

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Pradeep Srivastava, M.D.  
(NPI: 1043307671)  
(PTAN 001050 and 735005P50),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-727

Decision No. CR3297

Date: July 16, 2014

**DECISION**

Novitas Solutions, Inc. (Novitas), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), denied the application of Petitioner, Pradeep Srivastava, to enroll as a supplier in the Medicare program based on Petitioner's felony conviction for income tax evasion and filing a false income tax return within 10 years of the date of his application. Petitioner requested a hearing before an administrative law judge to dispute the denial. For the reasons stated below, I affirm Novitas' determination.

**I. Background and Procedural History**

On October 8, 2009, Petitioner was found guilty of federal income tax evasion and filing a false tax return. CMS Ex. 6, at 7. CMS revoked Petitioner's Medicare enrollment as of that date and imposed a three-year reenrollment bar. CMS Ex. 6, at 2. On January 27, 2010, the United States District Court for the District of Maryland (District Court) issued

a Judgment in Criminal Case indicating that Petitioner was found guilty of three counts of felony income tax evasion and filing a false tax return in violation of 26 U.S.C. §§ 7201 and 7206(1), and sentenced Petitioner to be incarcerated. CMS Ex. 6, at 10-11.

Petitioner submitted an application, Form CMS 855-I, to enroll in the Medicare program dated March 28, 2013, along with the following supporting documentation: Completion of Integrity Agreement letter dated April 3, 2013; Consent Order from the District of Columbia Board of Medicine reinstating Petitioner's medical license dated March 14, 2013; and the District Court's Amended January 27, 2010 Judgment. CMS Ex. 9. Subsequently, on May 21, 2013, Petitioner submitted Forms CMS 855-I and CMS 855-R, with attachments. CMS Ex. 8.

On May 31, 2013, Novitas issued an initial determination letter denying Petitioner's enrollment application based on a failure to meet enrollment requirements (42 C.F.R. § 424.530(a)(1)). The letter also stated: "Deny. Based on the felony conviction." CMS Ex. 7, at 1. The letter informed Petitioner that he could either submit a corrective action plan (CAP) within 30 days from the date of the letter or he could exercise his right to request reconsideration within 60 days from the date of the letter. CMS Ex. 7, at 1-2.

On June 17, 2013, Petitioner filed a timely request for reconsideration. CMS Ex. 6. On July 2, 2013, Novitas informed Petitioner that additional information was required to complete processing of his enrollment application. CMS Ex. 5. Petitioner submitted the additional information on July 18, 2013. CMS Ex. 4.

Novitas issued another initial determination letter dated August 14, 2013. CMS Ex. 3. Novitas denied Petitioner's enrollment based on 42 C.F.R. § 424.530(a)(3), because he had been convicted of a felony within 10 years preceding enrollment, which CMS determined to be detrimental to the best interests of the Medicare program. CMS Ex. 3. The letter informed Petitioner that he could either submit a CAP within 30 days from the date of the letter or he could exercise his right to request reconsideration within 60 days from the date of the letter. Petitioner submitted a CAP dated September 7, 2013. CMS Ex. 2. Petitioner also included documentation of his restitution payments, individual counseling, recertification in cardiovascular disease and Continuing Medical Education (CME).

By letter dated December 7, 2013, Novitas issued its reconsideration decision in response to Petitioner's previously submitted CAP and Request for Reconsideration. CMS Exs. 1, 2, 6. Novitas' reconsidered decision upheld the denial of Petitioner's enrollment application based on Petitioner's felony conviction in 2010. CMS Ex. 1. The letter notified Petitioner that he may request final review by an administrative law judge. CMS Ex. 1.

On February 12, 2014, Petitioner filed a timely request for a hearing (RFH). In response to my February 27, 2014 Acknowledgment and Pre-Hearing Order (Order), CMS filed a Pre-Hearing Brief and Motion for Summary Judgment (CMS Br.) and nine exhibits (CMS Exs. 1-9). Petitioner submitted a brief in opposition to CMS's Motion for Summary Judgment and a Cross Motion for Summary Judgment (P. Br.) and did not file any exhibits.

## II. Decision on the Record

In the absence of an objection, I admit CMS Exs. 1-9 into the record.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10; *Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible so long as the opposing party has the opportunity to cross-examine those witnesses).<sup>1</sup> Neither party submitted written direct testimony for any proposed witnesses. Consequently, there are no witnesses to cross-examine. Therefore, I issue a decision on the record. Order ¶ 11.

## III. Issue

Whether CMS had a legitimate basis for denying Petitioner's enrollment under 42 C.F.R. § 424.530(a)(3) based on Petitioner's felony conviction of income tax evasion and filing a false income tax return.<sup>2</sup>

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<sup>1</sup> Decisions of the Departmental Appeals Board (DAB) cited in this decision are accessible on the website for the Department of Health and Human Services (HHS) at: <http://www.hhs.gov/dab/decisions/index.html>.

<sup>2</sup> The record indicates that CMS revoked Petitioner's enrollment as a supplier in the Medicare program, and established a three-year reenrollment bar and an effective date of October 8, 2009. CMS Ex. 6, at 2. However, the reconsidered determination against which Petitioner filed the request for hearing in this case only involves the denial of Petitioner's application for enrollment in the Medicare program following the completion of the reenrollment bar. CMS Ex. 1. Petitioner has the right to a hearing for matters covered in a reconsidered determination. *See Denise Hardy*, DAB No. 2464, at 4-5 (2012); *Hiva Vakil*, DAB No. 2460, at 4-5 (2012); *see also Better Health Ambulance*, DAB No. 2475, at 4 (2012). Therefore, the revocation of Petitioner's Medicare enrollment is not an issue in this case.

#### IV. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(1)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

#### V. Findings of Fact, Conclusions of Law, and Analysis<sup>3</sup>

Petitioner is a physician and, therefore, a supplier for purposes of the Medicare program. *See* 42 U.S.C. § 1395x(d); 42 C.F.R. §§ 400.202 (definition of *Supplier*), 410.20(b)(1). In order to participate in the Medicare program as a supplier, individuals must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may deny enrollment for any of the reasons stated 42 C.F.R. § 424.530.

1. ***Petitioner was convicted of felony income tax evasion and filing a false income tax return less than four years before he filed applications to enroll in the Medicare program.***

The record shows and Petitioner does not dispute that Petitioner was convicted of felony income tax evasion and filing a false income tax return on January 27, 2010. CMS Ex. 6 at 10; P. Br. at 1. Petitioner's application for enrollment was received by Novitas on March 28, 2013 and resubmitted on May 21, 2013. CMS Exs. 8, 9. Therefore, I find that Petitioner was convicted of felony income tax evasion and filing a false income tax return within 10 years of his application for enrollment.

2. ***Novitas had a legitimate basis for denying Petitioner's enrollment in the Medicare program under 42 C.F.R. § 424.530(a)(3)(i)(B), because Petitioner was convicted of felony income tax evasion and filing a false income tax return, which are offenses per se detrimental to the interests of the Medicare program and its beneficiaries, and the conviction took place within ten years of Petitioner's application for enrollment.***

The pertinent regulatory provision provides the following basis for the denial of an enrollment application:

- (3) *Felonies.* If within the 10 years preceding enrollment or revalidation of enrollment, the provider, supplier, or any owner of the provider or supplier, was convicted of a Federal or State felony offense that CMS has determined to be detrimental to the best interests of the program and its

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<sup>3</sup> My findings of fact and conclusions of law are set forth in italics and bold font.

beneficiaries. CMS considers the severity of the underlying offense.

(i) Offenses include—

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(B) Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud, and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.

42 C.F.R. § 424.530(a)(3)(i)(B).

Petitioner does not dispute that he was convicted for the felony of income tax evasion. The criminal offense of “income tax evasion” is one of the enumerated felonies under 42 C.F.R. § 424.530(a)(3)(i)(B). Therefore a conviction of this crime is per se considered detrimental to the best interests of the program. *See Letantia Bussell*, DAB No. 2196, at 9, (2008).<sup>4</sup>

Petitioner does not appear to dispute this; however, Petitioner argues that CMS already revoked his Medicare enrollment and barred him from reenrollment for the maximum period of time permitted under 42 C.F.R. § 424.535(c). Because revocation was effective in October 2009, Petitioner asserts that he has completed the three-year reenrollment bar, which provides that a reenrollment bar after a revocation cannot be more than three years.

The regulation that Petitioner relies on, taken in isolation, supports Petitioner’s contention. “After a . . . supplier . . . has had [his] billing privileges revoked, [he] is barred from participating in the Medicare program from the effective date of the revocation until the end of the re-enrollment bar. The re-enrollment bar is . . . not greater than 3 years . . .” 42 C.F.R. § 424.535(c). Although Petitioner is no longer subject to a reenrollment bar, he still is not enrolled. This is because he is required to complete and submit “a new applicable enrollment application and applicable documentation, as a new . . . supplier, for validation by CMS.” 42 C.F.R. § 424.535(d)(1) (emphasis added).

If a supplier submits an enrollment application, CMS must consider whether the supplier meets the requirements for enrollment. The regulations provide seven reasons why CMS

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<sup>4</sup> Although the *Letantia Bussell* decision involved a physician whose Medicare enrollment was revoked under 42 C.F.R. § 424.535(a)(3)(i)(B) based on a conviction for income tax evasion (DAB No. 2196 at 6), the decision is relevant in this case because section 424.535(a)(3)(i)(B) is identical to section 424.530(a)(3)(i)(B).

may deny enrollment, including a conviction of a felony that is detrimental to the best interests of the Medicare program and its beneficiaries within ten years of the enrollment application. *See* 42 C.F.R. § 424.530(a)(3). CMS has the authority to deny Petitioner's enrollment because, as discussed above, Petitioner's conviction is a basis for denying enrollment.<sup>5</sup>

Petitioner also argues that he fulfilled all the conditions of an Integrity Agreement,<sup>6</sup> participated in counseling, took CME courses, was recertified in cardiology and regained his license to practice medicine. However, I cannot consider these issues because CMS properly denied enrollment, and I have no authority to review CMS discretionary decision to take an action authorized by law. *Letantia Bussell*, DAB No. 2196, at 12-13.

### III. Conclusion

For the reasons explained above, I affirm CMS's determination to deny Petitioner's enrollment as a supplier in the Medicare program.

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/s/  
Scott Anderson  
Administrative Law Judge

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<sup>5</sup> Although Petitioner's belief that he should only be subject to a three-year reenrollment bar appears reasonable, considered in context, it is incorrect. If Petitioner was right, then suppliers enrolled in the Medicare program prior to a conviction could only be precluded from participation in the program for three years while individuals with the same conviction who seek enrollment for the first time would be subject to denial of enrollment for ten years. There is no reason to believe that HHS intended to treat these two groups in such a disparate way.

<sup>6</sup> The record reflects that the HHS Office of the Inspector General sent Petitioner a letter on April 3, 2013, stating that Petitioner completed the five-year term of an Integrity Agreement that had commenced on July 24, 2007. CMS Ex. 9, at 31. Because Petitioner was not found guilty of the felonies that are the basis for the denial of his enrollment until October 2009, the Integrity Agreement appears to have no connection to the present case.