Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

T & T Home Health Agency, Inc.,
(PTAN: 67-9300; NPI 1659404648),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-1403

Decision No. CR3233

Date: May 16, 2014

DECISION

Petitioner, T & T Home Health Agency, Inc., appeals a reconsideration decision issued on July 11, 2013. I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to revoke Petitioner's Medicare enrollment and billing privileges after a site visit determined that Petitioner was no longer operational.

I. Background and Procedural History

Prior to its revocation, Petitioner provided reimbursable home health services to beneficiaries in the Medicare program and had an office location at 3530 Forest Lane #265, Dallas, Texas (3530 Forest Lane). On October 29, 2012, Palmetto GBA (Palmetto), a Medicare contractor, notified Petitioner that it was revoking its Provider Transaction Access Number explaining that "[o]n June 12, 2012, a site inspection was conducted at 3530 Forest Lane . . . and it was determined that [Petitioner] was no longer operating at this location." Palmetto also imposed a two-year re-enrollment bar on Petitioner. CMS Ex. 1.

By undated letter, Petitioner's Administrator/Owner, Ms. Florence Urevbu, asked CMS's Center for Program Integrity, Provider Enrollment Operations Group, to reconsider Palmetto's determination. She stated that she had surrendered Petitioner's state license to provide home health services and that:

> It is impossible for me to have a site visit after the license was surrendered on June 8th 2012 in person. I surrendered T&T State license voluntary in person to the state office. There is no reason for the same entity to come back for a site visit after accepting the license once the office has been closed, then come back on 6/11/12 for another site visit. The agency can not operate without a state license. I will appreciate if all records in Palmetto is corrected to reflect voluntarily surrender of license and voluntarily termination of all billing rights and not revocation.

CMS Ex. 3. On July 11, 2013, CMS upheld the revocation based on Petitioner's failure to comply with 42 C.F.R. § 424.535(a)(5), which requires a home health agency to be operational. CMS Ex. 4. CMS found that:

> [Petitioner] was revoked for a failed site visit that was conducted during the processing of their revalidation application. Their practice location was reported as [3530 Forest Lane]. The site visit was completed on 6/12/2012 and came back that the agency was no longer at this location. The provider sent a "notice of voluntary termination" that was received 5/28/2013, stating that they had voluntarily terminated effective 6/12/2012. There was no prior notification of the voluntary termination from the provider via the CMS Form 855. No action was taken with this notice because of the revocation being an earlier date of 6/12/2012.

CMS Ex. 4.

On September 9, 2013, Petitioner filed a hearing request with the Civil Remedies Division of the Departmental Appeals Board to appeal the reconsideration decision. Petitioner's owner states that Petitioner's license had been "voluntary[ily] surrendered" due to financial difficulties. CMS Ex. 5. I was assigned to hear and decide the case on October 21, 2013.

By my "Acknowledgment and Pre-Hearing Order" (Order) dated October 21, 2013, I set a deadline for the parties to file complete pre-hearing exchanges including any motions for summary judgment. CMS filed a motion for summary judgment and brief (CMS Br.), accompanied by seven exhibits (CMS Exs. 1-7). Petitioner filed a response (P. Br.), accompanied by six exhibits (P. Exs. 1-6). In the absence of objection, I admit CMS Exs. 1-7 and P. Exs. 1-6 into evidence.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would only be necessary if the opposing party affirmatively requested an opportunity to cross-examine a witness. Pre-Hearing Order ¶¶ 8, 9; *see Vandalia Park*, DAB No. 1940 (2004); *Pacific Regency Arvin*, DAB No. 1823, at 8 (2002) (holding that the use of written direct testimony for witnesses is permissible as long as the opposing party has the opportunity to cross-examine those witnesses). Neither party offered written direct testimony or requested an opportunity to cross-examine a witness. I find, therefore, that an in-person hearing in this case is unnecessary and consider this case on the full merits of the written record. *See* Order ¶ 10.

II. Discussion

A. Issue Presented

Whether there was a basis for CMS to revoke Petitioner's billing privileges because it was not operational pursuant to 42 C.F.R. § 424.535(a)(5).

B. Findings of Fact and Conclusions of Law

1. Palmetto had a basis to revoke Petitioner's enrollment because it was not operational at 3530 Forest Lane on June 12, 2012, the date of the attempted Medicare site inspection.

A provider in the Medicare program "must be operational to furnish Medicare covered items or services." 42 C.F.R. § 424.510(d)(6). A provider is "operational" when it 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 . . . to furnish these items or services." 42 C.F.R. § 424.502. CMS may perform on-site inspections to verify the accuracy of a provider's enrollment information and to determine the provider's compliance with Medicare enrollment requirements. 42 C.F.R. §§ 424.510(d)(8), 424.517(a).

CMS may revoke a provider or supplier's Medicare billing privileges for a variety of reasons including:

> (5) *On-site review.* CMS determines, upon on-site review, that the provider or supplier is no longer operational to furnish Medicare covered items or services, or is not meeting Medicare enrollment requirements under statute or regulation to supervise treatment of, or to provide Medicare items or services for, Medicare patients. Upon on-site review, CMS determines that –

> (i) A Medicare Part A provider is no longer operational to furnish Medicare covered items or services, or the provider fails to satisfy any of the Medicare enrollment requirements.

42 C.F.R. § 424.535(a)(5)(i).

Petitioner's owner does not dispute that Petitioner was not operational at 3530 Forest Lane on the date of the Medicare site inspection on June 12, 2012, although she does assert that Petitioner was open at a new location since April 12, 2012 and proffered documentation of a state survey of that location. P. Br. at 1-2; P Ex. 2. Petitioner's owner does not assert that Petitioner is now operational at any location because its business has since closed. I find that Petitioner was clearly not operational at 3530 Forest Lane on June 12, 2012 and that this was a valid basis for its revocation.

2. Petitioner did not properly terminate its Medicare enrollment or notify Palmetto about an address change prior to June 12, 2012.

Petitioner is not asking for re-instatement of its enrollment or billing privileges. Instead, Petitioner argues that Palmetto did not have the authority to revoke its enrollment and billing privileges because Petitioner already had terminated its relationship with Medicare voluntarily prior to the site inspection. Petitioner's owner argues she terminated her Medicare enrollment by surrendering Petitioner's operational license to the state licensing authority and sending CMS notice of the termination and its location change.

Petitioner's owner originally signed a CMS Form 855A certification statement in which she agreed to adhere to all Medicare enrollment requirements and acknowledged that Petitioner's Medicare enrollment and billing privileges might be revoked if it failed to meet these requirements. CMS Ex. 6, at 50. The CMS Form 855A enrollment applicable to Petitioner indicates that to make a change in enrollment, Petitioner had two options: to submit information using either the internet based provider enrollment, chain and ownership system (PECOS) or a paper application, the CMS Form 855A. CMS Ex. 6, at 2. Voluntary termination is listed as one of the actions for which Petitioner needed to file an enrollment application. CMS Ex. 6, at 5, 7.

Petitioner's owner argues that Petitioner moved from its 3530 Forest Lane location in February 2012 to 3450 Forest Lane, #201, Dallas, Texas (3450 Forest Lane). Petitioner's owner asserts that a state agency surveyed its 3450 Forest Lane location on April 12, 2012 (P. Ex. 2) and that she surrendered Petitioner's license to the state agency on June 8, 2012 (P. Ex. 3). Petitioner attaches as part of P. Ex. 3 a section of a CMS Form 855A enrollment application that she asserts she signed on June 11, 2012 to show that Petitioner "voluntarily" terminated its Medicare enrollment as of June 11, 2012, the day prior to the site visit from a Medicare inspector. *See* P. Ex. 3, at 3-6. Petitioner also argues that Palmetto sent letters to Petitioner at 3450 Forest Lane (and to its P.O. Box

802984), prior to its notice of revocation (although not prior to the site inspection), which would infer CMS had notice of its move.

CMS asserts that the most current enrollment application Palmetto had on file for Petitioner, as of June 12, 2012, showed Petitioner's location to be 3530 Forest Lane, the location the site inspector visited on June 12, 2012. CMS Exs. 2, at 1; 4, at 2; 6, at 7, 21. CMS asserts that it did not receive notification that Petitioner wanted to voluntarily terminate its Medicare enrollment until May 28, 2013, when Petitioner sent Palmetto an undated letter notifying Palmetto of its desire to voluntarily terminate its PTAN and NPI. CMS Exs. 4, at 2; 7. CMS argues that if Petitioner wanted to voluntarily terminate its enrollment and billing privileges, it should have filed the appropriate CMS Form 855, but it never did so. CMS asserts that, with Petitioner's hearing request, Petitioner submitted pages from a CMS Form 855 purporting to show it voluntarily terminated its enrollment as of a date prior to the June 12, 2012 site survey, but Palmetto has no record of receiving that form.

Petitioner's evidence shows that Palmetto did send letters to Petitioner at addresses other than 3530 Forest Lane, specifically on June 19, 2012 (3450 Forest Lane), July 5, 2012 (3450 Forest Lane), August 3, 2012 (P.O. Box 802984), and August 23, 2012 (P.O. Box 802984). The letters, however, are dated after the site inspection and reference mail Palmetto sent to Petitioner, which was returned as undeliverable. The letters ask Petitioner to update its contact information on the appropriate enrollment application form. P. Exs. 4; 5, at 3-5; 6.

I do not find that Petitioner has shown by a preponderance of the evidence that it submitted the appropriate enrollment application form to voluntarily terminate its Medicare enrollment, or change its address, prior to the Medicare inspection. Petitioner's initial revocation, request for reconsideration, and reconsideration decision do not document any enrollment application that Petitioner's owner may have sent to effectuate a voluntary termination before the Medicare site inspection. Further, Petitioner's owner filed no transmittal letter, proof of mailing, witness affidavit, or any other evidence showing she actually submitted the application to Palmetto that she now asserts she submitted on June 11, 2012. The letters Palmetto sent to Petitioner's new address in June, July, and August of 2012 all requested Petitioner to update its contact information on the CMS Form 855, which support my conclusion that Petitioner's owner did not properly send an application form indicating a termination, or an address change for that matter, before Petitioner's Medicare site inspection.

Whether or not Petitioner's owner apprised the state licensing authority of a voluntary termination of Petitioner's state license does not equate to voluntary termination of Petitioner's Medicare enrollment and billing privileges because the requirements for state licensure and Medicare enrollment are different. The relinquishment of a state license alone does not ensure automatic notification to CMS or foreclose the possibility of a

Medicare revocation. As CMS notes, and I agree, enforcement of the Medicare enrollment requirements could otherwise be frustrated by the preemptive relinquishment of a state license in an effort to avoid a Medicare re-enrollment bar that results from a revocation. CMS Br. at 6.

III. Conclusion

Petitioner was not operational at the location Palmetto had on file for it, and CMS was authorized to revoke its enrollment and billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(i). Petitioner is accordingly subject to a two-year re-enrollment bar, beginning June 12, 2012, the date CMS determined it was non-operational.

/s/
Joseph Grow
Administrative Law Judge