Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Acute Care Homenursing Services, Inc.,
(PTAN: 36-7522)
(NPI: 1235230665),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-2266

Decision No. CR4835

Date: April 26, 2017

DECISION

Petitioner, Acute Care Homenursing Services, Inc., was an Ohio-based home health agency. At one time, it participated in the Medicare program. But, as of February 1999, it was no longer authorized to conduct business in the State of Ohio. When, in 2012, it was required to revalidate its Medicare program participation, Petitioner's president and owner submitted the necessary application and managed to maintain the home health agency's enrollment, but, in doing so, he provided false information. Eventually, the Centers for Medicare & Medicaid Services (CMS) caught on and revoked Petitioner's Medicare enrollment.

Petitioner appeals the revocation, and the parties have filed cross-motions for summary judgment.

As discussed below, the uncontroverted facts establish that Petitioner was not authorized to do business in the State of Ohio, and it provided false information on its 2012 enrollment application. CMS therefore properly revoked Petitioner's Medicare enrollment.

For these reasons, I grant CMS's motion for summary judgment and deny Petitioner's.

Background

In a letter dated October 21, 2014, the Medicare contractor, Palmetto GBA, notified Petitioner that its provider number would be revoked effective November 21, 2014, pursuant to 42 C.F.R. §§ 424.535(a)(1), (4), and (7) because: 1) it had not abided by Medicare laws, rules, and program instructions; 2) its 2012 revalidation application contained false or misleading information; and 3) it allowed a separate entity to use its billing number. CMS Exhibit (Ex.) 1. Petitioner requested reconsideration. CMS Ex. 3. In a reconsidered determination dated March 4, 2015, CMS affirmed the revocation. CMS Ex. 5. Petitioner now appeals that determination.

The parties have filed cross-motions for summary judgment. CMS has filed its motion for summary judgment and memorandum in support (CMS MSJ) with 45 exhibits (CMS Exs. 1- 45). With its motion and brief (P. MSJ), Petitioner submitted one exhibit (P. Exs. 1).

Discussion

> ***CMS is entitled to summary judgment because the undisputed evidence establishes that Petitioner did not comply with Medicare enrollment requirements and that it provided false information on its revalidation application. CMS therefore properly revoked its Medicare enrollment pursuant to 42 C.F.R. §§ 424.535(a)(1) and (4).***[1]

Summary Judgment. The Departmental Appeals Board has, on multiple occasions, discussed the well-settled principles governing summary judgment. *See*, *e.g.*, *1866ICPayday.com, L.L.C.*, DAB No. 2289 at 2-3 (2009). Summary judgment is appropriate if a case presents no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *1866ICPayday* at 2; *Illinois Knights Templar Home*, DAB No. 2274 at 3-4 (2009), and cases cited therein.

The moving party may show the absence of a genuine factual dispute by presenting evidence so one-sided that it must prevail as a matter of law, or by showing that the non-moving party has presented no evidence "sufficient to establish the existence of an element essential to [that party's] case, and on which [that party] will bear the burden of proof at trial." *Livingston Care Ctr. v. Dep't of Health & Human Servs.*, 388 F.3d 168, 173 (6th Cir. 2004) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

[1] I make this one finding of fact/conclusion of law.

To avoid summary judgment, the non-moving party must then act affirmatively by tendering evidence of specific facts showing that a dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.11 (1986); s*ee also Vandalia Park*, DAB No. 1939 (2004); *Lebanon Nursing & Rehab. Ctr.*, DAB No. 1918 (2004).

Program rules. "Enrollment" is the process Medicare uses to establish an entity's eligibility to submit claims for covered services and supplies. 42 C.F.R. § 424.502.

A home health agency is a public agency or private organization that "is primarily engaged in providing skilled nursing services and other therapeutic services" to patients in their homes. Social Security Act (Act) § 1861(o). It may participate in the Medicare program as a provider of services if it meets that statutory definition and complies with other statutory and regulatory requirements. Act §§ 1861(o), 1891; 42 C.F.R. Part 484; 42 C.F.R. § 488.3. CMS may revoke its billing privileges and corresponding provider agreement if (among other reasons):

- it is not in compliance with Medicare enrollment requirements (42 C.F.R. § 424.535(a)(1));

- it certifies as "true" on its application to be enrolled, or to maintain enrollment, information that is misleading or false (42 C.F.R. § 424.535(a)(4)); or

- it knowingly allows another entity to use its billing number. 42 C.F.R. § 424.535(a)(7); *see also* 42 C.F.R. § 424.550(a) (prohibiting a Medicare provider from allowing another entity to use its billing number).

Although this case involves some confusing corporate structures, the dispositive facts are not in dispute, and the relevant issues are straightforward.

The first corporation: Acute Care Homenursing Services, Inc. (Petitioner).

- In July 1992, Petitioner filed its articles of incorporation with the State of Ohio. The filing lists Bruce C. Peters as the corporation's registered agent. CMS Ex. 6; *see* CMS Ex. 13. Thereafter, Acute Care Homenursing Services, Inc. (sometimes referred to as AC Homenursing Services, Inc.) operated as a corporation in the State of Ohio, and Bruce C. Peters, the president and owner, was its registered agent. CMS Exs.13, 14, 15; *see* CMS Ex. 2 at 3 (Peters Decl. ¶¶ 2, 3); P. Br. at 5.

- On December 31, 1996, Petitioner registered the trade name "Acute Care Homenursing Service, Inc." CMS Ex. 8 at 2-3. The registration form describes the business as "home health care, visiting nurse, and homemaker services." CMS Ex. 8 at 3.

- In a notice dated February 20, 1999, the Ohio Secretary of State notified Petitioner that its Articles of Incorporation or license to do business in Ohio was cancelled as of that day and that continuing business as a corporation would violate the law. CMS Ex. 9; *see* CMS Ex. 2 at 3 (Peters Decl. ¶ 4) (conceding that Ohio cancelled its charter on February 20, 1999). It seems that Petitioner had neither filed nor paid its corporate franchise taxes.

- On December 31, 2001, the Ohio Secretary of State cancelled Petitioner's trade name (Acute Care Homenursing Service, Inc.) because it had not filed a renewal. CMS Ex. 10.

The second corporation: AC Health Care Services d/b/a Primary Nursing Care, LLC. Owner Peters incorporated two other home agencies, which operated as one:

- On September 9, 1994, the State of Ohio recorded articles of incorporation for "AC Health Care Services, Inc." Bruce C. Peters is listed as this corporation's registered agent. CMS Ex. 15 at 1; CMS Ex. 16 at 2.

- On July 29, 2002, the Ohio Secretary of State recorded articles of incorporation for "Primary Nursing Care, LLC." CMS Ex. 22.

- Thereafter, AC Health Care Services, Inc. registered "Primary Nursing Care" as its "fictitious/trade" name. CMS Exs. 17, 18, 19, 20; *see* CMS Ex. 15 at 2.

Bruce Peters owned both Petitioner (Acute Care Homenursing Services) and AC Health Care Services d/b/a Primary Nursing Care, LLC. CMS Ex. 2 at 3 (Peters Decl. ¶¶ 7, 8); P. Br. at 5. The two corporations shared the same business address (2921 Youngstown Road SE, Warren, Ohio), but were separate entities, each with its own distinct National Provider Identifier (NPI).[2] CMS Ex. 37 at 1; CMS Ex. 38 at 1.

2012 revalidation. To maintain Medicare billing privileges, a provider must resubmit and recertify the accuracy of its enrollment information every five years. 42 C.F.R. § 424.515. The information submitted *must be complete and accurate*. 42 C.F.R. § 424.515(a)(2). The provider must include all necessary documentation "to *uniquely* identify the provider," including the *legal business name*, practice location, tax identification number, and NPI. 42 C.F.R. § 424.510(d)(2)(ii) (emphasis added).

[2] The NPI is a unique identification number for health care providers. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the Secretary of Health and Human Services to adopt a standard, unique identifier for each health care provider.

CMS may perform an on-site inspection to verify that the provider's information is accurate and to determine the provider's compliance with Medicare enrollment requirements. 42 C.F.R. § 424.515(c).

In 2012, Petitioner had to revalidate its enrollment, and, on January 16, 2012, Owner Peters signed and submitted CMS form 855A, which he subsequently amended by means of additional submissions. CMS Ex. 30; CMS Ex. 31 (dated March 29, 2012); CMS Ex. 32 (signature dated January 16, 2012, but faxed April 25, 2012).

At the time of the revalidation, Petitioner was not authorized to conduct business in the State of Ohio, and its trade name had been cancelled. CMS Exs. 9, 10.

Throughout the 855A, Owner Peters mis-identified Petitioner. In the section captioned "identifying information," he correctly listed Petitioner's NPI (1235230665), provider transaction access number (PTAN) (36-7522),[3] and tax identification number (34-1720474). CMS Ex. 30 at 13, 14, 17; *see also* CMS Ex. 30 at 53, 57; CMS Ex. 37 at 1. But instead of revalidating under Petitioner's name, he conflated it with the name of his second corporation. He wrote: "A C Homenursing Services, Inc., d/b/a Primary Nursing Care." CMS Ex. 30 at 32; *see* CMS Ex. 30 at 13 (listing "Primary Nursing Care" as its "Doing Business As Name"). He also wrote "Primary Nursing Care" as the "practice location name" for five practice locations (Warren, Rome, Garfield Heights, Boardman, and Fairlawn, Ohio). CMS Ex. 30 at 22-26.

Further, on March 13, 2012, the contractor's investigator visited Petitioner's address of record. The investigator found signs identifying "Primary Nursing Care" and "Apex Medical Supply." CMS Ex. 33. No sign identified Petitioner by its Medicare enrollment name (and cancelled trade name), "Acute Care Homenursing Services, Inc."

In a letter dated April 25, 2012, the contractor confirmed that "Acute Care Nursing Services Inc." d/b/a "Primary Nursing Care" had submitted its revalidation, citing Petitioner's NPI and PTAN. The letter asked Petitioner to verify the accuracy of the enrollment information and reminded it that a federal regulation (42 C.F.R. § 424.516) requires providers to submit timely updates and changes in enrollment information, including, among other items listed, *changes in legal business name* and *adverse legal actions*, such as license suspensions. CMS Ex. 34.[4] Petitioner did not correct or clarify the enrollment information it had provided.

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[3] A PTAN is a Medicare-only number, which the Medicare contractor issues to a provider when it enrolls in the Medicare program. Owner Peters' second corporation, AC Health Care Services d/b/a Primary Nursing Care, LLC, had no PTAN because it was not enrolled in the Medicare program.

[4] In error CMS labeled this exhibit CMS Ex. 33. It is, however, CMS's 34th exhibit.

Thus, as Petitioner concedes, it reported another corporation's name instead of its own on its 2012 revalidation application. Owner Peters certified the information to be "true, correct, and complete." CMS Ex. 2 at 3 (Peters Decl. ¶ 8); CMS Ex. 30 at 52; CMS Ex. 31 at 18; CMS Ex. 32 at 6.

In an affidavit dated November 7, 2014, Owner Peters claimed that he did so to disclose that he owned Primary Nursing Care. CMS Ex. 2 at 3 (Peters Decl. ¶ 8). CMS finds this claim disingenuous. First, Owner Peters was responding to the most basic request: to identify the business by name. CMS Ex. 30 at 13, 22-26, 32. Second, in those sections of the form that specifically *asked* for ownership information, he did not mention "AC Health Care Services." CMS Ex. 30 at 28-41. Indeed, he omitted from the 855A all mention of "AC Health Care Services" – the corporation for which "Primary Nursing Care" was the trade name. CMS Ex. 30 at 28-41.

But I need not decide the veracity of Owner Peters' declaration. Petitioner's motivation is not material. Section 424.535(a)(4) does not require proof that the provider intended to convey false information, only that he "in fact provided misleading or false information that he certified as true." *Sandra E. Johnson, CRNA*, DAB No. 2708 at 15 (2016), *quoting Mark Koch, D.O.*, DAB No. 2610 at 4 (2014). Because Petitioner submitted a Medicare enrollment application that contained false or misleading information that Petitioner certified as true, CMS could properly revoke its billing privileges and provider agreement under section 424.535(a)(4). *See Johnson* at 15.

And, because Petitioner submitted false information, it did not comply with multiple enrollment requirements, including:

- 42 C.F.R. § 424.510(d)(2), which requires that an enrollment application include "complete, accurate, and truthful responses to all information requested";

- 42 C.F.R. § 424.510(d)(4), which requires that the information submitted be such that CMS can validate it for accuracy "at the time of submission";

- 42 C.F.R. § 424.510(d)(6), which requires that the provider be operational to furnish Medicare-covered items or services;

- 42 C.F.R. § 424.516(a)(2), which requires compliance with federal and state licensure, certification, and regulatory requirements.

CMS could therefore revoke Petitioner's billing privileges and provider agreement under section 424.535(a)(1).

CMS makes a second compelling argument as to why it may revoke Petitioner's Medicare enrollment pursuant to sections 424.535(a)(1) and (4): in submitting form 855A, Petitioner declared that Owner Peters had the legal authority to conduct business on behalf of the corporation. The regulations mandate that the application "be signed by an individual who has the authority to bind the provider . . . both legally and financially" to the Medicare requirements. 42 C.F.R. § 424.510(d)(3); *see* 42 C.F.R. § 424.510(a). When Owner Peters signed the application on January 16, 2012, neither he nor anyone else had the authority to bind Petitioner to anything because Petitioner could not legally transact business at that time. CMS Ex. 9.

Petitioner concedes that the corporation was defunct at the time its owner signed and submitted the 855A, but points out that it subsequently – as in almost three years later – paid its back taxes and, remarkably, the State of Ohio reinstated its corporate status retroactive to 1999. CMS Ex. 2 at 4-6. Apparently, Ohio law allows such retroactive reinstatement so long as the officer, agent, or employee hadn't known that the articles of incorporation were cancelled. CMS Ex. 2 at 7. Understandably, CMS scoffs at the suggestion that, for more than a decade, Owner Peters did not know that his corporation no longer existed as a legal entity.[5] But, again, I am not going to question the owner's veracity or look behind the underlying legitimacy of the state's actions, certainly not for summary judgment purposes. The Medicare regulations are explicit: the information submitted by the provider "*must* be such that CMS can validate it for accuracy *at the time of submission*." 42 C.F.R. § 424.510(d)(4) (emphasis added). The critical date then is the date that Petitioner signed and submitted the 855A. And, at the time, Owner Peters was not authorized to conduct business on behalf of Petitioner. His claim to the contrary was false.

[5] Petitioner has not explained how it continued to bill the Medicare program while not able to operate its business. Because Petitioner's violations under subsections 424.535(a)(1) and (a)(4) amply justify revocation, I do not reach the question of whether it allowed another entity to use its billing number. The evidence to support this notion is nevertheless compelling: 1) Petitioner was not legally authorized to do business in the State of Ohio; 2) someone was billing the Medicare program, using Petitioner's billing number; and 3) an investigator visiting Petitioner's official practice location found a different home health agency in residence. Moreover, in 2014, Petitioner sued CMS, asking a federal court for injunctive relief to prevent the agency from recouping Medicare overpayments. To support its claim of irreparable financial harm, it provided the financial records of AC Health Care Services, the corporation that was *not* enrolled in the Medicare program. In the absence of any other reasonable explanation – and Petitioner has provided none – I could reasonably infer that Petitioner allowed another home health agency to use its billing number and provider agreement.

Conclusion

The undisputed evidence establishes that Petitioner was not authorized to do business in the State of Ohio when it submitted its 2012 revalidation application, and it submitted false information in that revalidation application. CMS therefore properly revoked its Medicare enrollment under 42 C.F.R. §§ 424.535(a)(1) and (4).

I therefore grant CMS's motion for summary judgment, deny Petitioner's motion, and sustain the revocation.

/s/
Carolyn Cozad Hughes
Administrative Law Judge