

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Chilakamarri Ramesh, M.D.,
(NPI: 1578575106),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-76

Decision No. CR3050

Date: December 24, 2013

DECISION

I grant summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) affirming CMS's determination to deny Petitioner's April 22, 2013 application to enroll as a physician in the federal Medicare program. I find that I have no authority to consider whether CMS abused its discretion in denying Petitioner's application on the ground that he had been convicted of a felony within the past 10 years that CMS determined to be detrimental to the best interests of the Medicare program and its beneficiaries.

I. Background

Petitioner is a physician. On April 22, 2013, he submitted an application to participate in Medicare. CMS determined to deny this application and Petitioner requested reconsideration. CMS's determination was affirmed on reconsideration and Petitioner requested a hearing. The case was assigned to me for a hearing and a decision. CMS filed a motion for summary judgment along with exhibits that CMS identified as CMS Ex. 1 – CMS Ex. 4. Petitioner opposed the motion (P. Brief) and he filed exhibits that he identified as P. Ex. A-1, P. Ex. A-2, P. Exs. B-Z, and P. Ex. AA. Petitioner objects to my receiving CMS Ex. 4 on relevancy

grounds. I overrule that objection. The exhibit is a publicly available form and I could take notice of it even if it were not an exhibit. Moreover, it is relevant to show that Petitioner knew that his dishonesty could be a crime.

II. Findings of fact and conclusions of law

As I explain in more detail below there are no disputed issues of material fact in this case. I rest my decision entirely on legal conclusions based on the undisputed facts. Therefore, summary judgment is appropriate.

The undisputed facts establish that in May 2009 Petitioner pled guilty to a felony under federal law, a conspiracy to commit naturalization fraud. CMS Ex. 2 at 1. Specifically, Petitioner agreed with a co-conspirator to sign blank form waivers (INS Form N-648) for eight applicants for naturalization, knowing that his co-conspirator would complete the waivers subsequently and knowing also that there was a high probability that the co-conspirator would include false information on these waivers before submitting them to the Immigration and Naturalization Service (INS). P. Ex. C at 2. As a consequence, Petitioner was sentenced to 10 months in prison and fined \$30,000. P. Ex. E at 2-6.

The purpose of the waivers was to provide the applicants for naturalization with medically certified disability exceptions to the naturalization requirement that they demonstrate an ability to speak and write basic English and to answer basic questions about the history and government of the United States. A medical professional who fills out the N-648 form must complete it and sign it under penalty of perjury and acknowledge that knowingly placing false information on the form may subject him or her to criminal penalties. CMS Ex. 4.

CMS determined to deny Petitioner's enrollment application on the authority of 42 C.F.R. § 424.530(a)(3). This section provides, generally, that CMS may deny a Medicare enrollment application if within 10 years of the date of the enrollment application the applicant was convicted of a federal or State felony "that CMS has determined to be detrimental to the best interests of the [Medicare] program and its beneficiaries." The regulation provides four examples of felonies that may be the basis for enrollment denial. 42 C.F.R. §§ 424.530(a)(3)(i)(A) – (D). These examples have been found to be illustrative and not inclusive of all of the felonies that may be the basis for denial of enrollment. *Fayad v. Sebelius*, 803 F. Supp. 2d 699, 703-04 (E.D. Mich. 2011), citing *Ahmed v. Sebelius*, 710 F. Supp. 2d 167, 173-74 (D. Mass. 2010).

What is most important about this regulation is that it grants CMS discretion to determine which felony convictions are detrimental to the best interests of Medicare and its beneficiaries. CMS's exercise of that discretion is not

reviewable. In a case where CMS determines to exercise its discretion to deny enrollment based on the requirements of 42 C.F.R. § 424.530(a)(3), my reviewing authority is limited to deciding whether Petitioner has been convicted of a felony under federal or State law. I lack the authority to question whether, under such circumstance, CMS abused its discretion to deny Petitioner's enrollment application. At bottom, I may not substitute my judgment for that of CMS and find a felony conviction not to be detrimental to the program's and its beneficiaries' best interests.

Here, the undisputed facts establish that Petitioner was convicted of a felony within the 10-year period prior to his filing his enrollment application. Petitioner does not deny that. Consequently, I must find that CMS had the discretion to deny Petitioner's application and I must decide this case in favor of CMS.

That said, I would note that Petitioner's conviction is clearly for the type of felony for which enrollment denial is contemplated. The types of felonies specifically listed as grounds for denial under 42 C.F.R. § 424.530(a)(3) include those described at subsection (i)(B) as consisting of: "Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes" All of these enumerated felonies have dishonesty as a common element. The regulation makes it plain that CMS will consider individuals who have been convicted of these crimes involving dishonesty to be untrustworthy to deal with program beneficiaries and funds and will determine that their enrollment applications should thus be denied. Petitioner was not convicted of any of these enumerated crimes but he was convicted of a crime of dishonesty that was just as egregious as are any of the enumerated crimes. He was a conspirator in a scheme to perpetrate a fraud against the government of the United States and its citizens. That dishonesty is certainly of a caliber of the enumerated felonies cited at subsection (i)(B) of 42 C.F.R. § 424.530(a)(3) and CMS clearly acted reasonably in determining that Petitioner's participation would be detrimental to the best interests of the Medicare program and its beneficiaries.

Petitioner makes several arguments in opposition to CMS's motion for summary judgment and I find all of them to be without merit. First, Petitioner argues that the determination by CMS to deny Petitioner's application was based on CMS's incorrect conclusion that Petitioner's conviction had involved making a false diagnosis. P. Brief at 6-9. Petitioner reasons that if the predicate for the determination is incorrect then the determination itself must be an abuse of discretion and should be reversed.

The problem with that logic, obviously, is that at bottom Petitioner is demanding that I look behind CMS's exercise of discretion in this case. As I have stated, I lack that authority. Petitioner was undeniably convicted of a federal felony within

