

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Perry Coalmon, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-777

Decision No. CR4758

Date: December 9, 2016

DECISION

The Centers for Medicare & Medicaid Services (CMS), through an administrative contractor, denied the application of Perry Coalmon, M.D. (Dr. Coalmon or Petitioner) to enroll in the Medicare program because his practice location listed on the enrollment application was not open when an inspector attempted two site visits. Dr. Coalmon requested a hearing before an administrative law judge to dispute the denial. I affirm CMS's denial of Dr. Coalmon's enrollment application because Dr. Coalmon's practice location was not yet operational when CMS attempted two site visits.¹

I. Background and Procedural History

Dr. Coalmon is a physician who had been enrolled in the Medicare program; however, in 2004, the Department of Health and Human Services (HHS) excluded Dr. Coalmon from

¹ The Civil Remedies Division docketed this case with two petitioners: Dr. Coalmon and Arunaobi Integrated Medical and Behavior Health, Inc. (Arunaobi). However, CMS asserts that the hearing request only involved Dr. Coalmon's denial of enrollment. CMS Brief (Br.) at 1 n.1. Dr. Coalmon did not dispute this in his submission. I agree with CMS and remove Arunaobi as a party to this case.

participation in federal health care programs and revoked Dr. Coalmon's Medicare billing privileges. CMS Exhibit (Ex.) 2 at 1-3. HHS based Dr. Coalmon's exclusion on his failure to repay a debt to the National Health Service Corps, which "was eventually written off as uncollectible." Petitioner (P.) Ex. at 1.² Despite this, on February 10, 2014, HHS reinstated Dr. Coalmon's eligibility to participate in federal health care programs. CMS Ex. 4; *see also* 42 C.F.R. § 1001.1501(b).

On January 13, 2016, a CMS administrative contractor received an application from Dr. Coalmon to re-enroll in the Medicare program as a physician. On the application, Dr. Coalmon listed the following for his practice location: Arunaobi Integrated Health, 5325 W Burleigh St, Milwaukee, WI 53210. Dr. Coalmon also stated that this address was effective as of February 1, 2016. CMS Ex. 1 at 1-3.

The CMS administrative contractor sent an inspector to conduct a site visit of Dr. Coalmon's practice location. The site inspector attempted site visits on March 10, 2016, at 1:30 p.m. and April 7, 2016, at 4:30 p.m.; however, on both occasions, the site inspector did not gain access to the practice location because it was locked. When the inspector called Dr. Coalmon's phone number, he learned that it had been disconnected. CMS Exs. 5, 6.

In its initial determination, the CMS administrative contractor denied Dr. Coalmon's enrollment application based on 42 C.F.R. § 424.530(a)(1) (failure to meet enrollment requirements) and (a)(5) (not operational to furnish Medicare-covered items or services). The initial determination stated that Dr. Coalmon could request reconsideration, but enclosed a form for him to complete in order to submit a corrective action plan (CAP). CMS Ex. 7.

Dr. Coalman signed and submitted the CAP request form. Along with the CAP form, Dr. Coalman submitted a May 10, 2016 letter from Arunaobi's owner stating that Dr. Coalmon was going to provide services for Arunaobi and that Arunaobi "will be open for business on May 18, 2016." Arunaobi's owner attached a deed, utility bill, and two illegible documents. CMS Ex. 10.

In a June 3, 2016 reconsidered determination,³ the CMS administrative contractor upheld its previous denial of Dr. Coalmon's enrollment application. CMS Ex. 11. The reconsidered determination stated:

² Petitioner submitted only one exhibit, but did not mark it with a letter or number. Therefore, I simply refer to it as P. Ex.

³ CMS treated Petitioner's CAP as a reconsideration request. CMS Br. at 5.

Per a review of previous application submissions, findings concluded that two onsite visits were conducted at the location of 5325 W Burleigh St, Milwaukee, WI 53210. Both site visits failed to establish sufficient evidence of active occupancy and/or professional services rendered by Arunaobi Integrated Medical and Behavioral Health Inc. or Perry Coalman MD.

CMS Ex. 11 at 2.

Petitioner requested a hearing to dispute the reconsidered determination. On August 4, 2016, I issued an Acknowledgment and Pre-Hearing Order (Order), which established a submission schedule for pre-hearing exchanges. In response, CMS filed a motion for summary judgment and prehearing brief along with 11 exhibits. Because Petitioner did not submit his prehearing exchange, I issued an Order to Show Cause why I should not dismiss Petitioner's hearing request due to abandonment. Petitioner responded that he tried to timely upload his prehearing exchange and did not intend to abandon his hearing request. Petitioner also submitted a prehearing brief (P. Br.) along with one exhibit.

II. Decision on the Written Record

Based on Petitioner's response to the Order to Show Cause, I conclude that Petitioner did not abandon his hearing request; therefore, I will adjudicate this matter.

I admit all of the proposed exhibits into the record because neither party objected to any of them. Order ¶ 7; Civil Remedies Division Procedures (CRDP) § 14(e).

My Order advised the parties to submit written direct testimony for each of their witnesses and that I would only hold an in-person hearing if a party requested to cross-examine a witness. Order ¶¶ 8-10; CRDP §§ 16(b), 19(b). Neither party submitted any written direct testimony. Therefore, I issue this decision based on the written record. Order ¶ 10; CRDP § 19(d).

III. Issue

Whether CMS had a legitimate basis to deny Petitioner's Medicare enrollment application.

IV. Jurisdiction

I have jurisdiction to hear and decide this case. 42 U.S.C. § 1395cc(j)(8); 42 C.F.R. §§ 424.545(a), 498.3(b)(15), (17), 498.5(l)(2).

V. Findings of Fact, Conclusions of Law, and Analysis

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

The Social Security Act (Act) authorizes the Secretary of Health and Human Services (Secretary) to promulgate regulations governing the enrollment process for providers and suppliers. 42 U.S.C. §§ 1302, 1395cc(j). A “supplier” is “a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services” under the Medicare provisions of the Act. 42 U.S.C. § 1395x(d); *see also* 42 U.S.C. § 1395x(u).

- 1. On March 10, 2016, at 1:30 p.m. and April 7, 2016, at 4:30 p.m., an inspector, acting on CMS’s behalf, was unable to conduct a site visit of the practice location that Dr. Coalmon provided on his enrollment application because the door to the facility was locked and no one was present.***

Dr. Coalmon stated on his enrollment application that his practice location was 5325 W Burleigh St, Milwaukee, WI 53210. CMS Ex. 1 at 3. An inspector from the CMS administrative contractor attempted site visits of Dr. Coalmon’s practice location on March 10, 2016, at 1:30 p.m. and April 7, 2016, at 4:30 p.m., but the inspector was unable to gain access to the practice location. CMS Exs. 5, 6. As stated by the inspector in her report:

I have been to the location 2 times. Both times, the doors were locked with no one in sight. I called the number listed for Dr. Perry Coalmon in Milwaukee (listed at another location) to see if I could gain access. The number says it is disconnected. I have attached photos from both visits.

CMS Ex. 6 at 1. The inspector also indicated that: the practice location was not open for business; the facility did not appear to have employees or staff; there were no signs of customer activity; and the facility did not appear to be operational. CMS Ex. 6 at 1.

Consistent with the inspector’s observations, the owner of Arunaobi, the practice with which Dr. Coalmon is affiliated, stated that the practice was going to be open starting May 18, 2016. CMS Ex. 10 at 4. Therefore, I find that the practice location stated in Dr. Coalmon’s enrollment application was not open March and April when the inspector attempted two site visits.

2. CMS had a legitimate basis to deny Dr. Coalmon's Medicare enrollment application under 42 C.F.R. § 424.535(a)(1) and (5) because Dr. Coalmon did not have an operational practice location.

Petitioner does not dispute that the practice location he listed on his enrollment application was not open when the inspector attempted the site visits. Hearing Req.; *see also* P. Br. at 2; CMS Ex. 3 at 2 (CMS administrative contractor notes a telephone call with Petitioner on March 14, 2016, in which Petitioner stated “we haven’t even opened.”). Rather, Petitioner asserts that the CMS administrative contractor’s determination to deny his enrollment application conflicts with CMS’s determination to accept Arunaobi’s application for the same practice location even though Arunaobi was not yet open. P. Br. at 2. Petitioner questions why CMS even conducted a site visit and disputes that CMS is required under 42 C.F.R. § 424.518(b)(2)(ii), (c)(2)(i), and (c)(3)(ii)(A) to conduct a site visit for any previously excluded provider or supplier before enrolling that provider or supplier in the Medicare program again. In particular, Petitioner disputes that he defaulted on any debt owed to HHS and that his exclusion was warranted. P. Br. at 2-3.

I have no jurisdiction to consider whether HHS properly excluded Petitioner in 2004. Further, it is unnecessary for me to make this determination in order to decide this case.

As a supplier, Petitioner must enroll in the Medicare program to receive payment for covered Medicare items or services. 42 C.F.R. § 424.505. The term “*Enroll/Enrollment*” means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services.” 42 C.F.R. § 424.502. A provider or supplier seeking billing privileges under the Medicare program “must submit enrollment information on the applicable enrollment application.” 42 C.F.R. § 510(a)(1). A supplier whose Medicare billing privileges were revoked also must submit an enrollment application if he wants to re-enroll in the Medicare program. 42 C.F.R. § 424.535(d). “Once the provider or supplier successfully completes the enrollment process, . . . CMS enrolls the provider or supplier into the Medicare program.” 42 C.F.R. § 424.510(a)(1).

However, it is an enrollment requirement that an enrolling provider or supplier be operational, and CMS may deny an enrollment application if a supplier fails to be in compliance with an enrollment requirement. 42 C.F.R. §§ 424.510(d)(8), 424.530(a)(1). Further, CMS may deny a supplier’s enrollment application if, upon an on-site review, CMS determines that the provider is not operational to provide Medicare-covered items or services. 42 C.F.R. § 424.530(a)(5)(i).

The term “operational” means:

the provider or supplier 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 (definition of *Operational*). In order “[t]o be ‘operational’ in accordance with the definition in section 424.502, a provider, among other things, must have a ‘qualified physical practice location’ that is ‘open to the public for the purpose of providing health care related services.’” *Viora Home Health, Inc.*, DAB No. 2690 at 7 (2016). A provider or supplier’s “qualified physical practice location” is the provider or supplier’s address that is on file with CMS at the time of a site visit. *Care Pro Home Health, Inc.*, DAB No. 2723 at 5-6 (2016) (footnote omitted).

In the present case, it is undisputed that the inspector attempted to conduct a site visit, on two different days, of the practice location Petitioner provided on his enrollment application form, but that the inspector was unable to complete the site visit because Petitioner’s practice location was locked and no one was present to answer the door. These facts are sufficient for me to conclude that Petitioner was not open to the public, and, therefore, not operational. In making this conclusion, I am mindful “that the proper inquiry is to assess the [provider’s] operational status *at the time of the onsite review* because the intent of the applicable regulations ‘is that a supplier must maintain, and be able to demonstrate, continued compliance with the requirements for receiving Medicare billing privileges.’” *Viora*, DAB No. 2690 at 7 n.7 (emphasis in original), quoting *A to Z DME, LLC*, DAB No. 2303 at 7 (2010). Petitioner’s failure to be open to the public on either of the days that the inspector attempted site visits prevented the inspector from determining whether Petitioner was compliant with enrollment requirements.

Further, Petitioner’s argument, mentioned above, that the CMS administrative contractor improperly included a site visit as part of the evaluation of Petitioner’s enrollment application is incorrect. When a supplier applies to enroll in the Medicare program, the supplier is subject to a site visit at CMS’s discretion to determine that it is operational and meets enrollment requirements. 42 C.F.R. § 424.517. Petitioner, in his enrollment application, not only asserted that the effective date for his practice location was February 1, 2016, but that he had first seen a Medicare patient on that date. CMS Ex. 1 at 3. As it turns out, this information was false because the practice with which Petitioner indicated he was working, Arunaobi, was not open to provide services until May 18, 2016. CMS Ex. 10 at 4. Petitioner does not dispute this and concedes that “[t]he clinic was not occupied or open for business.” Hearing Req.

Therefore, because Petitioner's practice location, as identified in his enrollment application, was not open and staffed in March and April 2016, I conclude that CMS had a legal basis to deny Petitioner's enrollment application under 42 C.F.R. § 424.530(a)(1) and (a)(5) because Petitioner was not operational at his practice location.

VI. Conclusion

I affirm CMS's determination to deny Dr. Coalmon's enrollment in the Medicare program.

/s/

Scott Anderson
Administrative Law Judge