Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Daniel Wiltz, M.D. and Family Healthcare Clinic, APMC
(PTANs: 4M898DN20, 5CN02)
(NPIs: 1184644254, 1437341278),

Petitioners,

v.

Centers for Medicare & Medicaid Services

Docket No. C-17-238

Decision No. CR4929

Date: August 24, 2017

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its Medicare administrative contractor, revoked the Medicare enrollment and billing privileges of Daniel Wiltz, M.D. (Dr. Wiltz) and Family Healthcare Clinic, APMC (Family Healthcare) (collectively, Petitioners) pursuant to 42 C.F.R. § 424.535 (a)(3), (a)(4), and (a)(9) because Dr. Wiltz was convicted of a felony that CMS determined was detrimental to the interests of the Medicare program and its beneficiaries, because Dr. Wiltz failed to disclose the conviction on his or Family Healthcare's enrollment applications, and because neither Dr. Wiltz nor Family Healthcare reported Dr. Wiltz's conviction to CMS within 30 days. Petitioners acknowledge that Dr. Wiltz was convicted of a felony, but deny that it was for a type of offense that should be deemed detrimental to the Medicare program or its beneficiaries. For the reasons explained below, I conclude that CMS had a legal basis to revoke the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare.

I. Background

The following facts are undisputed. *See* Petitioner's Pre-Hearing Brief and Opposition to Motion for Summary Judgment (P. Br.) at 1. Dr. Wiltz is a medical doctor who operated a family medical practice (Family Healthcare) in St. Martinville, Louisiana. CMS Exhibit (Ex.) 1 at 2, 4. Dr. Wiltz first enrolled in Medicare as a supplier in 2010. CMS Ex. 5 at 5.

On March 13, 2008, a federal grand jury indicted Dr. Wiltz, along with three co-defendants, for conspiracy to commit mail fraud and wire fraud, in violation of 18 U.S.C. § 371. CMS Ex. 6 at 1, 7-10. The grand jury charged that the purpose of the conspiracy was to defraud The Hartford Insurance Company (Hartford) by making a claim on an insurance policy for proceeds to which the defendants were not entitled. CMS Ex. 6 at 7. According to the indictment, Dr. Wiltz and his co-defendants together owned and operated a furniture store in Baton Rouge, Louisiana. CMS Ex. 6 at 2-4. Dr. Wiltz, as owner of the furniture store, was the beneficiary of an insurance policy issued by Hartford. CMS Ex. 6 at 4. The furniture store was destroyed by a fire. *Id.* The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) conducted an investigation to determine whether the fire was caused by arson. CMS Ex. 6 at 5. Two of Dr. Wiltz's co-defendants were charged with arson in connection with the fire. CMS Ex. 6 at 6. Hartford issued two checks for $100,000 each in payment for a claim under the insurance policy; the checks were deposited into the furniture store's account. CMS Ex. 6 at 10, 13. Dr. Wiltz wrote a personal check in the amount of $200,000 to one of his co-defendants. Dr. Wiltz authorized bank officials to cash the check. CMS Ex. 6 at 14. Dr. Wiltz falsely stated to an ATF investigator that he did not authorize bank officials to cash the check. *Id.* Based on these facts, the grand jury also charged Dr. Wiltz with making false statements in violation of 18 U.S.C. § 1001(a)(2). CMS Ex. 6 at 1, 13-14.

On April 2, 2013, Dr. Wiltz appeared in the United States District Court for the Middle District of Louisiana and pled guilty to the charge of making false statements, in violation of 18 U.S.C. § 1001(a)(2). CMS Ex. 6 at 20. The U.S. District Judge adjudicated Dr. Wiltz guilty of the offense and sentenced him, among other things, to pay restitution to The Hartford Insurance Company in the amount of $100,000. CMS Ex. 6 at 20, 23. Dr. Wiltz did not plead guilty to, and was not convicted of, the conspiracy count of the indictment.

In separate letters, both dated June 27, 2016, Novitas Solutions (Novitas), a Medicare administrative contractor, informed Dr. Wiltz and Family Healthcare that their Medicare billing privileges were being revoked effective April 2, 2013, pursuant to 42 C.F.R. § 424.535(a)(3), (a)(4), and (a)(9), based on Dr. Wiltz's felony conviction for making false statements and because Dr. Wiltz and Family Healthcare failed to disclose the conviction on their enrollment applications, and because they failed to report the

conviction to CMS within 30 days. CMS Exs. 2, 3.[1] In addition, Novitas informed Dr. Wiltz and Family Healthcare that they were subject to a re-enrollment bar of three years. CMS. Ex. 2 at 2; CMS. Ex. 3 at 2.

In a letter dated August 22, 2016, counsel requested reconsideration on behalf of Dr. Wiltz and Family Healthcare. CMS Ex. 4 at 3-4. By letter dated November 17, 2016, CMS through its Provider Enrollment & Oversight Group issued an unfavorable reconsidered determination. CMS Ex. 5. In the reconsidered determination, CMS expressly determined that Dr. Wiltz's conviction was for an offense detrimental to the Medicare program and its beneficiaries:

> Dr. Wiltz pled guilty to an allegation of having made a false statement, in connection with arson and insurance fraud. The false, fraudulent, misleading and material statement made by Dr. Wiltz in the context of a very serious criminal investigation calls into question his trustworthiness and veracity. Payment under the Medicare program is made for claims submitted in a manner that relies upon the trustworthiness of our Medicare partners. Consequently, Dr. Wiltz's continued participation in the Medicare program could place Trust Funds at risk.

CMS Ex. 5 at 4.

Petitioners requested a hearing and the case was assigned to me. I issued an Acknowledgement and Pre-Hearing Order (Order) dated January 9, 2017,[2] which directed each party to file a pre-hearing exchange consisting of a brief and any supporting documents, and also set forth the deadlines for those filings. Order ¶¶ 4-5. The Order also explained that the parties should submit written direct testimony for any witnesses in lieu of in-person direct testimony. Order ¶ 8. Finally, the Order explained that a hearing would only be necessary for the purpose of cross-examination of witnesses. Order ¶ 10. In response to the Order, CMS filed a motion for summary judgment and brief (CMS Br.)

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[1] The Novitas letters of June 27, 2016 mistakenly state that Dr. Wiltz and Family Healthcare failed to "notify the Centers for Medicare & Medicaid Services of [a] change of practice location as required under 42 C.F.R. 424.516." However, Petitioners did not claim to be confused by this error. Moreover, the reconsidered determination makes clear that the revocation was based on Petitioners' failure to report Dr. Wiltz's conviction.

[2] Due to a clerical error, the Order is dated January 9, 2016. It was issued January 9, 2017.

and eight proposed exhibits (CMS Exs. 1-8). Petitioners, through counsel, filed a brief opposing summary judgment. Petitioners did not offer any exhibits, nor did they object to CMS's proposed exhibits. P. Br. at 2. Therefore, in the absence of objection, I admit into the record CMS Exs. 1-8.

In its motion for summary judgment, CMS argues that there are no material facts in dispute that would require a hearing. CMS Br. at 2. Petitioners oppose CMS's motion and request to present the testimony of Dr. Wiltz at a hearing. P. Br. at 2. However, Petitioners did not offer the written direct testimony of Dr. Wiltz as required by paragraph 8 of my Order. Moreover, as explained more fully below, even if Petitioners had proffered the written direct testimony of Dr. Wiltz, I would conclude that the testimony is not material to any issue before me. For these reasons, I find that there is no dispute as to any material fact and CMS is entitled to judgment as a matter of law; I therefore grant CMS's motion for summary judgment.

II. Issues

The issues in this case are:

Whether CMS had a legal basis to revoke the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare because, during the preceding ten years, Dr. Wiltz was convicted of a felony offense that CMS determined is detrimental to the Medicare programs and its beneficiaries.

Whether CMS had a legal basis to revoke the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare because Dr. Wiltz included false or misleading information in his enrollment application.

Whether CMS had a legal basis to revoke the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare because neither Dr. Wiltz nor Family Healthcare timely reported to CMS an adverse legal action.

III. Jurisdiction

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

IV. Discussion

A. Statutory and Regulatory Framework

As a physician, Dr. Wiltz is a "supplier" for purposes of the Medicare program; as an entity that offers physician services, this is likewise true of Family Healthcare. *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 and entities must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. CMS may revoke the enrollment and billing privileges of a supplier for any reason stated in 42 C.F.R. § 424.535. When CMS revokes a supplier's Medicare billing privileges, CMS establishes a reenrollment bar for a period ranging from one to three years. 42 C.F.R. § 424.535(c). Generally, a revocation becomes effective 30 days after CMS mails the initial determination revoking Medicare billing privileges, but if the revocation is based on a felony conviction, the revocation is effective with the date of the conviction. 42 C.F.R. § 424.535(g).

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

1. Summary judgment is appropriate because there is no dispute as to any material fact.[3]

Summary judgment is appropriate if "the record shows that there is no genuine issue as to any 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) (citations omitted). The moving party must show that there are no genuine issues of material fact requiring an evidentiary hearing and that it is entitled to judgment as a matter of law. *Id.* If the moving party meets its initial burden, the non-moving party must "come forward with 'specific facts showing that there is a genuine issue for trial . . . .'" *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986). "To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact — a fact that, if proven, would affect the outcome of the case under governing law." *Senior Rehab.*, DAB No. 2300 at 3 (citations omitted). To determine whether there are genuine issues of material fact for hearing, an administrative law judge must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor. *Id.*

There is no genuine dispute as to any material fact in this case. Petitioners acknowledge that Dr. Wiltz was convicted of a felony offense. Petitioners do not allege that Dr. Wiltz disclosed the conviction on his Medicare enrollment application or that of Family Healthcare. Nor do Petitioners contend that either Dr. Wiltz or Family Healthcare reported Dr. Wiltz's conviction to CMS or its contractor within 30 days. Instead, Petitioners argue that Dr. Wiltz's conviction did not involve insurance fraud or other similar crimes. P. Br. at 1. Petitioners argue additionally that Dr. Wiltz made the false

[3] My findings of fact and conclusions of law appear as numbered headings in bold italic type.

statement for which he was convicted not to further the fraud scheme of his co-defendants, but to distance himself from that scheme. P. Br. at 1-2. However, as explained below, even accepting these arguments and representations as true for purposes of ruling on the motion for summary judgment, CMS is entitled to judgment as a matter of law. Accordingly, summary judgment is appropriate.

2. CMS had a legal basis to revoke Dr. Wiltz's and Family Healthcare's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(3) because Dr. Wiltz was convicted of a felony offense that CMS determined to be detrimental to the best interests of the Medicare program and its beneficiaries.

CMS may revoke a supplier's enrollment in the Medicare program if, within the preceding ten years, the supplier was convicted of a felony offense that CMS "has determined to be detrimental to the best interests of the program and its beneficiaries." 42 C.F.R. § 424.535(a)(3)(i); *see also* Social Security Act (Act) §§ 1842(h)(8) (authorizing the Secretary of Health and Human Services to deny enrollment to a supplier that has been convicted of a felony offense that the Secretary has determined is "detrimental to the best interests of the program or program beneficiaries") and 1866(b)(2)(D) (authorizing the Secretary to deny or terminate enrollment after he ascertains that a supplier has been convicted of a felony that he "determines is detrimental to the best interests of the program or program beneficiaries"). Offenses for which billing privileges may be revoked include –but are not limited to –felony crimes against persons, such as murder, rape, assault, and similar crimes; financial crimes such as extortion, embezzlement, income tax evasion, insurance fraud, and similar crimes; felonies that place the Medicare program or its beneficiaries at immediate risk (such as convictions for criminal neglect or misconduct); and felonies that would result in mandatory exclusion under section 1128 of the Act. 42 C.F.R. § 424.535(a)(3)(ii)(A)-(D).

In promulgating 42 C.F.R. § 424.535(a)(3), CMS determined that the enumerated crimes are detrimental per se to Medicare.[4] *See Letantia Bussell, M.D.*, DAB No. 2196 at 9

[4] Effective February 3, 2015, CMS modified 42 C.F.R. § 424.535(a)(3). 79 Fed. Reg. 72,500, 72,532 (Dec. 5, 2014). In the prior version of the regulation, the enumerated felonies regarded as per se detrimental to Medicare appeared in subsection 424.535(a)(3)(i). However, the descriptions of the enumerated felonies are unchanged. Thus, prior decisions of Departmental Appeals Board (DAB) administrative law judges and appellate panels interpreting 42 C.F.R. § 424.535(a)(3)(i)(A)-(D) are relevant in interpreting the current provision at 42 C.F.R. § 424.535(a)(3)(ii)(A)-(D). Further, the outcome in this case is the same whether I apply the original text or the amended text of that regulation.

(2008). Accordingly, if Dr. Wiltz's conviction for making a false statement is similar to insurance fraud, CMS is authorized to revoke his Medicare enrollment and billing privileges. *See Abdul Razzaque Ahmed, M.D.*, DAB No. 2261 at 8 (2009), *aff'd, Ahmed v. Sebelius*, 710 F. Supp. 2d 167 (D. Mass 2010) (obstruction of a health care fraud investigation is similar to insurance fraud). Moreover, even if Dr. Wiltz's conviction is not deemed similar to insurance fraud, CMS is authorized to determine, on a case-by-case basis, that a particular felony conviction is detrimental to Medicare and its beneficiaries and therefore supports revocation. *See, e.g., Saeed A. Bajwa, M.D.*, DAB No. 2799 at 8, 10-11 (2017), *appeal docketed*, No. 3:17-CV-00792 (GTS/DEP) (N.D.N.Y July 19, 2017) (42 C.F.R. § 424.535(a)(3)(i) authorizes CMS to determine what felony convictions are a basis for revocation; CMS is not limited to the felonies enumerated as examples).

In the present case, CMS argues that it properly revoked the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare because Dr. Wiltz's conviction for making a false statement in connection with an investigation into insurance fraud should be regarded as falling within the category of "other similar crimes" that authorize revocation under 42 C.F.R. § 424.535(a)(3)(ii)(B). CMS Br. at 8. CMS argues further that Dr. Wiltz's conviction for making a false statement reflects unfavorably on Dr. Wiltz's honesty and trustworthiness and is therefore detrimental to the Medicare program and its beneficiaries. *Id*.

Petitioners argue that Dr. Wiltz's felony conviction "did not involve insurance fraud and other similar crimes." P. Br. at 1. Petitioners point out that Dr. Wiltz was not charged with insurance fraud, nor was he convicted on the count of the indictment that charged him with conspiracy to commit mail fraud and wire fraud. P. Br. at 1-2. Petitioners simply do not address whether CMS properly determined that Dr. Wiltz's felony conviction was detrimental to Medicare and its beneficiaries independent of its relationship to one of the felony convictions enumerated in 42 C.F.R. § 424.535(a)(3)(ii). While I agree with Petitioners that Dr. Wiltz was neither charged with insurance fraud nor convicted of conspiracy to commit mail fraud or wire fraud, this does not eliminate the basis for revocation.

As CMS points out, Dr. Wiltz made the false statement for which he was convicted in connection with an investigation into arson and insurance fraud. CMS Br. at 8; *see also* CMS Ex. 5 at 4. Petitioners acknowledge that Dr. Wiltz made a false statement regarding a duplicate check that "was issued due to an insurance claim submitted by Petitioners' former partners." P. Br. at 1. Petitioners further acknowledge that Dr. Wiltz's former partners were convicted of insurance fraud and arson. P. Br. at 2. Thus, despite Petitioners' attempt to distance Dr. Wiltz's false statement from his former partners' scheme to defraud the insurance company, it is apparent that the false statement concerned facts material to the ATF investigation into that scheme.

I may consider the facts and circumstances surrounding the conviction to determine whether the conviction is for an offense "similar" to an enumerated felony. *Ahmed*, DAB No. 2261 at 11 (administrative law judge did not err in considering "the conduct and circumstances underlying Petitioner's guilty plea in deciding whether Petitioner's offense was similar to insurance fraud"). The record before me does not include a transcript of Dr. Wiltz's plea allocution. Nevertheless, in pleading guilty to making a false statement in violation of 18 U.S.C. § 1001(a)(2), Dr. Wiltz at a minimum admitted to making a "materially false, fictitious, or *fraudulent* statement or representation" in a matter within the jurisdiction of a branch of the United States government. 18 U.S.C. § 1001(a)(2) (emphasis added).[5] Thus, in the course of a federal investigation into arson and insurance fraud, Dr. Wiltz made a false or fraudulent statement regarding disposition of the proceeds of an insurance policy, which may have been obtained by fraud. This is sufficiently similar to insurance fraud to invoke the definition at 42 C.F.R. § 424.535(a)(3)(ii)(B).[6]

But, even if I were to conclude that Dr. Wiltz's conviction for making a false statement is not similar to insurance fraud, I would nevertheless conclude that CMS properly determined that the conviction was for a felony that CMS determined is detrimental to the Medicare program and its beneficiaries. In this case, it is apparent that CMS exercised its discretion, pursuant to 42 C.F.R. § 424.535(a)(3)(i), to determine that a felony conviction not listed in 42 C.F.R. § 424.535(a)(3)(ii) is detrimental to the Medicare program and its beneficiaries and, accordingly, warrants revocation. *See Bajwa*, DAB No. 2799 at 8, 10-11. If I am satisfied that CMS exercised its discretion under 42 C.F.R. § 424.535(a)(3)(i), I may not substitute my own determination as to whether a given felony is detrimental to the Medicare

[5] In pleading guilty, Dr. Wiltz must have admitted sufficient facts to satisfy the elements of the crime with which he was charged. The facts establishing that Dr. Wiltz was guilty of making a false statement cannot be relitigated here. As I have explained above, those facts are sufficiently similar to insurance fraud to establish a basis for revocation. Thus, the testimony Petitioners seek to offer regarding Dr. Wiltz's claimed motivation for making the false statement (*see* P. Br. at 2) is irrelevant to these proceedings.

[6] This conclusion is further reinforced by the fact that Dr. Wiltz's sentence required him, among other things, to pay restitution to the insurance company. *See* CMS Ex. 6 at 23. From the restitution order, I infer that the sentencing judge concluded that the insurance company was a victim of Dr. Wiltz's crime. Administrative law judges and appellate panels of the DAB have long held that convictions for offenses in which Medicare or Medicaid is a victim are "related to" the delivery of an item or service under the programs within the meaning of section 1128(a) of the Act. *See, e.g., Napoleon S. Maminta, M.D.*, DAB No. 1135 (1990). By analogy, in the present case, the insurance company was a victim of Dr. Wiltz's crime; it is therefore reasonable to conclude that the crime was "similar to" insurance fraud.

program and its beneficiaries for that of CMS. *See Brian K. Ellefsen, DO*, DAB No. 2626 at 7 (2015). The record before me amply demonstrates that CMS exercised its discretion. CMS itself issued the reconsidered determination in which it expressly found that Dr. Wiltz's conviction is detrimental to the Medicare program and its beneficiaries because the conviction calls into question whether Dr. Wiltz can be trusted to submit truthful claims to Medicare. CMS Ex. 5 at 4.

In summary, whether or not Dr. Wiltz's conviction was for a felony that is similar to insurance fraud, CMS acted within the scope of its authority to determine that Dr. Wiltz was convicted of a felony detrimental to the best interests of the Medicare program and its beneficiaries. Moreover, even if the Medicare enrollment and billing privileges of Dr. Wiltz and Family Healthcare were not subject to revocation based on Dr. Wiltz's conviction of a felony that CMS determined is detrimental to the best interests of the Medicare program and its beneficiaries, revocation would nevertheless be proper because, as discussed below, Dr. Wiltz and Family Healthcare have not contested two additional bases for revocation of their enrollment and billing privileges.

3. CMS had a legal basis to revoke Dr. Wiltz's and Family Healthcare's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(4) because Dr. Wiltz did not disclose his felony conviction on his enrollment application or that of Family Healthcare, and thereby provided false information in the application.

CMS may revoke a currently enrolled supplier's billing privileges in the following circumstance, among others:

> The . . . supplier certified as "true" misleading or false information on the enrollment application to be enrolled . . . in the Medicare program.

42 C.F.R. § 424.535(a)(4).

CMS argues that Dr. Wiltz updated his Medicare enrollment on August 20, 2015, after the date of his conviction, but did not disclose the conviction in his enrollment application. CMS Br. at 6; *see also* CMS Ex. 1. CMS further argues that Dr. Wiltz's certification that his enrollment application was accurate and complete was false or misleading because he omitted to disclose his felony conviction. CMS Br. at 6. Petitioners do not deny that Dr. Wiltz failed to disclose his felony conviction on his updated enrollment application. *See* P. Br. at 1 ("Respondent's statement of the facts and arguments are not contested . . . "). Therefore, I conclude that CMS had a legal basis to revoke the enrollment and billing privileges of Dr. Wiltz and Family Healthcare under 42 C.F.R. § 424.535(a)(4).

4. CMS had a legal basis to revoke Dr. Wiltz's and Family Healthcare's Medicare enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(9) because Dr. Wiltz and Family Healthcare failed to report an adverse legal action within 30 days as is required by 42 C.F.R. § 424.516(d)(1)(ii).

CMS may revoke a currently enrolled supplier's billing privileges in the following circumstance, among others:

> The . . . supplier did not comply with the reporting requirements specified in § 424.516(d)(1)(ii) and (iii) of this subpart.

42 C.F.R. § 424.535(a)(9). In turn, section 424.516(d)(1)(ii) requires physicians and other practitioners to report to their Medicare contractor, within 30 days, any "adverse legal action." Section 424.502 defines a "final adverse action" to include a "conviction of a Federal or State felony offense . . . within the last 10 years preceding enrollment, revalidation, or re-enrollment."[7] 42 C.F.R. § 424.502.

CMS argues that, prior to the date CMS revoked Petitioners' Medicare enrollment and billing privileges, Petitioners never informed CMS that Dr. Wiltz had been convicted of a felony. CMS Br. at 7. Petitioners do not deny that neither Dr. Wiltz nor Family Healthcare reported Dr. Wiltz's felony within 30 days after April 2, 2013. *See* P. Br. at 1 ("Respondent's statement of the facts and arguments are not contested . . . "). Therefore, I conclude that CMS had a legal basis to revoke the enrollment and billing privileges of Dr. Wiltz and Family Healthcare under 42 C.F.R. § 424.535(a)(9).

5. Petitioners' arguments in equity are not a basis to reverse the revocation of Dr. Wiltz's and Family Healthcare's Medicare enrollment and billing privileges.

Petitioners ask me to consider "the potential plight of many Medicare and Medicaid beneficiaries in rural St. Martin Parish who would have greater difficulties accessing primary care physician services" if I affirm the revocation of Dr. Wiltz's and Family Healthcare's Medicare enrollment and billing privileges. P. Br. at 2. To the extent Petitioners are arguing that revocation of their Medicare enrollment and billing privileges is inequitable under the circumstances presented, CMS's discretionary act to revoke a provider or supplier is not subject to review based on equity or mitigating circumstances. *Bussell*, DAB No. 2196 at 13. Rather, "the right to review of CMS's determination by an

[7] Significantly, suppliers are required to report a conviction for *any* felony offense; this requirement is not limited to those enumerated in 42 C.F.R. § 424.535(a)(3)(ii).

[administrative law judge] serves to determine whether CMS had the authority to revoke [the provider's or supplier's] Medicare billing privileges, not to substitute the [administrative law judge's] discretion about whether to revoke." *Id*. Once CMS establishes a legal basis on which to proceed with a revocation, then the CMS determination to revoke becomes a permissible exercise of discretion, which I am not permitted to review. *See Id*. at 10; *see also Ahmed*, DAB No. 2261 at 19 (if CMS establishes the regulatory elements necessary for revocation, an administrative law judge may not substitute his or her "discretion for that of CMS in determining whether revocation is appropriate under all the circumstances").

V. Conclusion

For the reasons stated, I affirm CMS's determination to revoke the Medicare enrollment and billing privileges of Daniel Wiltz, M.D. and Family Healthcare Clinic, APMC.

/s/
Leslie A. Weyn
Administrative Law Judge