

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

I&S Healthcare Services, LLC
(NPI No. 1144347154),

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-13-16

Decision No. CR2715

Date: March 5, 2013

DECISION

Palmetto GBA (Palmetto), an administrative contractor acting on behalf of the Centers for Medicare and Medicaid Services (CMS), found Petitioner not to be operational and revoked Petitioner's enrollment as a provider in the Medicare program effective March 23, 2012. Petitioner appealed. For the reasons stated below, I affirm the determination to revoke Petitioner's enrollment.

I. Background and Procedural History

Petitioner, I&S Healthcare Services, LLC, was enrolled in the Medicare program as a home health agency (HHA). The parties agree that in February 2012, CMS suspended Petitioner's enrollment, but following the submission of a corrective action plan (CAP), CMS reinstated Petitioner in April 2012. CMS's Motion for Summary Judgment and Prehearing Brief (CMS Br.) at 4-5; Petitioner's Pre-hearing Brief and Opposition to CMS's Motion for Summary Judgment (P. Br.) at 1-2. On June 7, 2012, a Palmetto inspector arrived at Petitioner's offices located at 2646 South Loop West #370, Houston, Texas 77054 to conduct an unannounced site visit. CMS Br. at 5; P. Br. at 2. The site inspector noted that: Petitioner's facility was not open for business; the facility did not

have employees or staff present; there were no signs of customer activity; and the facility did not appear to be operational. CMS Exhibit (CMS Ex.) 3. The inspector also noted that there was a sign posted indicating Petitioner's name and business hours, as well as a sign that stated: "I&S Healthcare Services LLC This is notice of Voluntary Suspension of Normal Business Operations Effective March 23, 2012 to October 1, 2013 Administration." CMS Exs. 3, 5. In a July 24, 2012 initial determination, Palmetto revoked Petitioner's enrollment, effective March 23, 2012, as a Medicare provider under 42 C.F.R. § 424.535(a)(5)(i) because Petitioner was no longer operational. CMS Ex. 4; Petitioner Exhibit (P. Ex.) 1.

Petitioner filed a timely CAP. P. Ex. 3. Petitioner, through counsel, also requested reconsideration of Palmetto's revocation. CMS Ex. 2; P. Ex. 2. In the reconsideration request, Petitioner stated that it had closed its operations following the February 2012 suspension of its provider status and that after Palmetto approved its first CAP, Petitioner had been:

unable to reinitiate operations by the time of the on-site visit. Its administrative obligations, as triggered by the initial revocation of billing privileges, did not allow it enough time to reorganize and start admitting new patients. Therefore, I & S' inability to provide services is not the result of its own doing or operational decisions, but of the actions they have had to take to be able to comply with CMS' requirements after the initial revocation of billing privileges. . . . I & S is ready to start again, as soon as the billing privileges are reinstated and Palmetto GBA finishes the revalidation process.

On September 18, 2012, CMS issued an unfavorable reconsidered determination. CMS Ex. 1; P. Ex. 4.

Petitioner timely filed a request for a hearing with the Departmental Appeals Board, Civil Remedies Division. In response to my October 24, 2012 Acknowledgment and Pre-hearing Order (Order), CMS and Petitioner each filed prehearing briefs and five proposed exhibits. Because neither party objected to any of the proposed exhibits, I admit CMS Exs. 1 through 5 and P. Exs. 1 through 5 into the record. Further, in their submissions, the parties indicated that they had no witnesses. Accordingly, the record is closed and I will issue this decision based on the written record. *See* Order ¶ 12.

II. Discussion

Petitioner, as an HHA, is considered a provider under the Medicare program. 42 C.F.R. § 498.2. In order to participate in the Medicare program as a provider, individuals and entities must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. During the enrollment process, the revalidation process, or

whenever CMS deems it necessary, CMS may perform on-site reviews to verify the accuracy of a provider's enrollment information, determine the provider's compliance with Medicare enrollment requirements, and determine whether the provider is no longer operational. 42 C.F.R. §§ 424.510(d)(8); 424.515(c), 424.517(a). CMS may revoke a provider's enrollment if it is not operational. 42 C.F.R. § 424.535(a)(5).

A. Issue

Whether CMS has a legitimate basis to revoke Petitioner's enrollment as a provider in the Medicare program based on a determination that Petitioner was not operational under 42 C.F.R. § 424.530(a)(5).

B. Findings of Fact, Conclusions of Law, and Analysis¹

- 1. During the June 7, 2012 site visit, Petitioner's office displayed a sign indicating it had voluntarily suspended operations from March 23, 2012, through October 1, 2013, and the site inspector observed that Petitioner did not otherwise appear operational.***

Palmetto's site inspector conducted his site visit of Petitioner's offices at 12:00 PM on Thursday June 7, 2012. CMS Ex. 3. This visit took place during Petitioner's posted business hours. CMS Ex. 5, at 3. The site inspector noted on the site survey form the following about Petitioner's offices: the facility was not open for business; the facility did not have employees or staff present; there were no signs of customer activity at the facility; and the facility did not appear to be operational. CMS Ex. 3. The inspector also noted on the site survey form that a sign was posted on Petitioner's office door stating that Petitioner had suspended operations from March 23, 2012, until October 1, 2013; the inspector took a photograph of the sign. CMS Exs. 3, 5, at 1-2.

Consistent with the inspector's observations, Petitioner admitted that it had been "unable to reinstate operations by the time of the on-site visit. Its administrative obligations, as triggered by the initial revocation of billing privileges, did not allow it enough time to reorganize and start admitting new patients." CMS Ex. 2, at 2; P. Exs. 2, at 2, 5, at 2. Petitioner also admitted that it had placed the notice of its voluntary suspension of business operations in its window. CMS Ex. 2, at 1; P. Ex. 2, at 1. Therefore, I find that Petitioner had suspended its operations, was not staffed, was not open to the public, and was not providing services when the site inspector conducted the site survey.

¹ My findings of fact and conclusions of law are set forth, in italics and bold font.

2. CMS has a legitimate basis to revoke Petitioner's enrollment in the Medicare program because Petitioner was not operational pursuant to 42 C.F.R § 424.535(a)(5).

CMS may revoke a currently enrolled provider or supplier's Medicare billing privileges and any corresponding provider agreement if:

CMS determines, upon on-site review, that the provider or supplier is no longer operational to furnish Medicare covered items or services Upon on-site review, CMS determines that- (i) A Medicare Part A provider is no longer operational to furnish Medicare covered items or services, or the provider fails to satisfy any of the Medicare enrollment requirements.

42 C.F.R. § 424.535(a)(5)(i). A provider is "operational" when it has a "qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicare claims, and is properly staffed, equipped, and stocked (as applicable based on the type of facility or organization, provider or supplier specialty, or the services or items being rendered), to furnish these items or services." 42 C.F.R. § 424.502. In the present matter, the undisputed facts indicate that Petitioner neither held itself out as an HHA that was providing services on June 7, 2012, nor was it capable on that date of doing so.

In its brief, Petitioner does not dispute the observations of the site inspector during the June 7, 2012 site visit to Petitioner's offices. However, Petitioner asserts that on June 7, 2012, it was still attempting to comply with the CAP that CMS approved in the spring of 2012, and had not yet been able to resume operations. P. Br. at 2. Petitioner further asserts that CMS interprets the term "operational" too expansively and argues that the term "no longer operational" is not defined in the regulations. P. Br. at 3-4, 6. Petitioner argues that under CMS's interpretation of the regulations, a provider could be revoked for not being operational if a provider "closes down for vacations, holidays, or emergency situations." P. Br. at 6. Petitioner asserts that it is unreasonable to expect a provider to be open "every day, of every week, of every year." P. Br. at 10. Petitioner asserts that the regulations permit providers, "when the management of its business requires," to have a "temporary cessation of operations." P. Br. at 7. Petitioner argues that the sign that it placed on its offices expressly indicated that the suspension of its operations was temporary. P. Br. at 7, 9. Petitioner cites no authority for its position.

Petitioner's position that a suspension of operations for approximately a year and a half, as indicated on the posted sign, is a temporary cessation of operations analogous to a temporary closing due to holidays or emergencies is a strained argument in the extreme. The fact that Petitioner had been operational at an earlier time and might be operational

