Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Bloomfield Care Center, (CCN: 16-5326),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-10

ALJ Ruling No. 2014-13

Date: November 18, 2013

RULING

I deny the motion of the Centers for Medicare & Medicaid Services (CMS) to compel Petitioner to file its pre-hearing exchange first. I order Petitioner to file a complete hearing request in which it states each and every one of its defenses and arguments in this case by no later than **December 2, 2013.**

Petitioner is a skilled nursing facility. CMS determined that Petitioner was not complying substantially with Medicare participation requirements and imposed a remedy, consisting of a civil money penalty, against Petitioner. Petitioner requested a hearing and this case was assigned to me for a hearing and a decision.

Hearing requests in cases involving civil money penalty determinations by CMS against skilled nursing facilities are governed by regulations at 42 C.F.R. Part 498. The content of a hearing request is governed explicitly by 42 C.F.R. § 498.40(b). That section requires that a hearing request: (1) identify the specific issues, the findings of fact, and conclusions of law, with which the party requesting a hearing disagrees; and (2) specify the basis for contending that these findings and conclusions are incorrect.

Petitioner filed a hearing request on October 10, 2013. In its request, Petitioner argues that the Iowa State Agency's actions in the case were "arbitrary and capricious, an abuse of discretion," and that the State agency committed numerous legal errors. Additionally, Petitioner asserts that it disagrees that it was not in substantial compliance with applicable regulations and it asserts that it contests "the findings of fact for each and every example cited as well as the conclusions reached that the findings constituted a violation of the regulation cited."

These assertions fail to comply with the requirements of 42 C.F.R. § 498.40(b) because they fail to specify any basis for contending that CMS' findings and conclusions are incorrect. CMS made specific allegations of noncompliance in this case and it provided Petitioner with a detailed listing of those findings. Among other things, Petitioner has a survey report that outlines those findings of noncompliance in detail. Given that, Petitioner must do substantially more than make the blanket allegations of compliance and the very general assertions of improprieties by the Iowa State Agency that it made in its October 10 request. At a minimum, it must specify the exact facts that are in dispute and it must explain why it disputes them. Anything less than that is noncompliance with regulatory requirements.

CMS has demanded as a remedy that Petitioner be required to file its pre-hearing exchange first. I am not granting that relief because I would prefer that Petitioner see CMS' case in detail before it makes its exchange. However, I conclude that Petitioner must correct its failure to comply with regulatory requirements if it indeed wants a hearing. Consequently, I am ordering Petitioner to re-file its hearing request and to do so in compliance with regulatory requirements. If it fails to do so, I will entertain a motion from CMS to dismiss.

/s/ Steven T. Kessel Administrative Law Judge