

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Beltway Foot Clinic PLLC,  
(PTAN: 6494670002)  
(NPI: 1285934737)

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-15-2586

Decision No. CR4866

Date: June 14, 2017

**DECISION**

Petitioner, Beltway Foot Clinic PLLC, is a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), located in Houston, Texas, that, until recently, participated in the Medicare program. The Centers for Medicare & Medicaid Services (CMS) has revoked its Medicare supplier number, and Petitioner appeals. CMS now moves for summary judgment.

Each party presents the written declaration of one witness. Neither party has asked to cross-examine the other's witness, so an in-person hearing would serve no purpose. *See* Acknowledgment and Prehearing Order at 5-6 ¶¶ 8-10 (June 18, 2015). This matter may therefore be decided on the written record, without considering whether the standards for summary judgment are satisfied.

Because the supplier did not post its hours of operation, was not staffed and accessible, and was not open for inspection during the hours of operation it listed in its revalidation application, CMS properly revoked its provider number.

## Background

Until its Medicare supplier number was revoked, effective November 26, 2014, Petitioner participated in the Medicare program as a supplier of DMEPOS. *See* 42 C.F.R. § 424.57. In a letter dated March 19, 2015, the Medicare contractor, National Supplier Clearinghouse (a division of Palmetto GBA), notified Petitioner that its Medicare supplier number was revoked retroactively, pursuant to 42 C.F.R. §§ 405.800; 424.57(e); 424.535(a)(5); and 424.535(g). The letter noted that one of the contractor's representatives attempted to visit the facility on November 21 and 26, 2014. The office was closed on both occasions, so the representative could not inspect the premises. CMS Ex. 3.

Petitioner sought reconsideration. CMS Ex. 4. In a reconsideration determination dated April 24, 2015, a Medicare hearing officer affirmed the revocation of Petitioner's supplier number. CMS Ex. 5. Petitioner now appeals that determination pursuant to 42 C.F.R. § 424.545.

With its brief (CMS Br.), CMS submits six exhibits (CMS Exs. 1-6). Petitioner submits a brief (P. Br.) and four exhibits (P. Exs. 1-4). One is a written declaration (P. Ex. 2) but three are documentary evidence (P. Exs. 1, 3, 4). Petitioner did not submit these documents at the reconsideration level. Petitioner asks that they be admitted to rebut the field investigator's written declaration and photographs, which CMS presented for the first time during these proceedings. CMS has not objected to my admitting the documents. I therefore find good cause for Petitioner's submitting documentary evidence for the first time at this level. 42 C.F.R. § 498.56(e). In the absence of any other objections, I admit into evidence CMS Exs. 1-6 and P. Exs. 1-4.

## Discussion

***CMS properly revoked the supplier's billing privileges, because the facility did not post its hours of operation and was not accessible and staffed or open for inspection during the hours of operation listed in its revalidation application.***<sup>1</sup>

Requirements for a DMEPOS supplier's Medicare participation. 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 § 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

---

<sup>1</sup> I make this one finding of fact/conclusion of law.

so. 42 C.F.R. §§ 424.57(c)(1) and (d); 424.535(a)(1). Among other requirements, the supplier must maintain a physical facility on an appropriate site. 42 C.F.R. § 424.57(c)(7). An “appropriate site” is “accessible and staffed during posted hours of operation.” 42 C.F.R. § 424.57(c)(7)(i)(C). The supplier must maintain a visible sign and post its hours of operation. 42 C.F.R. § 424.57(c)(7)(i)(D). It must permit CMS or its agents to conduct on-site inspections to ascertain its compliance with governing regulations. 42 C.F.R. §§ 424.57(c)(7) and (8). Where, as here, a supplier fails to post its hours of operation, or the contractor’s representative finds the facility closed during the hours it purports to be open, the supplier does not meet the requirements of section 424.57(c), and CMS may appropriately revoke its billing privileges. 42 C.F.R. § 424.535(a)(5); *Ita Udeobong, d/b/a Midland Care Medical Supply & Equipment*, DAB No. 2324 (2010).

On October 29, 2014, the supplier submitted to the Medicare contractor its Medicare revalidation application, listing its address as 9515 Bellaire Blvd. #B, Houston, Texas, and its hours of operation as 8:00 a.m. to 5:00 p.m. Monday through Friday. CMS Ex. 1 at 2.

According to a site verification survey form, signed by the contractor’s field investigator, Michael Lightner, he visited the supplier’s office address at 10:17 a.m. on November 21, 2014, and returned at 11:53 a.m. on November 26, 2014. CMS Ex. 2 at 1; CMS Ex. 6 (Lightner Decl. ¶¶ 3, 4). He observed that no hours of operation were posted. On both occasions, he attempted to enter the offices, but the door was locked. He rang the bell several times but received no response. CMS Ex. 2; CMS Ex. 6 at 2 (Lightner Decl. ¶¶ 4, 5). The inspector took pictures on both days, and the pictures indicate the dates and times cited in the report. CMS Ex. 2 at 2-7; CMS Ex. 6 at 2 (Lightner Decl. ¶ 5).

Petitioner concedes that its hours of operation were not posted when the investigator visited and were not posted until months later, on March 22, 2015. Petitioner’s Request for Review. This puts the supplier out of substantial compliance with section 424.57(c)(7)(i)(D) and justifies the revocation.

Petitioner maintains that the office was open and that its proprietor, Lauren Sum, D.P.M., was seeing patients when Investigator Lightner visited on November 21. According to Dr. Sum, her office was open from 8:30 a.m. to 1:00 p.m. that day. P. Br. at 1. Accepting this as true, the supplier was nevertheless out of compliance, because it was not open during the hours it listed on its revalidation application. Further, Petitioner concedes that no one was in the office on November 26. Dr. Sum was seeing patients at another location. According to Petitioner, she and her staff were available by telephone, but the investigator did not call. CMS Ex. 4; P. Br. But posting a telephone number does not make the site “accessible and staffed.” The regulation requires that staff be present physically and that individuals (including the investigator) be able to enter the premises.

