

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Izgel Medical Services, PLLC,  
(NPI: 1669645628),

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-609

Decision No. CR2441

Date: October 4, 2011

**DECISION**

I find that the Centers for Medicare and Medicaid Services (CMS), acting through its contractor, National Government Services, Inc. (NGS), was authorized to revoke the Medicare provider enrollment of Petitioner, Izgel Medical Services, PLLC.

**I. Background**

Petitioner is an internal medical practice owned by Emerth Lance Coburn, M.D. On March 23, 2011, NGS, acting on behalf of CMS, revoked Petitioner's participation in Medicare. Petitioner requested a hearing, and the case was assigned to me for a hearing and a decision.

The parties exchanged briefs and proposed exhibits. Neither party requested that I convene an in-person hearing. CMS filed ten proposed exhibits that it designated as CMS Exhibit (Ex.) 1 – CMS Ex. 10. Petitioner filed five proposed exhibits that it designated as P. Ex. 1 – P. Ex. 5. I receive all of the parties' proposed exhibits into the record.

## **II. Issue, Findings of Fact, and Conclusions of Law**

### **A. Issue**

The issue in this case is whether Petitioner timely reported to CMS a change in its practice location. Medicare regulations require that a physician must report a change in his or her practice location within 30 days of that event. 42 C.F.R. § 424.516(d)(1)(iii). CMS contends that Petitioner failed to comply with this requirement when it changed its practice location. It argues that it may revoke Petitioner's Medicare billing privileges due to Petitioner's failure to comply with Medicare reporting requirements. 42 C.F.R. § 424.535(a)(9). Petitioner argues that it timely reported the relocation of its practice, and, therefore, CMS may not revoke its participation.

### **B. Findings of Fact and Conclusions of Law**

I find that Petitioner did not prove that it timely reported the change of its practice location by filing a CMS-855I Medicare enrollment application on November 9, 2010. Consequently, CMS may revoke Petitioner's participation.

The relevant facts are as follows. In July 2009, Dr. Coburn filed on behalf of Petitioner a Medicare enrollment application form to add an address in Forest Hills, New York, as an office location (76-05 113 Street, Forest Hills). CMS Ex. 1 at 18, 28; CMS Ex. 2 at 1. On January 13, 2011, an employee of a Medicare contractor came to these premises to inspect them. CMS Ex. 3 at 2. He discovered that Petitioner was not located there.

On March 23, 2011, NGS revoked Petitioner's Medicare participation effective January 13, 2011. The grounds for the revocation determination were that Petitioner: (1) was no longer operating at the Forest Hills site on January 13, 2011; and (2) had failed to notify CMS within 30 days of its move from its location in Forest Hills to a new location.

Petitioner contends that, effective October 15, 2010, it moved its practice location to another Forest Hills address (108-27 63<sup>rd</sup> Avenue, Forest Hills). CMS Ex. 6 at 1. It asserts that, on November 9, 2010, it timely filed a CMS-855I Medicare enrollment application in which it reported this change of address. Thus, Petitioner argues, it complied with Medicare reporting requirements. Petitioner argues additionally that, even if it did not successfully file on November 9, it subsequently cured that failure by filing a Medicare enrollment application on March 25, 2011 that reported the address change.

NGS did not receive the purported November 9, 2010 change of address notice, and Petitioner has produced no documentation showing that the notice was filed. It has not offered a copy of the document, nor has it offered proof that it was mailed. As for the March 25, 2011 notice, which Petitioner filed only after its Medicare participation had been revoked, it does report a change of practice address. CMS Ex. 5 at 17-18, 28. However, it also reports that Petitioner began treating Medicare beneficiaries at the new location on October 1, 2010. *Id.* In other words, it reports that Petitioner began treating patients at the new practice location in Forest Hills more than 30 days prior to November 9, 2010, the date when Petitioner purportedly sent its first notice to the contractor. CMS Ex. 5 at 17. Petitioner now contends that the October 1 inception of practice date is a typographical error and that the actual inception of practice date at the new location is October 15, 2010.

I find Petitioner's assertions not to be credible. First, I do not find to be credible its claim that, on November 9, 2010, it filed an application to report its change of address in Forest Hills. The contractor has no record of having received the purported application, and Petitioner has produced nothing in the way of documentary corroboration of its claim. Most telling, Petitioner has not produced a copy of the purported November 9 application. I am not persuaded that Petitioner actually filed this document.

As for the March 25, 2010 application, I note initially that CMS is under no obligation to accept it. The regulation requires that Petitioner report a change of its practice address within 30 days from the date that it makes the change. 42 C.F.R. § 424.516(d)(1)(iii). Petitioner may not cure its failure to file the required report by filing one, months after the fact, in the guise of seeking reconsideration of CMS's determination.

Reconsideration affords a party the opportunity to provide evidence that it had done what it was required to do. For example, Petitioner might have provided a copy of its purported November 9 application, assuming the application actually had been filed, to show on reconsideration that it had done what the regulation required. But, reconsideration does not afford a party the opportunity to comply with obligations that it had failed to comply with initially. Thus, filing an application untimely as part of reconsideration does not cure the failure to file the application timely.

Furthermore, and as I have found, the March 25, 2010 application that Petitioner filed with its reconsideration request reports that Petitioner began seeing patients at its new location more than 30 days prior to allegedly filing a November 9, 2010 application. Thus, the March 25, 2010 application would not "cure" Petitioner's failure to timely report, even if CMS accepts it.

Moreover, Petitioner offers confusing and unbelievable evidence about the October 1 inception date. Petitioner submitted the declaration of Mishelle Neginsky to support its assertion that it filed an application on November 9, 2010. P. Ex. 4. In that declaration, Ms. Neginsky states that she made a typographical error in the *November 9, 2010 application*, allegedly reporting incorrectly in that document that Petitioner began seeing patients at its new location on October 1, 2010, when, in fact, it began doing so on October 15. However, it is not the November 9, 2010 application (which has never been produced) that contains this error, it is the *March 25, 2011 application* that contains it. CMS Ex. 5 at 17.

The credible evidence of record shows that Petitioner changed its practice location within Forest Hills at some point after it filed its first application in 2009 and failed to report that change timely. That is sufficient ground for CMS to revoke Petitioner's participation in Medicare.

                                          /s/                                            
Steven T. Kessel  
Administrative Law Judge