

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Ronald Paul Belin, DPM,
Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-1941

Decision No. CR3796

Date: April 16, 2015

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS) to deny the application of Petitioner, Ronald Paul Belin, DPM, to participate in the Medicare program. CMS had discretion to deny Petitioner's request and I do not have the authority to look behind CMS's exercise of discretion.

I. Background

I originally dismissed this case because it was *res judicata*. An appellate panel of the Departmental Appeals Board remanded the case to me with directions that I decide whether it was within CMS's discretion to deny Petitioner's application.

I find no basis to conduct further proceedings in this case. The parties previously filed pre-hearing exchanges and briefed the merits. These include six exhibits identified by CMS as CMS Ex. 1 – CMS Ex. 6 and 24 exhibits identified by Petitioner as P. Ex. 1 – P. Ex. 24. I accept those exchanges, including the exhibits filed by the parties, into the record and I decide this case based on the record before me.¹

¹ CMS did not object to my receiving any of Petitioner's exhibits. I am assuming from the absence of objection that these exhibits were all furnished by Petitioner as part of its request for reconsideration of the initial determination.

II. Issue, Findings of Fact and Conclusions of Law

A. Issue

The issue is whether CMS exercised its discretion to deny Petitioner's application for Medicare enrollment.

B. Findings of fact and conclusions of law

The operative facts of this case are undisputed. On October 4, 2006, Petitioner pled guilty to a felony, consisting of one count of obtaining a controlled substance by fraud. He applied for enrollment in the Medicare program and, on November 20, 2013, a Medicare contractor, acting on behalf of CMS, denied his request. The contractor denied the request on the authority of 42 C.F.R. § 424.530(a)(3), a regulation that authorizes CMS to deny Medicare enrollment to any applicant who, within the previous ten years, has been convicted of a felony that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries. The section includes a non-exclusive list of examples of the kinds of felonies that will be considered to be detrimental. These include any felony that is a basis for exclusion under section 1128 of the Social Security Act (Act). 42 C.F.R. § 424.530(a)(3)(i)(D). I note that such felonies include crimes related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance. Act § 1128(a)(4).

Petitioner requested reconsideration of that determination. The reconsidered determination affirmed the contractor's denial for the same reasons as given by the contractor. CMS Ex. 6 at 2. The reconsidered determination held explicitly that:

According to our records on October 4, 2006, . . . [Petitioner] agreed to a . . . [withheld] adjudication on one count of obtaining a controlled substance by fraud and was convicted of a felony charge. CMS has determined the offense to be detrimental to the best interest of the program and its beneficiaries.

Id.

Petitioner's application was his second since being convicted of a felony in 2006. His previous application for enrollment was denied by CMS based on the identical facts (including the same felony conviction of October 4, 2006) and for the identical reasons given in the present case: Petitioner had been convicted of a felony within the previous ten years and CMS determined that the crime was detrimental to the best interests of Medicare. In the previous application Petitioner requested a hearing before an administrative law judge. In his decision the administrative law judge relied on the provisions of 42 C.F.R. § 424.530(a)(3) and found explicitly that Petitioner had been

convicted of a felony offense within the previous ten years that CMS had determined to be detrimental to the Medicare program and its beneficiaries. *Ronald Paul Belin, DPM, DAB CR2768 (2013)*.

The law governing this case is clear. CMS has the authority to deny an application for Medicare enrollment where an applicant has been convicted of a felony offense within the previous ten years and where CMS has determined that the crime is detrimental to the best interests of the Medicare program. It is within CMS's discretionary authority to decide what is detrimental. If the threshold criteria of the regulation are met (a felony conviction within the previous ten years) and CMS decides that the crime that underlies the conviction is detrimental, then CMS may reject an application for enrollment.

I do not have the authority to look behind CMS's determination or to second-guess its conclusion. I do not have the authority to substitute my judgment in a case where CMS or its agent acts within the boundaries of the discretion that is conferred on them. I can decide only whether the regulatory criteria for denial are met. If they are, and CMS or a contractor acting as CMS's agent, acting within the discretion conferred by regulation, determines to reject an application, then I must affirm the determination if it is challenged.

Those criteria clearly are met here. When Petitioner applied for enrollment he stood convicted of a felony within the previous ten years. CMS's contractor properly exercised its discretion and determined that Petitioner's offense was detrimental to the best interests of the Medicare program and its beneficiaries. That determination is exactly consistent with regulatory requirements.

Petitioner argues that the contractor should have considered various facts and circumstances in evaluating his application and that these facts, when weighed in the context of the case, mitigate in favor of approving the application. Petitioner's Pre-hearing Brief. I have no authority to look at these facts. What matters is that the contractor's determination was based on explicit regulatory criteria and on facts that justify the contractor's action. That it may not have considered other evidence is irrelevant because the determination fell squarely within the regulatory grounds for denial.

/s/
Steven T. Kessel
Administrative Law Judge