

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

_____)	
In the Case of:)	
)	
José Castillo, O.D.,)	Date: September 04, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-521
)	Decision No. CR2003
Centers for Medicare & Medicaid)	
Services.)	
_____)	

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the provider enrollment of Petitioner, José Castillo, O.D., for a period of one year.

I. Background

Petitioner, an optometrist who is located in Hialeah, Florida, requested a hearing to challenge CMS's determination to revoke his Medicare provider enrollment. The case was assigned to me for a hearing and a decision. I issued a pre-hearing order in which I directed CMS and Petitioner to file pre-hearing exchanges of their proposed exhibits and briefs. CMS complied with my order by filing its exchange on July 20, 2009. Petitioner filed nothing in response.

CMS filed eight proposed exhibits with its exchange which it identified as CMS Exhibit (CMS Ex.) 1 – CMS Ex. 8. I receive these exhibits into the record.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether CMS is authorized to revoke Petitioner's provider enrollment for a period of a year.

B. Findings of fact and conclusions of law

I make findings of fact and conclusions of law (Findings) to support my decision. I set forth each Finding below as a separate heading.

1. CMS may revoke a provider's Medicare enrollment if the provider is no longer operational.

Enrollment in the Medicare program is conditioned on compliance with Medicare enrollment requirements. Among these is the requirement that a provider be operational. 42 C.F.R. § 424.535(a)(5). An "operational" provider must, at a minimum, have a place of business at which he or she offers services to the public during normal business hours. The provider must also notify the Medicare program of the location of his or her business. Failure by a provider to comply with either of these requirements is grounds for revocation of that provider's Medicare enrollment and his or her Medicare billing privileges.

2. The uncontested facts establish that Petitioner was not operational at the address that he gave Medicare as his practice location and that he failed to notify Medicare of his change of business address. Therefore, CMS was authorized to revoke his Medicare enrollment.

In his application for provider enrollment Petitioner certified that his practice location was at 3001 W 12 Ave., Suite 9, in Hialeah, Florida. CMS Ex. 1, at 17, 27. CMS asserts that, on September 16, 2008, investigators for a contractor working on behalf of Medicare drove by Petitioner's asserted practice location in order to determine whether Petitioner in fact had a practice at that address. The investigators found the office doors to be locked and no signs at the location that indicated that there was an active business there. The tenant next door informed the investigators that Petitioner had ceased operating a business at the location several months previously. A forwarding telephone number associated with the address indicated that the office had been closed effective July 1, 2008.

In his hearing request Petitioner admits that he closed his office in June of 2008. CMS Ex. 2, at 1-2. He asserts that, after June of 2008, he continued to practice at another address. He admits that he failed to notify Medicare of his change of location. Essentially, he argues that he intended nothing improper by his action.

These uncontested facts are sufficient to establish that Petitioner was no longer operational at the address he had given in his provider enrollment application and failed to notify Medicare of his change of business location. These are sufficient for CMS to revoke his enrollment pursuant to the provisions of 42 C.F.R. § 424.535(a)(5). The fact that Petitioner may not have intended anything improper by his action is not a defense. He was obligated to notify Medicare that he was no longer operational at the address he had certified as his practice location and his failure to do so in and of itself justifies revocation of his provider enrollment.

3. CMS revoked Petitioner's provider enrollment for the minimum period authorized by regulation.

Where revocation of enrollment is authorized CMS may revoke a provider's enrollment for a period of not less than one year and not more than three years. 42 C.F.R. § 424.535(c). The length of the revocation period depends on the severity of the basis for revocation. *Id.* CMS opted to revoke Petitioner's enrollment for the minimum period of one year. That is justified as a matter of law.

/s/
Steven T. Kessel
Administrative Law Judge