

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Almont Ambulatory Surgical Center, Inc.
(CCN: 05C0001822),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-09-647

Decision No. CR2080

Date: February 26, 2010

DECISION

I dismiss the hearing request of Petitioner, Almost Ambulatory Surgical Center because I find that it has abandoned its request for a hearing.

I. Background

Petitioner is an ambulatory surgical center doing business in California. It participated in the Medicare program and its participation in Medicare was subject to applicable provisions of the Social Security Act and implementing regulations.

The Centers for Medicare & Medicaid Services (CMS) determined to terminate Petitioner's participation in Medicare based on findings made during a survey of Petitioner's facility that was conducted on May 7, 2009. The agency conducting that survey identified a total of 15 deficiencies at the facility including six instances of noncompliance with Medicare coverage conditions. Termination was effectuated on July 20, 2009.

Petitioner requested a hearing and the case was assigned to me for a hearing and a decision. I issued a pre-hearing order on August 13, 2009 in which I directed the parties to file pre-hearing exchanges by specified dates. My order required each party to file a brief which addressed every issue in the case and all proposed exhibits including the written direct testimony of each proposed witness. Petitioner then moved for summary disposition and, on November 7, 2009, I issued a ruling denying Petitioner's motion. In that ruling I again ordered the parties to complete pre-hearing exchanges on the due dates that I had originally established. CMS complied with my initial pre-hearing order on December 15, 2009 by filing a pre-hearing exchange that included a brief and 12 proposed exhibits. The exhibits, which CMS identified as CMS Ex. 1 – CMS Ex. 12, included the written declarations of three proposed witnesses. CMS mailed a copy of its exchange to Petitioner in care of Roberto Macatangay, MD, MPH, Petitioner's director and the individual who had made previous filings on Petitioner's behalf.

Petitioner's pre-hearing exchange was due on January 14, 2010. However, it failed to file anything by this deadline. On January 28, 2010, I sent an order to show cause to Petitioner directing Petitioner to file its pre-hearing exchange within 10 days along with a statement explaining its failure to file its exchange timely. I expressly warned Petitioner that, if it failed to file a response to the order to show cause, I could consider it to have abandoned its hearing request.

Petitioner failed nothing in response to the order to show cause.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether there is reason for me to dismiss Petitioner's hearing request.

B. Findings of fact and conclusions of law

I find that Petitioner abandoned its request for a hearing. The initial pre-hearing order that I issued in this case on August 13, 2009 unequivocally established a deadline of January 14, 2010 for Petitioner to file its pre-hearing exchange. My November 2, 2009 ruling in which I denied Petitioner's motion for summary disposition reinforced the initial pre-hearing order by directing the parties to file their pre-hearing exchanges by the deadlines established in the August 13 order. CMS duly complied with my order. Petitioner filed nothing. Nor did Petitioner file any response to my order to show cause which explicitly warned Petitioner that I might decide that it had abandoned its hearing request if it failed to file a reply to the order to show cause.

