

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Pharmacy Toi,

Petitioner,

v.

Centers for Medicare & Medicaid Services

Docket No. C-16-727

Decision No. CR4757

Date: December 8, 2016

DECISION

For the reasons set forth below, I find that CMS appropriately denied Petitioner's Medicare enrollment application.

Background

Petitioner, Pharmacy Toi, is a Texas pharmacy that seeks to enroll in the Medicare program as a supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). CMS Ex. 1 at 4. The Centers for Medicare & Medicaid Services (CMS) denied its enrollment application because it was not accredited at the time it applied. CMS Ex. 5. In a reconsidered determination, a hearing officer for the Medicare contractor (Palmetto GBA) affirmed the denial. Petitioner now seeks review by an administrative law judge.

CMS submits a motion for summary judgment/brief, along with six exhibits, marked CMS Exs. 1-6. In addition to its hearing request (Hrg. Req.), Petitioner submits a written argument (P. Br.) and six exhibits (P. Exs. 1-6). I note, however, that Petitioner lists no witnesses and provides no written declarations. P. Br.; *see* Acknowledgment and Pre-hearing Order at 5 (¶ 8) (July 20, 2016). CMS offers the written declaration of one

witness, but Petitioner has not asked to cross-examine her. CMS Ex. 6; P. Br.; *see* Acknowledgment and Pre-hearing Order at 5 (¶ 9). Because a hearing would serve no purpose, I issue this decision without considering CMS's motion for summary judgment.

Discussion

***CMS properly denied Petitioner Pharmacy Toi's Medicare enrollment application because, at the time it applied, it did not meet the Medicare enrollment requirements.*¹**

To receive Medicare payments for services furnished to program beneficiaries, a Medicare supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. "Enrollment" is the process used by CMS and its contractors to: 1) identify the prospective supplier; 2) validate the supplier's eligibility to provide items or services to Medicare beneficiaries; 3) identify and confirm a supplier's owners and practice location; and 4) grant the supplier Medicare billing privileges. 42 C.F.R. § 424.502. To enroll in Medicare, a prospective supplier must complete and submit an enrollment application. 42 C.F.R. §§ 424.510(d)(1), 424.515(a).

In this case, Petitioner submitted its application to the Medicare contractor on March 31, 2016. At that time, the supplier was not accredited. To enroll in the Medicare program, all suppliers of DMEPOS and other items and services must be accredited by a CMS-approved accreditation organization. The accreditation must indicate the specific products and services for which the supplier is accredited. 42 C.F.R. § 424.57(c)(22); *see* 42 C.F.R. § 424.58.

Petitioner maintains that I should nevertheless allow its enrollment because the Accreditation Commission for Health Care approved it for accreditation on June 23, 2016, about three months after it filed its application. P. Ex. 4. The regulation, however, requires the supplier to certify *in its application* that it meets the requirement for accreditation. 42 C.F.R. § 483.57(c). Because the supplier was not then accredited, CMS properly denied its Medicare enrollment application.

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

Conclusion

Because, at the time it submitted its enrollment application, Petitioner Pharmacy Toi was not accredited, as required by CMS regulations, CMS properly denied its Medicare enrollment. I therefore affirm the reconsidered determination.

_____/s/_____
Carolyn Cozad Hughes
Administrative Law Judge