Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Keokuk Area Hospital,
(CCN: 16-0008),

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-1087

Decision No. CR2697

Date: January 23, 2013

DECISION

Petitioner, Keokuk Area Hospital (Petitioner or Keokuk Hospital), appeals a determination by the Centers for Medicare and Medicaid Services (CMS) that denied Petitioner's request to participate as a "critical access hospital" (CAH) under the Medicare Rural Hospital Flexibility Program. CMS now moves for summary judgment, which Petitioner opposes.

For the reasons set forth below, I find that this case presents no genuine dispute of material facts and that CMS is entitled to judgment as a matter of law. I therefore grant CMS's motion for summary judgment.

I. Background

Section 1820 of the Social Security Act (Act) establishes the Medicare Rural Hospital Flexibility Program, which requires participating states to develop at least one rural health network and to have at least one facility in the state designated as a CAH. Act § 1820(c)(1). A CAH is eligible for higher levels of reimbursement and funding to which other facilities are not entitled. *See* Act §§ 1814(l)(1), 1820(g)(1)(D), 1834(l), 1861(v).

Regulations implementing those statutory provisions are found at 42 C.F.R. Part 485, subpart F. To be designated a CAH, a hospital must meet all statutory and regulatory requirements. 42 C.F.R. § 485.601(b).

Petitioner is a 49-bed hospital in Keokuk, Iowa.[1] By letter dated March 14, 2012, and a CMS-855A enrollment application form, it sought to change its designation from an "acute hospital" to a CAH. Wisconsin Physician Services (WPS), a CMS contractor, denied Petitioner's request, and Petitioner sought reconsideration. By letter dated May 25, 2012, CMS denied Petitioner's request, finding that the Keokuk Hospital did not satisfy the proximity requirements for a CAH because it is within a 35-mile drive from two other hospitals.

Petitioner timely requested a hearing before an administrative law judge (ALJ). With its hearing request (RFH), Petitioner submitted a 103-page attachment (RFH Attach.).[2] CMS has moved for summary disposition and filed a brief in support (CMS Br.). Petitioner responded with a brief opposing summary disposition (P. Br.) and three additional exhibits (P. Exs. 1-3).

II. Issues

I consider whether summary judgment is appropriate.

On the merits, the sole issue before me is whether Petitioner qualifies as a CAH.

III. Discussion

1. ***CMS is entitled to summary judgment because the undisputed facts establish that Keokuk Hospital is less than a 35-mile drive from other hospitals and therefore does not meet the proximity requirement for a CAH. 42 C.F.R. § 485.610(c).***[3]

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[1] A CAH cannot have more than 25 inpatient beds. Act § 1820(c)(2)(B)(iii); 42 C.F.R. § 485.620(a). Petitioner told CMS, and CMS accepted, that Petitioner would reduce its inpatient bed size to 25 if CMS granted it CAH status. Therefore, whether Petitioner complied with this participation standard is not at issue before me.

[2] Petitioner labeled certain documents in its attachment as Exhibits 1-7, but numbered all of the attached pages consecutively. For example, page 67 is part of "Exhibit 1" while page 68 is part of "Exhibit 2." For clarity, I refer to the documents in this attachment by their consecutive numbers (*e.g.*, RFH Attach. at 68) rather than by the "exhibit" numbers.

[3] My findings of fact/conclusions of law are set forth, in italics and bold, in the discussion captions of this decision.

Summary judgment is appropriate if a case presents no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300 at 3 (2010).

CMS denied Keokuk Hospital CAH status because of its proximity to other hospitals. RFH Attach. at 68-69. Unless the drive is over "mountainous terrain" or in areas with only "secondary roads," a CAH must be at least a 35-mile drive from another hospital or CAH. Act § 1820(c)(2)(B)(i)(I); 42 C.F.R. § 485.610(c).[4]

The parties agree that Keokuk Hospital is within a 35-mile drive of two other hospitals: it is 18.77 driving miles from Fort Madison Community Hospital in Fort Madison, Iowa, and 15.27 driving miles from Memorial Hospital in Carthage, Illinois. The parties also agree that that the drives are not over "mountainous terrain" or in areas with only "secondary roads" available. RFH at 2, 4; RFH Attach. at 43. Thus, Petitioner does not meet the proximity requirements of the statute and regulations and cannot be certified as a CAH. Act § 1820(c)(2)(B)(i)(I); 42 C.F.R. § 485.610(c); *see Cibola General Hospital*, DAB No. 2387 (2011).

2. *"Legislative goals" do not override the plain language of the statute and regulations.*

Based on the plain language of the statute and regulations, it seems that CMS must deny Keokuk Hospital's request for CAH status. Petitioner nevertheless argues that CMS's actions are inconsistent with the legislative goal of "maintaining hospital-level services in rural communities, thereby ensuring access to care." RFH at 3. While I agree that Congress intended to preserve access to hospital services for Medicare beneficiaries in rural areas, it did so in a more limited way than Petitioner suggests. As the Departmental Appeals Board pointed out in *Cibola*, the statute does not provide enhanced reimbursement for all rural hospitals; rather, it imposes proximity constraints in order "to identify those hospitals that are critical to maintaining access to hospital services." *Cibola*, DAB No. 2387 at 10.

Further, where, as here, the statutory language is unambiguous, I may not use legislative history to modify its plain meaning. *See Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 461 (1987) (holding that where, as here, the language of a statute is unambiguous, considering the legislative history to add to the statutory language, is not appropriate absent "rare and exceptional circumstances").

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[4] Over mountainous terrain or in areas with secondary roads, the driving distance must be at least 15 miles. Act § 1820(c)(2)(B)(i)(I); 42 C.F.R. § 485.610(c).

3. *Even assuming CMS had the discretion to approve Keokuk Hospital's CAH status without regard to the proximity requirements of the statute and regulation, an ALJ may not substitute his/her own discretion for that of CMS.*

Petitioner also insists that CMS has granted CAH status to at least one other hospital that did not meet the proximity requirements, which, in Petitioner's view, means that CMS may determine that other criteria – *e.g.*, the hospital's unique location, the municipal need for access to emergency services – override the proximity requirements. P. Br. at 2-3.[5] Whether CMS has such discretion is highly questionable. Even if it has such discretion, however, my authority is limited to determining whether CMS has a legal basis for its action, which it plainly had. I may not substitute my own discretion for that of CMS. *Letantia Bussell, M.D.*, DAB No. 2196 at 12-13 (2008)

Moreover, an ALJ has no authority to disregard the plain language of the statute and regulations, no matter how compelling the equitable considerations. *See Pepper Hill Nursing & Rehab. Ctr., LLC*, DAB No. 2395 at 10-11 (2011) (holding that an ALJ and the Departmental Appeals Board are bound by the applicable statute and regulations and not authorized to provide "equitable relief" by enrolling a supplier that does not meet Medicare statutory and regulatory requirements); *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 14 (2009) ("An ALJ is bound by applicable laws and regulations and may not invalidate either a law or regulation on any ground.").

4. *That, in 2005, the State of Iowa designated Keokuk Hospital a "necessary provider" does not entitle it to CAH status.*

The Iowa Department of Public Health recognized Petitioner as a "necessary provider" on September 16, 2005. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. No. 108-173), states such as Iowa that participated in the Medicare Rural Hospital Flexibility Program could override the

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[5] Petitioner claims that CMS granted CAH status to West Shore Medical Center in Manistee, Michigan, even though it lies just 28.24 driving miles from another hospital. P. Br. at 2. Because I find that West Shore Medical's CAH status is irrelevant here, I do not consider its eligibility. I note, however, that hospitals within 35 driving miles of other hospitals may nevertheless qualify as CAHs. *See, e.g.*, 42 C.F.R. § 485.610(c); State Operations Manual, ch. 2 § 2556A ("A CAH may qualify for application of the "secondary roads only" criterion if there is a combination of primary and secondary roads between it and any hospital . . . so long as more than 15 of the total miles from the hospital . . . consists of areas in which only secondary roads are available."); *Cibola* (finding that close proximity to an Indian Health Service hospital did not disqualify the applicant).

proximity requirements by deeming the hospital a "necessary provider" of health care services. The MMA, however, revoked that authority effective January 1, 2006, and required that all hospitals seeking CAH status be at least a 35-mile drive from the next closest hospital regardless of whether its state deems it a "necessary provider." *See* Pub. L. 108-173, § 405(h). The preamble to the regulation implementing that amendment explained:

> Section 405(h) of Public Law 108-173 amended section 1820(c)(B)(i)(II) of the Act by adding language that terminates a State's authority to waive the location requirement for a CAH by designating the CAH as a necessary provider, effective January 1, 2006. Currently, a CAH is required to be located more than a 35-mile drive (or in the case of mountainous terrain or secondary roads, a 15-mile drive) from a hospital or another CAH, unless the CAH is certified by the State as a necessary provider of health care services to residents in the area. Under this provision, after January 1, 2006, States will no longer be able to designate a CAH based upon a determination that it is a necessary provider of health care.

69 Fed. Reg. 48,916, 49,220 (Aug. 11, 2004). Congress excepted from the proximity requirements those hospitals that, prior to January 1, 2006, had been identified as "necessary providers" by their states *and* had already been designated CAHs. *See* Act § 1820(h); Pub. L. 108-173, § 405(h); 69 Fed. Reg. at 49,220. Because Keokuk Hospital had not been designated a CAH, it does not fall within this exception.

Thus, the undisputed evidence establishes that Keokuk Hospital does not meet CAH statutory requirements and CMS is therefore entitled to judgment as a matter of law.

IV. Conclusion

I find that this case presents no genuine dispute of material facts, and that CMS is entitled to judgment as a matter of law. I therefore grant CMS's motion for summary disposition.

/s/
Carolyn Cozad Hughes
Administrative Law Judge