

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Elizabeth A. Conroy, CRNA,
(PTAN(s): 165913DRP, 165913YHMP, 651666, 65166AXN,
651666Q58, 651666C0R, 651666NUG, 651666QCA),
(NPI: 1346204096)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-653

Decision No. CR4753

Date: December 8, 2016

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the Medicare billing privileges of Petitioner, Elizabeth A. Conroy, CRNA.

I. Background

Petitioner requested a hearing to challenge CMS's determination to revoke her Medicare billing privileges. CMS moved for summary judgment. With its motion CMS filed proposed exhibits identified as CMS Ex. 1-CMS Ex. 6. Petitioner opposed the motion and cross-moved for summary judgment. She filed exhibits identified as P. Ex. 1-P. Ex. 7. Neither CMS nor Petitioner offered the written direct testimony of any witnesses.

CMS objected to P. Ex. 2-P. Ex. 7 on the ground that they are irrelevant. I agree that these exhibits are of no probative value. They relate to equitable arguments that have no bearing on the outcome of this case and that I have no authority to consider. However, I find it unnecessary to strike them. I receive CMS Ex. 1-CMS Ex. 6 and P. Ex. 1-P. Ex. 7 into the record.

Although the material facts of this case are undisputed, there is no need for me to decide whether the criteria for summary judgment are met inasmuch as neither CMS nor Petitioner offered witness testimony. I decide the case based on the written record.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether the regulations authorize CMS to revoke Petitioner's Medicare billing privileges.

B. Findings of Fact and Conclusions of Law

CMS asserts two regulatory bases for revoking Petitioner's billing privileges. First, it contends that it is authorized to do so based on the authority conferred by 42 C.F.R. § 424.535(a)(3) (re-codified in October 2015, as 42 C.F.R. § 424.535(a)(3)(i)). This section authorizes CMS to revoke a supplier's Medicare billing privileges if that individual was convicted within the previous 10 years of a felony that CMS determines to be detrimental to the best interests of the Medicare program and its beneficiaries. Specifically, such felonies include felonies committed against persons, such as murder, rape, assault, and other similar crimes. Second, CMS asserts that it may revoke Petitioner's billing privileges pursuant to 42 C.F.R. § 424.535(a)(9). This section, in substance, authorizes CMS to revoke a supplier's billing privileges for failure to report an "adverse legal action" to CMS within 30 days as is required by 42 C.F.R. § 424.516(d)(1)(ii) and (iii).

The facts of this case establish that Petitioner was convicted of a felony offense under New Jersey law. Her conviction resulted from an incident in which Petitioner, intoxicated at the time, threatened her minor child with a bow and arrow and threw various objects at him. CMS Ex. 1 at 9-21. She was charged with assault. She pled guilty to, and was convicted on October 21, 2011, of endangering the welfare of a child, a felony under New Jersey law. *Id.* at 11. There is no dispute that Petitioner failed to report this conviction to CMS.

These facts unquestionably establish grounds for CMS to revoke Petitioner's Medicare billing privileges. First, she was convicted of a felony against a person in the nature of an assault as is described at 42 C.F.R. § 424.535(a)(3)(i)(A) (re-codified in October 2015, as

42 C.F.R. § 424.535(a)(3)(ii)(A)). Although the felony of which she was convicted is not “assault” on its face, the very essence of Petitioner’s crime was her assault against her minor child. Threatening her child with a bow and arrow and throwing objects at him are assault, whether or not that term is used specifically in the law that provides the legal basis for her conviction. Furthermore, that crime is *in the nature of an assault* and therefore, it falls within the authority conferred by the regulation.

The regulation does not predicate the authority to revoke billing privileges to a narrow and limited set of felony convictions. It is written broadly to include any felonies that are crimes against persons “such as” murder, rape, and assault. That broad language sweeps in not only crimes that are labeled specifically as murder, rape, or assault, but also all other crimes against persons that involve violence or the potential for violence against those persons. Here, Petitioner unquestionably committed crimes of violence against her son that fall within the regulation’s reach.

Petitioner argues that the original charges against her of assault were dismissed and, thus, she cannot be characterized as having committed an assault against her son. P. Brief (Br.) at 4. She argues also that the child endangerment statute under which she was convicted draws a nexus between endangerment and abuse or neglect of a child. P. Br. at 5-6. She contends that New Jersey’s definitions of “abuse” and “neglect” are extremely broad and that these definitions actually encompass acts or omissions that would not comprise harm against a child. *See* N.J.S.A. 9:6-1. From this, Petitioner contends that one may not infer from her conviction that she was convicted either of assault or a crime that is in the nature of assault. P. Br. at 6.

These arguments ignore the undisputed facts of this case. Petitioner’s conviction results directly from allegations that she, intoxicated, pointed a weapon at her son and threw objects at him. That is assaultive behavior by any definition. Even if Petitioner wasn’t convicted of felony assault, her conviction under New Jersey law is for behavior that is in the nature of an assault. That is enough to authorize revocation of her billing privileges.

Petitioner argues also that the definitions contained in the New Jersey law are inconsistent in some respects and that prosecution under that law might be invalid because of those inconsistent definitions. P. Br. at 8. Be that as it may, Petitioner’s argument does not gainsay the fact that she was *convicted* of violating that law. She seems to be arguing now that her conviction might not be meaningful because of flaws in the New Jersey statute. That is not an argument that I have authority to hear and decide. What matters here is only that Petitioner was convicted of child endangerment under New Jersey law, a felony, and that the acts that underlie her conviction consist of assaultive behavior.

