

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Miracle Deeds Medical Supplies, LLC,
(PTAN: 7411920001),
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-16-614

Decision No. CR4697

Date: September 2, 2016

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke the Medicare enrollment and billing privileges of Petitioner, Miracle Deeds Medical Supplies, LLC.

I. Background

Petitioner, an orthotics supplier, requested a hearing in order to challenge CMS's adverse determination. CMS filed a motion for summary judgment along with six proposed exhibits that it identified as CMS Ex. 1-CMS Ex. 6. Petitioner filed a brief in opposition to CMS's motion and eight proposed exhibits that it identified as MDMS Ex. 1-MDMS Ex. 8. I receive the parties' exhibits into the record.

It is unnecessary that I decide whether the criteria for summary judgment are met here inasmuch as Petitioner did not request a hearing in order to cross-examine the one witness whose declaration CMS offered. Petitioner offered no testimony on its behalf. Petitioner listed two witnesses but failed to provide written direct testimony as per my Acknowledgment and Pre-hearing Order. I decide the case based on the parties' exchanges.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether grounds exist for CMS to revoke Petitioner's Medicare enrollment and billing privileges.

B. Findings of Fact and Conclusions of Law

Petitioner maintains a business address in Abilene, Texas. The undisputed facts establish that on two occasions (on December 15 and 18, 2015), a site investigator employed by a Medicare contractor attempted to visit Petitioner's place of business in order to conduct a site inspection. Petitioner's facility was closed on both occasions even though the inspector visited the facility during posted business hours. CMS Ex. 2 at 2; CMS Ex. 6 at ¶¶ 5, 6. On the first occasion, there was a "closed" sign, stating that Petitioner's owner would return by 12:00 p.m. CMS Ex. 2 at 1; CMS Ex. 6 at ¶ 5. On the second occasion, there was nothing posted by Petitioner to explain why it was closed or when it would reopen. CMS Ex. 2 at 1; CMS Ex. 6 at ¶ 6.

In order to remain eligible for Medicare reimbursement a supplier must be accessible to the public and staffed during posted hours of operation. 42 C.F.R. § 424.57(c)(7)(C). Furthermore, a supplier must be operational. 42 C.F.R. § 424.535(a)(5). The term "operational" means that a supplier, among other things, must be open to the public for purposes of providing health care related services. 42 C.F.R. § 424.502. The facts plainly establish that Petitioner failed to meet these requirements. It was not accessible to the public, and it was not staffed during posted business hours.

CMS may revoke a supplier's Medicare participation and billing privileges if that supplier fails to comply with the criteria of 42 C.F.R. §§ 424.57 or 424.535. CMS and its contractor have that authority here based on Petitioner's failure to be open during posted hours of operation and to be operational.

Petitioner does not contend explicitly that it was open during the failed attempts to conduct on-site inspections of its premises. Rather, it asserts that it had an emergency phone number and a notice with its proprietor's estimated time of return posted on the exterior of its premises. According to Petitioner, anyone wishing to meet with its staff or proprietor could have called that number and arranged a meeting "in a matter of minutes." Petitioner's brief at 1.

Photographs taken by the inspector of the outside of Petitioner's business show a phone number painted on the building's front door. There is no sign stating that this is an emergency phone number. CMS Ex. 2 at 2. I make no finding as to whether calling that number would have prompted Petitioner's proprietor to come down to the site and open

it. Leaving a phone number for potential customers to call does not make a facility open and accessible during posted hours. Having represented that it would be open at specific hours, Petitioner was obligated to have someone on the premises during those hours. Posting a phone number is not an acceptable substitute for being open and accessible.

Petitioner also seems to suggest that the inspector may not have visited the correct address while attempting to inspect Petitioner's facility. Petitioner's brief at 2. No facts support this contention. I am satisfied from the evidence offered by CMS that the inspector attempted to conduct on-site inspections at Petitioner's actual business address. CMS Ex. 2.

Petitioner's remaining arguments focus on the hardships that its owners encountered while attempting to operate the business, hardships that Petitioner contends prevented them from always operating the business during posted hours. That provides no legal excuse for failing to be open and accessible during posted hours or failing to be operational. The regulations governing operations and accessibility do not allow for exceptions.

Petitioner's remaining arguments also reduce to assertions that CMS should withhold imposition of remedies based on considerations of fairness. I do not have authority to address equitable arguments. *Amber Mullins, N.P.*, DAB No. 2729 (2016).

_____/s/_____
Steven T. Kessel
Administrative Law Judge