

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

AnSah, Inc. d/b/a AnSah Health Care
(NPI: 1124207618),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1680

Decision No. CR4182

Date: August 31, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS) revoked the Medicare billing privileges of AnSah, Inc. (AnSah), doing business as AnSah Health Care, because CMS concluded that AnSah was not operational at the practice location on file with CMS and its administrative contractor. After the CMS contractor upheld the revocation in a reconsidered determination, AnSah requested a hearing to dispute the revocation. Based on the evidence in the record, I affirm CMS's revocation of AnSah's Medicare billing privileges.

I. Background

AnSah is a home health agency that was enrolled as a provider of services in the Medicare program. *See* 42 U.S.C. § 1395x(u). On October 27, 2014, a CMS administrator contractor, Palmetto GBA, informed AnSah that its Medicare billing privileges were revoked retroactively to July 23, 2014. CMS Exhibit (Ex.) 2. Palmetto stated:

CMS has determined, upon on-site review, that Ansah Inc. is no longer operational to furnish Medicare covered items or services and is not meeting Medicare enrollment requirements under statute or regulation to supervise treatment of or to provide Medicare covered items or services for Medicare patients. On July 23, 2014 a site visit was conducted at 5054 Navajo Drive Frisco, TX 75034-1273. It was found that Ansah Inc. is no longer operating from this location.

CMS Ex. 2 at 1.

On December 15, 2014, AnSah requested reconsideration of the revocation. CMS Ex. 4. AnSah's reconsideration request included an affidavit from its administrator, who stated that AnSah moved from the 5054 Navajo Drive location on December 2, 2013, to 9555 Lebanon Road, Suite 1001, Frisco, Texas 75034. CMS Ex. 4 at 7. AnSah's administrator asserted that AnSah notified the Texas Department of Aging and Disability Services on November 1, 2013, of its upcoming change in location and later notified Palmetto of the location change on a "cost report" filed in May 2014. CMS Ex. 4 at 8, 23. AnSah also filed with Palmetto a CMS-855A enrollment application on November 12, 2014, through the Provider Enrollment, Chain, and Ownership System (PECOS). CMS Ex. 4 at 27-87.

On February 2, 2015, CMS's Center for Program Integrity issued a reconsidered determination that stated, in relevant part:

All of the documentation in the file for this case has been reviewed and the decision has been made in accordance with Medicare guidelines. Specifically, the provider shows evidence of changing its address with the Texas Department of Aging [and Disability Services]. However, PECOS still reflects the old practice location that failed the site inspection. The copy of the submitted 855A does not show evidence of being submitted to Palmetto in 2013 which is required within 90 days as outlined in 42 CFR§ 424.516(e). Therefore, the proposed reconsideration is denied.

CMS Ex. 3 at 2.

On March 17, 2015, AnSah requested a hearing to dispute the revocation of its Medicare billing privileges. In response to my Acknowledgement and Pre-hearing Order (Order), CMS filed a brief and five exhibits, and AnSah filed a brief.

II. Decision on the Record

AnSah did not object to CMS's proposed exhibits. Therefore, I admit CMS Exhibits 1 through 5 into the record.

Neither party submitted written direct testimony for any witnesses. *See* Order ¶ 8; Civil Remedies Division Procedures (CRDP) § 19(b). Accordingly, there is no need for an in-person hearing to cross-examine witnesses. Order ¶ 9; CRDP § 16(b). I issue this decision based on the written record. Order ¶¶ 10-11; CRDP § 16(b), (d).

III. Issue

Whether CMS has a legitimate basis to revoke AnSah's Medicare billing privileges because AnSah was not operational at the practice location on file with CMS when an inspector attempted to conduct a site visit.

IV. Jurisdiction

I have jurisdiction to decide this case. 42 C.F.R. §§ 405.803(a), 424.545(a)(1), 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

V. Findings of Fact, Conclusions of Law, and Analysis¹

To participate in the Medicare program as a provider, a provider must complete a CMS-855A enrollment application, which requires disclosure of the provider's address. *See* 42 C.F.R. § 424.510(a). Once enrolled, a provider must report, within 90 days, any changes in its enrollment information, including its address. 42 C.F.R. § 424.516(e)(2). CMS may perform periodic revalidations and site visits to verify the provider's enrollment information, the provider's compliance with Medicare enrollment requirements, and that the provider is operational. 42 C.F.R. §§ 424.510(d)(8), 424.515(c), 424.517(a). If CMS determines that a provider is not operational, then CMS may revoke the provider's Medicare billing privileges retroactive to the date that CMS determined that the provider was not operational. 42 C.F.R. §§ 405.800(b)(2); 424.535(a)(5)(i), (g).

- 1. A Palmetto inspector attempted to conduct a site visit on July 23, 2014, at the address on file for AnSah (5054 Navajo Drive, Frisco, Texas); however, that location was not open to the public or staffed to allow the inspector to enter the office.***

¹ My numbered findings of fact and conclusions of law appear in bold and italics.

It is undisputed that until December 2, 2013, AnSah was enrolled in the Medicare program with its address listed as 5054 Navajo Drive, Frisco, Texas. CMS Ex. 4 at 7; *see also* CMS Ex. 5 at 51. It is also now undisputed that AnSah moved its office on or around December 2, 2013, to 9555 Lebanon Road, Suite 1001, Frisco, Texas. CMS Ex. 3 at 2; CMS Ex. 4 at 7, 48. AnSah sent notice of its change in location to the Texas Department of Aging and Disability Services, but there is no evidence that it actually sent notice of the location change to Palmetto prior to the site inspection. CMS Ex. 4 at 8, 11-23.

On July 23, 2014, at approximately 1:50 p.m., an inspector with Palmetto attempted to conduct an unannounced site inspection of AnSah's office at the 5054 Navajo Drive location. CMS Ex. 1 at 1. The inspector wrote in his inspection report that when he arrived at that location, an occupant told him that AnSah had moved locations to the 9555 Lebanon Road address. CMS Ex. 1 at 1. The inspector noted in his report that AnSah: was not open for business; did not have staff present; did not have customer activity; did not have inventory present; and did not appear to be operational. CMS Ex. 1 at 1.

2. CMS had a basis to revoke AnSah's Medicare billing privileges pursuant to 42 C.F.R. § 424.535(a)(5) because the July 23, 2014 on-site visit showed that AnSah was not operational at the location on file with CMS.

AnSah acknowledges that it left the 5054 Navajo Drive location by December 2, 2013, over six months before Palmetto's attempted on-site visit. CMS Ex. 4 at 7-8, 48. AnSah argues that on July 23, 2014, it was operational at the 9555 Lebanon Road address and that it had provided Palmetto (and CMS) with notice of its change of address. AnSah points out that it completed a change of location form for the Texas Department of Aging and Disability Services, and also claims that it filed a "cost report" with Palmetto in May 2014 that included AnSah's new location. CMS Ex. 4 at 8. AnSah further argues that the inspector learned of AnSah's new location at the time of the on-site visit, when an occupant of AnSah's old location told him the new address. *See* CMS Ex. 1 at 1.

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 (as applicable based on the type of facility or organization, provider or supplier specialty, or the services or items being rendered) to furnish these items or services.

42 C.F.R. § 424.502. CMS may revoke a currently enrolled provider's Medicare billing privileges in the following circumstance.

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).

Even if AnSah was open and staffed at the 9555 Lebanon Road location on July 23, 2014, the regulatory definition of the term “operational” refers to the “qualified physical practice location” of a provider. 42 C.F.R. § 424.502. The Medicare enrollment application requires a provider to list its practice location (*see* CMS Ex. 4 at 48) and a provider must provide documentation of its “practice location” with its enrollment application. 42 C.F.R. § 424.510(d)(2)(ii). CMS may perform on-site inspections to verify that the enrollment information submitted by a supplier is accurate and to determine compliance with Medicare requirements. 42 C.F.R. § 424.517(a). This means that CMS will inspect the “qualified physical practice location” that has been provided by the supplier and is currently on file with CMS. *See, e.g., JIB Enterprises, LLC, DAB CR3010*, at 9 (2013). As the regulatory drafters explained,

when CMS or our contractor determines that a provider . . . is no longer operating *at the practice location provided to Medicare on a paper or electronic Medicare enrollment application* that the revocation should be effective with the date that CMS or our contractor determines that the provider or supplier is no longer operating at the practice location.

73 Fed. Reg. 69,725, 69,865 (Nov. 18, 2008) (emphasis added).

In the present matter, CMS provided undisputed evidence that AnSah was not open to the public or properly staffed and thus not operational at the 5054 Navajo Road location, which was the address AnSah had on file with CMS at the time of the July 23, 2014 attempted on-site visit. I conclude that CMS had a legal basis to revoke AnSah’s billing privileges pursuant to 42 C.F.R. § 424.535(a)(5)(i).

3. AnSah did not notify CMS or the CMS contractor of its change of address within 90 days of December 2, 2013, the date AnSah changed locations.

AnSah argued at the reconsideration level that its notification to the Texas Department of Aging and Disability Services in November 2013, a May 2014 “cost report” to Palmetto, the notice given by a third party to the inspector on July 23, 2014, and a CMS-855A

enrollment application filed on November 12, 2014, were sufficient to provide Palmetto with notice of AnSah's new location. AnSah implies that the inspection (or a separately attempted inspection) should have occurred at the 9555 Lebanon Road location based on these notifications. CMS Ex. 4 at 7-9.

AnSah has not provided evidence to support that it effectively or timely notified Palmetto of its change in location within the 90 days required by regulation. 42 C.F.R. § 424.516(e)(2). Of the arguments AnSah puts forward, the only possible notice that could be considered timely is the one provided to the Texas Department of Aging and Disability Services. However, it is unreasonable – and unsupported – for AnSah to presume that notifying the Texas Department of Aging and Disability Services automatically notified Palmetto, an entirely separate entity serving a different level of government.

AnSah's other arguments involving alleged notice through a May 2014 "cost report" filed with Palmetto, by a third party to the Palmetto inspector on July 23, 2014, and through the filing of a CMS-855A enrollment application on November 12, 2014, all occurred more than 90 days following AnSah's change of location. Even if I could consider the cost report to be notice provided before the July 2014 attempted inspection, AnSah did not submit a copy of that report for me to review. AnSah's mere allegation of submitting a cost report as notice is insufficient for me to conclude Palmetto had notice of the change of address. Further, only the latest notice, through a CMS-855A, was proper notice; however, it occurred nearly a year after AnSah changed locations and many months after the attempted inspection. Therefore, I conclude that AnSah did not timely notify Palmetto of its change of address. The July 23, 2014 attempted on-site inspection occurred at the location on file with Palmetto.

VI. Conclusion

I affirm the revocation of AnSah's Medicare billing privileges effective July 23, 2014.

/s/

Scott Anderson
Administrative Law Judge