

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Mariann Bregin,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-13-670

ALJ Ruling No. 2013-19

Date: August 23, 2013

RULING AND ORDER DISMISSING CASE

By letter dated November 7, 2012, Trailblazer Health Enterprises, LLC, a Medicare contractor, notified Petitioner that her Medicare provider number was being revoked, effective November 1, 2012, pursuant to 42 C.F.R. § 424.535(a)(1) because she was not in compliance with Medicare enrollment requirements, specifically that Petitioner is not authorized to perform the services described in 42 C.F.R. § 410.75(b)(1), for her specialty as a nurse practitioner. CMS Exhibit (Ex.) 1. Petitioner requested reconsideration on November 29, 2012. A Hearing Officer issued an unfavorable reconsideration decision on February 27, 2013. CMS Ex. 2.

On April 6, 2013, Petitioner filed a request for a hearing (RFH) before an Administrative Law Judge (ALJ). Petitioner's two-page RFH states that Petitioner requests "reinstatement." Petitioner further states in her RFH that "I have practiced for 32 years as a nurse practitioner. I did not receive a Masters degree. I know that as of 2001, a Medicare requirement [for nurse practitioners] is to be masters educated. . . . I have only recently found out that my first PTAN number was issued in June 2003. I was shocked to find out that my prior employer did not acquire this for me. . . .When I joined a large

health plan they did obtain a PTAN for Medicare reimbursement in June of 2003, 6 months after the required date [to be grandfathered into Medicare without a Master's degree].”

On May 8, 2013, CMS moved for dismissal pursuant to 42 C.F.R. § 498.70(b) and argued that Petitioner's RFH failed to specify issues, findings of fact, and conclusions of law that she disagrees with as required by 42 C.F.R. § 498.40(b)(1).

Petitioner has a right to a hearing on a revocation of Medicare enrollment, provided certain requirements are met. Her request for hearing failed to specify issues, findings of fact, and conclusions of law that she disagrees with as required by 42 C.F.R. § 498.40(b)(1).

The regulation at 42 C.F.R. § 410.75(b) sets forth the qualifications required to be enrolled in the Medicare program as a nurse practitioner. For Medicare B coverage, a nurse practitioner must be a registered nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and must meet one of the following:

- (1) Obtained Medicare billing privileges as a nurse practitioner for the first time on or after January 1, 2003 and meets the following requirements:
 - (i) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners.
 - (ii) Possess a master's degree in nursing or a Doctor of Nursing Practice (DNP) doctoral degree.
- (2) Obtained Medicare billing privileges as a nurse practitioner for the first time before January 1, 2003, and meets the standards in paragraph (b)(1)(i) of this section.
- (3) Obtained Medicare billing privileges as a nurse practitioner for the first time before January 1, 2001.

42 C.F.R. § 410.75(b).

Petitioner admits in her hearing request that she does not comply with the Medicare regulation that sets forth the qualifications required to be enrolled in the Medicare program as a nurse practitioner.

In Petitioner's response to CMS's Motion to Dismiss, Petitioner states that “I am dealing with a situation as an employee of a medical practice's negligence of not obtaining a PTAN prior to 2001.” P. Response. Petitioner states that she is 60 years old, helping her daughters finish college, a single parent, enjoys working as a nurse practitioner, and desires to continue serving her elderly patients. Petitioner requests equitable relief by

requesting reinstatement in the face of the plain language of the regulation. Although I am sympathetic to her situation and I believe her long experience in the nursing field may well qualify her to provide services, I am bound by the regulations and cannot afford her the relief she seeks. I am not authorized to provide relief based on equitable considerations from an agency decision that is supported by the applicable law. *Pepper Hill Nursing & Rehab. Ctr., LLC*, DAB No. 2395, at 11 (2011).

An ALJ may dismiss a hearing request when the party requesting the hearing is either not a proper party or “does not otherwise have a right to a hearing.” 42 C.F.R. § 498.70(b). For the reasons explained above, I conclude that this matter should be, and it is, **DISMISSED**.

/s/
Richard J. Smith
Administrative Law Judge