Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Oduah D. Osaro, M.D.,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-805

Decision No. CR4357

Date: October 23, 2015

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), revoked the Medicare enrollment and billing privileges of Petitioner, Oduah D. Osaro, M.D., based on Petitioner's termination from the Iowa Medicaid program by the Iowa Department of Human Services pursuant to 42 C.F.R. § 424.535(a)(12). Petitioner appealed a reconsidered determination, and I affirm CMS's revocation of Petitioner's Medicare enrollment and billing privileges. There is no dispute that Petitioner was terminated from Iowa's Medicaid program, and he did not appeal that termination action.

I. Background and Procedural History

Petitioner is a physician licensed to practice medicine in Iowa. P. Ex. 1 ¶ 1. In a notice letter dated February 28, 2013, the Iowa Medicaid program terminated Petitioner's participation, effective March 30, 2013, because Petitioner allegedly required a Medicaid recipient to pay him cash in exchange for an office visit in which Petitioner prescribed controlled substances. In addition, Petitioner allegedly charged that patient an amount in excess of the amount Medicaid would reimburse for the office visit. CMS Ex. 1. The letter explained that the termination was grounded upon several sections of the Iowa Administrative Code, each of which the state explained was an independently sufficient

ground for termination. The letter notified Petitioner of his appeal rights and how to file an appeal. CMS Ex. 1.

On October 2, 2013, WPS notified Petitioner that it was revoking his Medicare enrollment and billing privileges, effective November 2, 2013 because of his termination from the Iowa Medicaid program and because he had exhausted all appeal rights. CMS Ex. 2. WPS imposed a reenrollment bar of one year. CMS Ex. 2.

Petitioner requested a reconsidered determination and filed a corrective action plan. CMS denied Petitioner's corrective action plan but did not issue a reconsidered determination. CMS Ex. 4 at 1. On November 19, 2013, Petitioner re-submitted his request for reconsideration. CMS Ex. 3, 5. On January 22, 2014, a hearing officer upheld Petitioner's revocation in a reconsidered determination and continued to cite his Medicaid termination as the Medicare revocation basis. CMS Ex. 6.

Petitioner timely requested a hearing on February 20, 2014 to appeal the reconsidered determination. The case was assigned to me for hearing and decision on March 24, 2014, and I issued an Acknowledgment and Pre-hearing Order (Order) on that date. In the Order, I set dates for the parties to exchange evidence and arguments. I informed the parties that I would only schedule a hearing if a party filed written direct testimony for a witness, and the opposing party requested to cross-examine the witness. Order ¶ 10. I granted five joint motions for continuances as Petitioner tried to reenroll in Medicaid with no success.

On July 21, 2015, CMS filed a motion for summary judgment and pre-hearing brief (CMS Br.), along with 6 exhibits (CMS Exs. 1-6). CMS did not list any witnesses. Petitioner did not object to CMS's exhibits. I admit CMS Exs. 1-6. On August 31, 2015, Petitioner filed a pre-hearing brief and opposed CMS's motion for summary judgment (P. Br.), along with two exhibits (P. Exs. 1-2). Petitioner listed himself as a witness and provided a sworn written statement. P. Ex. 1. CMS neither requested to cross-examine Petitioner nor objected to Petitioner's exhibits. I admit P. Exs. 1-2.

I do not find it necessary to convene an in-person hearing here because neither Petitioner nor CMS sought to cross-examine any witness. Order ¶ 11; *See Marcus Singel, D.P.M.*, DAB No. 2609, at 5-6 (2014). Accordingly, I issue this decision based on the full merits of the written record and find it unnecessary to rule on summary judgment. Order ¶¶ 10, 11.

II. Analysis

A. Issue

Whether CMS had a legal basis to revoke Petitioner's Medicare enrollment and billing privileges because the Iowa Medicaid program terminated his Medicaid enrollment and Petitioner exhausted his termination appeals.

B. Findings of Fact and Conclusions of Law

1. Effective March 30, 2013, the Iowa Medicaid program terminated Petitioner from participation in the Iowa Medicaid program.

On February 28, 2013, it is undisputed that the Iowa Medicaid program issued a letter informing Petitioner that he was being terminated from the Iowa Medicaid program because an investigation showed that Petitioner required a Medicaid patient to pay Petitioner cash in exchange for an office visit in which Petitioner subscribed the patient a controlled substance. The amount Petitioner charged for the office visit was in excess of the amount Medicaid would reimburse for a visit. The termination was grounded upon several sections of the Iowa Administrative Code and became effective on March 30, 2013, 30 days after the date of notification. The termination letter notified Petitioner of his right to file an appeal. CMS Ex. 1.

2. CMS had a legal basis for revoking Petitioner's Medicare billing privileges under 42 C.F.R. § 424.535(a)(12) because the Iowa Medicaid program terminated Petitioner from the Medicaid program, and Petitioner has no pending appeal of the termination proceeding.

Petitioner is a physician and, therefore, a supplier for purposes of the Medicare program. *See* 42 C.F.R. §§ 400.202, 410.20(b)(1). CMS may revoke the Medicare billing privileges of a supplier for any of the reasons stated in 42 C.F.R. § 424.535. Based on the Iowa Medicaid termination, CMS revoked Petitioner's Medicare billing privileges under 42 C.F.R. § 424.535(a)(12). That regulation directs that CMS may revoke billing privileges if:

> (i) Medicaid billing privileges are terminated or revoked by a State Medicaid Agency.
>
> (ii) Medicare may not terminate unless and until a provider or supplier has exhausted all applicable appeal rights.

Petitioner was terminated by the Iowa Department of Human Services, a state Medicaid agency. The February 28, 2013 termination letter specifically stated that Petitioner had

the right to an appeal. CMS Ex. 1 at 2. Petitioner then appealed the Iowa Medicaid termination on March 27, 2013. P. Ex. 1 ¶ 10. As part of his appeal, he participated in a telephone hearing on May 8, 2013. P. Ex. 1 ¶ 22. Petitioner states he received the Administrative Law Judge's (ALJ's) decision, dated May 23, 2013, via regular mail. P. Ex. 1 ¶¶ 37, 38. Petitioner states that his office was closed May 25, 26, 27, 29, and June 1, 2013, and he believes that he ultimately received the ALJ's decision on June 3 or 4, 2013. P. Ex. 1 ¶ 38. He also testifies about receiving a letter, postmarked June 4, 2013 via regular mail, stating that the ALJ's decision was final. P. Ex. 1 ¶ 39. Petitioner claims that he was not informed that the ALJ's decision was final in time to file an appeal of the ALJ's decision to uphold his Medicaid termination. P. Ex. 1 ¶ 41. Petitioner does not state that he attempted to further appeal his Medicaid termination, and Petitioner did not propose as an exhibit the ALJ decision nor the other letter declaring the proceedings final.

CMS's October 2, 2013 letter revoking Petitioner's Medicare enrollment and billing privileges states that Petitioner has exhausted all appeal rights related to the Medicaid termination. CMS Ex. 2. Petitioner does not dispute that he has exhausted his appeal rights concerning the Medicaid termination although, as evidenced by his frequent requests for extended continuances of this Medicare revocation proceeding, he has unsuccessfully attempted to re-enroll in the Iowa Medicaid program.

Petitioner implies that he was not given notice in a timely manner to allow him to appeal his Medicaid termination at the state agency level. However, I am not aware of any pending legal challenge regarding that issue, and it is not an issue I can now decide in this forum. Petitioner also argues his Iowa Medicaid termination was a result of a flawed process and seeks to justify his actions, that were a basis for Iowa's termination, as a "patient's right to request that the claim for [Petitioner's] services not be submitted to a third party payor due to the sensitive nature of the treatment being provided." P. Br. at 3. I also do not have authority to consider challenges to the Medicaid termination decision, which is now final. A Medicare enrollment revocation under section 424.535(a)(12) is derivative to the termination action of a state Medicaid agency, and I am aware of no authority that allows me to relitigate the merits or procedures involved in the underlying termination decision.

Petitioner also argues that I may review the discretionary act of CMS to revoke Petitioner's billing privileges. P. Br. at 2. However, although CMS has discretion to revoke a supplier's billing privileges, I am unable to review that exercise of discretion. *See, e.g.*, *Latantia Bussell, M.D.*, DAB No. 2196, at 13 (2008) ("the right to review of CMS's determination by an ALJ serves to determine whether CMS had the authority to revoke . . . not to substitute the ALJ's discretion about whether to revoke.").

Finally, Petitioner claims there is a shortage of primary care physicians in his area and the termination leaves Medicare beneficiaries with a lack of access to necessary services.

Although this is unfortunate, if true, a shortage of physicians is not a legal basis upon which I may reverse Petitioner's Medicare revocation.

III. Conclusion

I affirm CMS's determinations to revoke Petitioner's Medicare enrollment and billing privileges and the associated one-year reenrollment bar pursuant to 42 C.F.R. § 424.535(a)(12) because Petitioner was terminated from the Iowa Medicaid program and has exhausted his appeals of that termination action.

/s/
Joseph Grow
Administrative Law Judge