

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Letantia Bussell, M.D.,)	Date: December 14, 2007
)	
Petitioner,)	
)	
- v. -)	Docket No. C-07-514
)	Decision No. CR1712
Centers for Medicare & Medicaid)	
Services.)	
)	

DECISION

In February 2002, Petitioner, Letantia Bussel, M.D., was convicted of felony tax evasion. Based on that conviction, the Centers for Medicare & Medicaid Services (CMS) has revoked her Medicare billing privileges. I affirm CMS’s revocation of Petitioner’s Medicare billing privileges.

Background

CMS, acting on behalf of the Secretary of Health and Human Services, “may” revoke a currently enrolled provider’s Medicare billing privileges if, within the preceding 10 years, the provider was convicted of a felony offense that CMS “has determined to be detrimental to the best interests of the program and its beneficiaries.” 42 C.F.R. § 424.535(a)(3); *see also* Social Security Act (Act) §§ 1842(h)(8) (The Secretary may terminate his agreement with a participating physician who has been convicted of a felony for an offense which the Secretary has determined is “detrimental to the best interests of the program or program beneficiaries”) and 1866(b)(2)(D) (The Secretary may terminate a provider agreement after he ascertains that the provider has been convicted of a felony “which the Secretary determines is detrimental to the best interests of the program or program beneficiaries”). Offenses for which billing privileges may be revoked include financial crimes such as tax evasion, and any crime that would result in mandatory exclusion under section 1128(a) of the Act. 42 C.F.R. § 424.535(a)(3)(i)(B) and (D).

Section 1866(j)(2) of the Act creates appeal rights for providers and suppliers where enrollment has been denied, including the revocation of billing privileges, using the procedures that apply under section 1866(h)(1) of the Act. These procedures provide for review by an Administrative Law Judge (ALJ) and the right to appeal the ALJ's decision to the Departmental Appeals Board. 42 C.F.R. Part 498, et seq.

The parties have agreed that there are no factual disputes; the issue before me is a purely legal question. This matter may therefore be decided based on written submissions, without an in-person hearing. The parties agree that in February 2002, Petitioner was convicted of felony tax evasion in the U.S. District Court for the Central District of California. August 10, 2007 Order (memorializing prehearing telephone conference); *see also* CMS Exhibits 2, 3. CMS has submitted exhibits marked CMS Exs. 1-3. Petitioner has submitted exhibits marked P. Exs. 1-4.

Discussion

CMS may revoke Petitioner's Medicare billing privileges because, within the last 10 years, Petitioner was convicted of felony tax evasion against the United States, which is a felony detrimental to the best interests of the program.*

The relevant regulation provides that if a provider has been convicted of "financial crimes, such as . . . income tax evasion" within the last 10 years preceding revalidation of enrollment, CMS may revoke its Medicare billing privileges. 42 C.F.R. § 424.535(a)(3). As a matter of law, the Secretary has determined that tax evasion is among those felonies "detrimental to the best interests of the Medicare program or its beneficiaries" for which billing privileges may be revoked. *Id.*

Here, there is no dispute as to the relevant dispositive facts – Petitioner's conviction of tax fraud in February 2002. Thus, under the plain language of the regulation, CMS may revoke Petitioner's billing privileges.

In her brief, Petitioner explains the circumstances surrounding her conviction. She asks that I exercise my discretion in the best interests of the Medicare program and its beneficiaries and restore her billing privileges. P. Br. at 10. However, the statute and regulation explicitly afford CMS the discretion to revoke Petitioner's billing privileges, and I have no authority to review CMS's exercise of discretion. The Departmental Appeals Board has repeatedly declined to interject itself into the discretionary

* I make this one finding of fact/conclusion of law to support my decision.

enforcement processes of components of the Department of Health and Human Services. See *Wayne E. Imber, M.D.*, DAB No. 1740 (2000); *Brier Oak Terrace Care Ctr.*, DAB No. 1798 (2001). Once I have determined that there is a legal and factual basis for revoking Petitioner's billing privileges, I am "without jurisdiction to evaluate on any basis whatsoever the propriety of [CMS's] exercise of discretion in deciding to proceed with the [revocation]." *Michael J. Rosen, M.D.*, DAB No. 2096 (2007), at 14 (citing *Michael J. Rosen, M.D.*, DAB CR1566 (2007)); see also *Puget Sound Behavioral Health*, DAB No. 1944 (2004), at 15-16 (where regulation uses permissive rather than mandatory language ALJ had no authority to compel CMS to exercise its discretion).

Conclusion

Here, Petitioner admits that she was convicted of a felony – tax evasion. CMS may revoke her Medicare billing number for a felony it determines to be detrimental to the best interests of the program or program beneficiaries. CMS has determined that tax evasion is detrimental to the best interests of the program or its beneficiaries. I therefore affirm CMS's revocation of her billing privileges.

Carolyn Cozad Hughes
Administrative Law Judge