

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Buckeye Home Healthcare Services, LLC,
(NPI: 1588915144),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-989

Decision No. CR4987

Date: December 13, 2017

DECISION

I do not find a basis in law or in fact to sustain a contractor's determination, as affirmed on reconsideration, to revoke the Medicare participation agreement of Petitioner, Buckeye Home Healthcare Services, LLC. I order that the determination to revoke be reversed.

I. Background

The Centers for Medicare & Medicaid Services (CMS) moved for summary judgment, asserting that I should sustain the contractor's determination to revoke Petitioner's Medicare participation. CMS filed 10 exhibits with its motion that are identified as CMS Ex. 1-CMS Ex. 10. Petitioner opposed the motion and filed 11 exhibits that are identified as P. Ex. 1-P.Ex. 11.

It is unnecessary that I decide whether the criteria for summary judgment are met here, although the facts of this case are not disputed. CMS did not offer the testimony of any witness. Although Petitioner listed several witnesses and provided written direct testimony of two of those witnesses, identified as exhibits, CMS did not express an

interest in cross-examining them. Neither party objected to my receiving its adversary's proposed exhibits. There would be no purpose in convening an in-person hearing in light of that.

I decide this case based on the parties' exchanges. I receive their proposed exhibits into the record.

II. Issues, Findings of Fact, and Conclusions of Law

A. Issue

The issue is whether a basis exists to revoke Petitioner's participation in Medicare.

B. Findings of Fact and Conclusions of Law

CMS asserts that a contractor properly revoked Petitioner's Medicare participation on February 27, 2017 (effective August 18, 2016), on the authority conferred by 42 C.F.R. § 424.535(a)(2)(i). This subsection is part of a broader regulation that sets forth the circumstances pursuant to which CMS or one of its contractors may revoke a provider or a supplier's participation in Medicare. The regulation allows revocation where:

The provider or supplier, or any owner, managing employee, authorized or delegated official, medical director, supervising physician, or other health care personnel of the provider or supplier is –

- (i) Excluded from the Medicare, Medicaid, and any other Federal health care program

42 C.F.R. § 424.535(a)(2)(i).

This regulation is clear on its face. It allows revocation of any provider or supplier's participation where that entity is actually owned, managed, or directed by an excluded person or where it employs an excluded person.

At one time an individual named Hassan A. Abdi served as an authorized official of Petitioner. In December 2012 Petitioner filed a document with the contractor, which requested that Mr. Abdi be added as an "authorized official" to the contractor's documentation of Petitioner's status. CMS Ex. 4 at 5.

The Inspector General of the U.S. Department of Health and Human Services (I.G.) excluded Mr. Abdi from participating in Medicare, Medicaid, and other federally funded health care programs on August 18, 2016. CMS Ex. 7. However, the undisputed evidence establishes that Mr. Abdi severed his management relationship with Petitioner

in February 2014, more than two years prior to the date that the I.G. excluded him. On February 11, 2014, Mr. Abdi sent a letter to Petitioner requesting to be removed as an authorized official. CMS Ex. 9 at 2; P. Ex. 3. In a second, notarized letter to Petitioner, dated February 13, 2014, Mr. Abdi restated that he was resigning as an authorized official. CMS Ex. 9 at 3; P. Ex. 4.

These undisputed facts establish that Mr. Abdi was no longer associated with Petitioner in any management capacity as of August 18, 2016. Consequently, Petitioner was not associated with an excluded individual and there is no regulatory basis to revoke Petitioner's participation.

But, CMS contends that if Mr. Abdi was no longer associated with Petitioner as of the date of his exclusion and the retroactive revocation date, Petitioner failed to notify the contractor of that fact. According to CMS, the purported failure to notify is a sufficient basis for revocation even if, in fact, there was no prohibited association between Petitioner and Mr. Abdi.

I do not read the regulation so broadly as is contended by CMS. The regulation, on its face, addresses *status* and not notification requirements. While there are other regulations that require participating suppliers and providers to notify CMS or its contractors of a change in status, and while under some circumstances a failure to notify may in and of itself be a basis for revocation, neither the contractor nor CMS cited any of those regulations as the basis for the revocation determination in this case. CMS relies only on the regulation that addresses actual association with an excluded individual. The evidence is clear that Petitioner severed its relationship with Mr. Abdi years prior to the date of Mr. Abdi's exclusion. Consequently, CMS has shown no basis for revoking Petitioner's participation.

Petitioner offered evidence that it contends establishes that it actually notified the contractor that it had severed its relationship with Mr. Abdi. I do not evaluate that evidence because I find it irrelevant to the outcome-determinative issue in this case.

/s/
Steven T. Kessel
Administrative Law Judge