

**Department of Health and Human Services  
DEPARTMENTAL APPEALS BOARD  
Appellate Division**

Sheldon Pinsky, Ph.D., LICSW  
Docket No. A-11-67  
Decision No. 2412  
September 19, 2011

**FINAL DECISION ON REVIEW OF  
ADMINISTRATIVE LAW JUDGE DECISION**

Sheldon Pinsky, Ph.D. (Petitioner), who is a Licensed Independent Clinical Social Worker (LICSW) in the state of Minnesota, appeals the April 6, 2011 decision of Administrative Law Judge Joseph Grow (ALJ), *Sheldon Pinsky, Ph.D., LICSW*, DAB CR2347 (2011) (ALJ Decision). At issue before the ALJ was whether the Centers for Medicare & Medicaid Services (CMS) lawfully denied Petitioner's application to be enrolled in the Medicare program as a "clinical social worker." The ALJ granted summary judgment to CMS, concluding that Petitioner was ineligible for Medicare enrollment because it is undisputed that he does not possess a master's or doctor's degree in social work, as required by the Medicare statute and regulations. We agree with the ALJ that Petitioner was ineligible for enrollment as a clinical social worker and that summary judgment was appropriate.<sup>1</sup>

The Medicare program, established under title XVIII (section 1801 *et seq.*) of the Social Security Act (Act)<sup>2</sup>, provides medical insurance benefits under four parts (A through D). Medicare Part B pays for covered medical items and outpatient services furnished by qualified "suppliers," such as physicians and other health care practitioners, who must be approved by CMS for enrollment in the program.<sup>3</sup>

Medicare Part B covers "clinical social worker services." Act §§ 1861(s)(2)(N) (defining the term "medical and other health services" to include "clinical social worker services") and 1832(a)(1) (indicating that Part B covers "medical and other health services").

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<sup>1</sup> Whether the summary judgment is appropriate is a legal issue that we address *de novo*. *DMS Imaging, Inc.*, DAB No. 2313, at 2 (2010); *Lebanon Nursing and Rehabilitation Center*, DAB No. 1918 (2004).

<sup>2</sup> The current version of the Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact.htm).

<sup>3</sup> See generally Act §§ 1832-1833 (setting forth Part B coverage and payment rules); 42 C.F.R. § 400.202 (defining the term "supplier" for Medicare purposes); 42 C.F.R. Part 410 (specifying the types of items and services covered by Part B and the conditions and limitations on coverage); 42 C.F.R. Part 424, subpart P (setting out the requirements for enrolling suppliers in Medicare and granting them Medicare "billing privileges").

Section 1861(hh)(2) of the Act defines the term “clinical social worker services” in part to mean services “performed by a clinical social worker (as defined in [section 1861(hh)(1)]” of the Act. Section 1861(hh)(1), in turn, defines a “clinical social worker” to mean an individual who, in addition to meeting other criteria, “possesses a master’s or doctor’s degree in social work.” Medicare regulations mirror this statutory requirement. 42 C.F.R. § 410.73(a)(1).

It is undisputed that Petitioner holds graduate degrees in Education and in Guidance and Personnel Services but does not have a master’s or doctor’s degree in social work, as required by section 1861(hh)(1). Because Petitioner lacks the required degree in social work<sup>4</sup>, he is not a “clinical social worker” for Medicare coverage purposes and is thus ineligible to receive Medicare payment for the services he provides as a social worker. Cf. 42 C.F.R. § 410.150(b)(18) (providing that Medicare Part B pays benefits “[t]o a clinical social worker . . . for clinical social worker services” (emphasis added)).

Medicare enrollment is governed by the regulations in 42 C.F.R. §§ 424.500-565. Under these regulations, a requirement for Medicare enrollment is that the supplier be eligible to furnish and receive Medicare payment for covered services furnished to program beneficiaries. 42 C.F.R. §§ 424.510(d)(2)(iii) (requiring an enrollment applicant to submit documentation establishing “eligibility to furnish Medicare covered items or services to beneficiaries in the Medicare program”) and 424.516(a)(2) (requiring prospective enrollees to demonstrate compliance with “Federal and State licensure, certification, and regulatory requirements, as required, based on the type of services or supplies the provider or supplier type will furnish and bill Medicare”); *see also Peter McCambridge, C.F.A.*, DAB No. 2290 (2009) (holding that CMS was authorized to deny the supplier’s application for enrollment because Medicare did not cover the services for which he sought to claim Medicare payment). As noted in the previous paragraph, Petitioner is ineligible to furnish or receive Medicare payment for covered “clinical social worker services” because he does not meet the statutory definition of a clinical social worker. For that reason, CMS lawfully denied his application for enrollment in Medicare as a clinical social worker. 42 C.F.R. § 424.530(a) (authorizing CMS to deny enrollment for failure to meet “enrollment requirements”).

Petitioner contends, as he did before the ALJ, that he has extensive “professional education and expertise” that qualify him to treat persons with mental health issues.

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<sup>4</sup> Section 1861 (hh)(1) of the Act states in its entirety: “The term ‘clinical social worker’ means an individual who – (A) possesses a mater’s or doctor’s degree in social work; (B) after obtaining such degree has performed at least 2 years of supervised clinical social work; and (C) (i) is licensed or certified as a clinical social worker by the State in which the services are performed, or (ii) in the case of an individual in a State which does not provide for licensure or certification – (I) has completed at least 2 years or 3,000 hours of post master’s degree supervised clinical social work practice under the supervision of a master’s level social worker in a n appropriate setting (as determined by the Secretary), and (II) meets such other criteria as the Secretary establishes.” (Emphasis added.)

Request for Review at 1. He also contends that his lack of Medicare enrollment has compelled him to turn away patients in need of his care. *Id.* In addition, Petitioner contends that he has been licensed as a social worker in Minnesota since 1989, and that private insurance companies have paid for his services. *Id.* The ALJ accepted these contentions as true for purposes of summary judgment. ALJ Decision at 3, 5. We agree with the ALJ, however, that they are immaterial because they do not establish Petitioner's eligibility to provide and obtain payment for *Medicare-covered* services, as required for enrollment.

Medicare provides a defined set of benefits. Congress establishes the scope of, and limitations on, Medicare coverage as a matter of federal law. In this instance, Congress expressly chose to limit the program's coverage of clinical social work to services furnished by persons holding an academic degree in that field. Nothing in the Medicare statute and regulations authorizes the Board to ignore, waive, or otherwise make an exception to that statutory limitation on the ground that Petitioner is professionally competent and possesses a state license, or because his enrollment could benefit Medicare or its beneficiaries. The ALJ and the Board are authorized to determine only whether Petitioner has, in fact, met applicable enrollment requirements. *See, e.g., Pepper Hill Nursing & Rehabilitation Center, LLC*, DAB No. 2395, at 10-11 (2011) (holding that the Board is bound by the applicable statute and regulations and is not authorized to provide "equitable relief" by enrolling a supplier that does not meet Medicare statutory and regulatory requirements). Those requirements unambiguously demand that a person seeking enrollment as a clinical social worker meet Medicare's legal prerequisites to be designated as that type of supplier.

Finally, Petitioner contends that Medicare should enroll him because he already (allegedly) receives payment for his services from Minnesota's Medicaid program, which, he says, "is a state and federal program associated with the Medicare program." Request for Review at 1. He asserts that "[s]ince Medicare and Medicaid are related I see no reason why I should not be credentialed and reimbursed by Medicare." *Id.* This contention is likewise unpersuasive. Although Medicare and Medicaid are both medical insurance programs created by federal law, they are legally distinct, governed by separate rules, and designed to serve different populations. Medicare is established under and governed by title XVIII of the Act, funded and administered entirely by the federal government, and designed to provide medical insurance to elderly and disabled persons, without regard to income. Medicaid, on the other hand, is governed by title XIX of the Act, was enacted to pay for medical care to the poor (regardless of age), and is jointly financed by federal and state governments and administered by the states, with states given substantial flexibility (subject to broad federal requirements) in setting rules governing benefit coverage and payment. There is nothing in either the Medicare or Medicaid statutes (or in the programs' regulations) that authorizes CMS to enroll a supplier in Medicare merely because he participates in a state Medicaid program.

In sum, it is undisputed that Petitioner does not meet the enrollment requirement that he be eligible to furnish and receive payment for Medicare-covered services. CMS therefore lawfully denied his application for enrollment. Accordingly, we affirm the ALJ's decision to grant summary judgment to CMS.

/s/

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Judith A. Ballard

/s/

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Leslie A. Sussan

/s/

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Stephen M. Godek  
Presiding Board Member