

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Proactive Medical, L.L.C.,
(NPI: 1942284005),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-218

Decision No. CR2150

Date: June 9, 2010

DECISION

Here, the sole question before me is whether Petitioner, Proactive Medical, L.L.C., participated in the Medicare Program as a *fixed-base* Independent Diagnostic Testing Facility (IDTF) or a *mobile* IDTF. If fixed-base, the Medicare contractor properly revoked its billing privileges, because it shared its practice location with another Medicare-enrolled supplier, in violation of federal regulations. On the other hand, a mobile IDTF may share its practice location, so if Petitioner was mobile, the revocation was improper and must be reversed.

For the reasons discussed below, I find that Petitioner operated as a mobile IDTF, and the Medicare Contractor improperly revoked its billing privileges.

Background

Until its Medicare supplier number was revoked on June 3, 2009, Petitioner participated in the Medicare program as an IDTF. *See* 42 C.F.R. § 410.33. In a letter dated May 4, 2009, the Medicare contractor, Pinnacle Business Solutions, Inc., notified Petitioner that its supplier number would be revoked, because the supplier shared its practice location

and subleased its operation with another Medicare enrolled individual or organization, in violation of IDTF performance standards. CMS Ex. 1.

Petitioner sought reconsideration, and, in a decision dated October 9, 2009, the contractor's Medicare Senior Enrollment Officer affirmed the revocation of Petitioner's supplier number. CMS Exs. 5, 7.

The parties have filed cross motions for summary judgment. With its motion and brief (CMS Br.), CMS submits ten exhibits (CMS Exs. 1-10). With its motion and brief (P. Br.), Petitioner submits five exhibits (CMS Exs. 1-5).

Discussion

Petitioner is entitled to summary judgment, because the undisputed evidence establishes that it was enrolled in the Medicare program as a mobile IDTF, which may share a practice location with another Medicare-enrolled individual or organization.¹

An IDTF may be a fixed location, a mobile entity, or an individual nonphysician practitioner. 42 C.F.R. § 410.33(a)(1). It must meet all of the standards set forth in 42 C.F.R. § 410.33(g), or CMS will revoke its billing privileges. 42 C.F.R. § 410.33(h). Section 410.33(g)(15) prohibits a fixed-base IDTF from "sharing a practice location with another Medicare-enrolled individual or organization," and it prohibits a fixed-base IDTF from "leasing or subleasing its operations or practice location to another Medicare enrolled individual or organization." But these prohibitions explicitly do not apply to mobile IDTFs ("[w]ith the exception of . . . mobile IDTFs . . .").

Here, Petitioner concedes that it subleased space from Jon V. Schellack, M.D., a Medicare-enrolled supplier. P. Br. at 4; *see* CMS Br. at 3.

The parties also agree that Petitioner enrolled in the Medicare program as an IDTF, effective September 1, 2002. CMS Br. at 3, ¶ 1; P. Br at 3, ¶ 3.

To maintain Medicare billing privileges, a supplier must "resubmit and recertify" the accuracy of its enrollment information every five years. To meet this requirement, the supplier submits a new enrollment application with supporting documentation. 42 C.F.R. § 424.515. Accordingly, on February 3, 2009, Petitioner submitted a new Medicare enrollment application, CMS Form 855B. CMS Ex. 9. Section 4 of that application form asks for the information necessary to establish an IDTF as a mobile entity, including "base of operations address for mobile or portable suppliers" (Section 4E); "vehicle

¹ I make this one finding of fact/conclusion of law.

information” (Section 4F); and “geographic location for mobile and portable suppliers where the base of operations and/or vehicle renders services” (Section 4G). CMS Ex. 9 at 15-21. According to CMS, because Petitioner failed to complete sections 4E, 4F and 4G, it did not establish itself as a mobile IDTF. CMS Br. at 6.

Petitioner, however, points out that the application form instructs applicants to complete only those portions of section 4 “*that are changing.*” CMS Ex. 9 at 7 (emphasis added). At the specific subsections, it reiterates: “[i]f you are *changing, adding or deleting information*, check the applicable box, furnish the effective date, and complete the appropriate fields in this section.” CMS Ex. 9 at 20 (emphasis added). Thus, Petitioner was only required to complete those sections if it were making any changes.²

Prior to February 3, 2009, Petitioner had submitted its most recent enrollment application on October 31, 2003. In that earlier application, Petitioner provided the information purportedly missing from its 2009 application: “base of operations address,” “vehicle information,” and “geographic location for mobile and portable suppliers where the base of operations and/or vehicle renders services.” P. Ex. 1 at 7, 8. No evidence suggests that this information had changed (and CMS has not come forward with any evidence suggesting a dispute on that issue), so Petitioner appropriately left those sections blank on its 2009 application.

Petitioner was therefore a mobile IDTF and not subject to subleasing and space-sharing restrictions of 42 C.F.R. § 410.33(g)(15).

Conclusion

Petitioner is entitled to summary judgment because the undisputed evidence establishes that it operated as a mobile IDTF, and the Medicare Contractor improperly revoked its billing privileges.

/s/
Carolyn Cozad Hughes
Administrative Law Judge

² Petitioner was changing only its address from “5425 Brittany Drive, Suite B” to “5425 Brittany Drive, Suite C.” *Compare* P. Ex. 1 at 7 *with* CMS Ex. 9 at 16.