Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

CSC Enterprises Inc. DBA Branford Hills Health Care Center
(PTAN: 0282630001),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-336

Decision No. CR2161

Date: June 18, 2010

DECISION

In this case, Petitioner, CSC Enterprises Inc. DBA Branford Hills Health Care Center, did not meet accreditation and surety bond requirements for continuing its participation in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). The Centers for Medicare and Medicaid Services (CMS) therefore revoked its Medicare billing privileges. Petitioner now appeals the revocation, arguing that CMS should instead have allowed it to terminate voluntarily its Medicare participation. CMS moves for summary judgment, which Petitioner opposes.

Because the parties agree that Petitioner did not meet supplier standards, CMS properly revoked its supplier number and is entitled to summary judgment. I have no authority to review CMS's denial of Petitioner's subsequent application for voluntary termination.[1]

[1] The parties have filed briefs and exhibits. With its brief (CMS Br.), CMS submits four exhibits (CMS Exs. 1-4). Petitioner has filed its response (P. Br.) with an additional four exhibits (P. Exs. 1-4).

Because Petitioner did not comply with regulatory standards for accreditation and submission of a surety bond, CMS properly revoked its supplier number, and I have no authority to review CMS's denial of Petitioner's application for voluntary termination.[2]

Summary judgment is appropriate here because this case presents no genuine issue of material fact, and CMS is entitled to judgment as a matter of law. *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 2 (2009); *Ill. Knights Templar Home*, DAB No. 2274 at 3-4 (2009), and cases cited therein.

To receive Medicare payments for items furnished to a Medicare-eligible beneficiary, a supplier of medical equipment and supplies must have a supplier number issued by the Secretary of Health and Human Services. Social Security Act (Act) § 1834(j)(1)(A). To obtain and retain its supplier number, a Medicare supplier must meet the standards set forth in 42 C.F.R. § 424.57(c), and CMS may revoke its billing privileges if it fails to do so. 42 C.F.R. §§ 424.57(c)(1),(d); 424.535(a)(1). Among other requirements, the supplier must be accredited by a CMS-approved accreditation organization. 42 C.F.R. § 424.57(c)(22). With limited exceptions not applicable here, as of October 2, 2009, currently-enrolled DMEPOS suppliers also had to submit a $50,000 surety bond. 42 C.F.R. § 424.57(c)(22), (26).[3] If a DMEPOS suppler fails to obtain, maintain, and timely file its surety bond, CMS must revoke that supplier's billing privileges. 42 C.F.R. § 424.57(d); *see* 74 Fed. Reg. at 200-01.

Here, in a notice letter dated August 21, 2009, the Medicare contractor, Palmetto GBA National Supplier Clearinghouse, reminded its suppliers, including Petitioner, of the accreditation and surety bond deadline. CMS Ex. 1. Petitioner concedes that it did not obtain a surety bond, nor did it demonstrate that it was accredited by a CMS-approved organization. In a letter dated October 9, 2009, Palmetto advised Petitioner that, because it had neither supplied proof of its accreditation nor obtained a surety bond, its Medicare supplier number would be revoked effective November 8, 2009. CMS Ex. 2.

Based on these undisputed facts, I find that CMS properly revoked Petitioner's supplier number.

Petitioner admits that it did not meet the standards, but complains that CMS did not accept what it characterizes as its "corrective action plan" (CAP). Petitioner's CAP is a request for voluntary termination (CMS Form 855S), which Petitioner apparently filed on October 15, 2009, after receiving the revocation notice. CMS Ex. 3; P. Ex. 2. I have no

---

[2] I make this one finding of fact/conclusion of law.

[3] The effective date for suppliers *seeking* enrollment was May 4, 2009. 42 C.F.R. § 424.57(d)(1)(i).

authority to review this determination. The regulations governing supplier enrollment specifically allow for review of an involuntary revocation but say nothing about review of CMS's determination to reject a supplier's CAP or to deny a supplier's request for voluntary termination. 42 C.F.R. § 424.545(a) (A supplier whose Medicare enrollment has been revoked may appeal CMS's decision in accordance with 42 C.F.R. Part 498, subpart A.).

According to the regulations governing supplier appeals, only initial determinations, which are listed at 42 C.F.R. § 498.3(b), may be appealed in this forum, and I have no authority to review actions that are not initial determinations. 42 C.F.R. § 498.3(d). Since neither CMS's rejection of a CAP nor CMS's denial of a request for voluntary termination are listed among the initial determinations, I have no authority to review those determinations.

I also find without merit Petitioner's complaints regarding the contractor's August 21, 2009 notice. Petitioner admits that the notice came to its business office but complains that staff overlooked it, because it unacceptably "came addressed only to the facility as a folded over and taped flyer." P. Br. at 2-3; CMS Ex. 1. Petitioner cites no authority suggesting that the contractor was required to send out any individualized notices, much less that such notices had to be sent certified mail or addressed to the attention of each supplier's administrator. A notice in the *Federal Register* had already informed suppliers of the regulatory changes and deadlines, and Petitioner concedes that it "became aware of the new requirements for accreditation and provision of a surety bond" at that time. 74 Fed. Reg. at 166, 198; CMS Ex. 3, at 1. Petitioner nevertheless complains that it was "unaware of information regarding any requirements to voluntarily surrender our provider number." CMS Ex. 3, at 1. But the means by which a non-compliant supplier can avoid an involuntary termination have not changed, and the instructions that accompany every DMEPOS enrollment application tell suppliers to complete the application if "[v]oluntarily terminating your Medicare DMEPOS supplier billing number." P. Ex. 2, at 2. Thus, from the time it began its program participation, Petitioner should have known how to avoid an involuntary revocation. *See Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 63 (1984) (Those who participate in the Medicare program are supposed to understand program rules.).

Because the undisputed evidence establishes that Petitioner did not comply with regulatory standards for accreditation and surety bond, CMS properly revoked its supplier number.

/s/
Carolyn Cozad Hughes
Administrative Law Judge