. Ex. 8.

In any event, my review of this matter is limited to determining whether the record shows that Petitioner was in compliance with Supplier Standard 22 at the time of revocation and not whether Petitioner returned to compliance at some later time. 73 Fed. Reg. 36,448, 36,452 (June 27, 2008); *see also Restwell Mattress Co.*, DAB CR2194, at 5 (2010) (“Petitioner’s showing of accreditation over three months after the revocation is not a ground to reverse the revocation.”); *Sherye Epps*, DAB CR2215, at 9 (2010). Petitioner’s concession that The Joint Commission considered it not to be accredited at the time of revocation is sufficient for me to affirm CMS. *Eastern Plumas Dist. Hosp.*, DAB CR2168, at 7 (2010). Although Petitioner argues that it simply did not know that The Joint Commission removed its accreditation, Petitioner’s mistaken understanding of the facts is no basis for me to reverse NSC’s otherwise lawful revocation of Petitioner’s billing privileges. *See Restwell*, DAB CR2194, at 5-6.

VI. Conclusion

For the reasons stated above, I affirm the revocation of Petitioner’s Medicare billing privileges.

/s/

Scott Anderson
Administrative Law Judge