

Department of Health and Human Services

**DEPARTMENTAL APPEALS BOARD**

Civil Remedies Division

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In the Case of: )  
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)  
Jeanne E. Daly-McIntee, ) Date: February 26, 2010  
)  
Petitioner, ) Docket No. C-09-767  
) Decision No. CR2073  
v. )  
)  
Centers for Medicare & Medicaid Services. )

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**DECISION**

Petitioner, Jeanne E. Daly-McIntee, was properly denied enrollment in the Medicare program as a clinical social worker.

**I. Background**

On February 17, 2009, Petitioner's employer, HealthEast Hospital, filed her application for enrollment in Medicare as a licensed clinical social worker. Centers for Medicare and Medicaid Services (CMS) Exhibit (CMS Ex.) 1, at 10, 23, 53. The Medicare contractor, Wisconsin Physicians Services (WPS), advised Petitioner by letter dated April 16, 2009 that her enrollment application was denied because she did not have a master's or doctor's degree in social work as required by 42 C.F.R. § 410.73 to enroll as a clinical social worker. CMS Ex. 1, at 5.

On May 15, 2009, Petitioner requested reconsideration. CMS Ex. 1, at 4. Petitioner requested on reconsideration that the requirement for a master's degree in social work be waived and that her master's degree in human development and subsequent work history, training, and licensure be considered sufficient to satisfy the master's level requirement. She explained that she has been licensed in Minnesota as a Licensed Independent Clinical Social Worker for nearly twenty years, she has completed continuing education and training and has been approved by a national professional organization as a supervisor, and she maintains a teaching position at the graduate level within her profession. CMS Ex. 1, at 4.

The contract hearing officer advised Petitioner by letter dated July 20, 2009, that her application was denied because she did not have a master's or doctor's degree in social work. Therefore, she did not meet the requirements to enroll in Medicare as a clinical social worker. CMS Ex. 1, at 1-2.

Petitioner requested a hearing by letter dated September 18, 2009. The case was assigned to me for hearing and decision on September 30, 2009, and an Acknowledgment and Prehearing Order were issued at my direction. On October 30, 2009, CMS filed a motion for summary judgment, with a supporting memorandum (CMS Br.) and CMS Ex. 1. Petitioner filed her response to the CMS motion on November 30, 2009 (P. Br.). CMS waived a reply brief on December 7, 2009. There has been no objection to my consideration of CMS Ex. 1 and it is admitted.

## **II. Discussion**

### **A. Applicable Law**

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers. Act §§ 1835(a) (42 U.S.C. § 1395n(a)), 1842(h)(1) (42 U.S.C. § 1395u(h)(1)). A "supplier" furnishes services under Medicare and includes physicians or other practitioners and facilities that are not included within the definition of the phrase "provider of services." Act § 1861(d) (42 U.S.C. § 1395x(d)). A "provider of services," commonly shortened to "provider," includes hospitals, critical access hospitals, skilled nursing facilities, comprehensive outpatient rehabilitation facilities, home health agencies, hospice programs, and a fund as described in sections 1814(g) and 1835(e) of the Act. Act § 1861(u) (42 U.S.C. § 1395x(u)). Administration of the Part B program is through contractors. Act § 1842(a) (42 U.S.C. § 1395u(a)). The Act requires the Secretary of Health and Human Services (the Secretary) to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review in the event of denial or non-renewal of enrollment. Act § 1866(j) (42 U.S.C. § 1395cc(j)).

Pursuant to 42 C.F.R. § 424.505, a provider or supplier must be enrolled in the Medicare program and be issued a billing number to have billing privileges and to be eligible to receive payment for services rendered to a Medicare eligible beneficiary. If enrollment is approved, a supplier is issued a National Provider Identifier (NPI) to use for billing Medicare and a PTAN, an identifier for the supplier for inquiries. Medicare Program Integrity Manual (MPIM), Chapter 10, Healthcare Provider/Supplier Enrollment, § 6.1.1. Qualified physician services are covered by the program for those enrolled, subject to some limitations. Act §§ 1832(a) (42 U.S.C. § 1395k(a)), 1861(s)(1) (42 U.S.C. § 1395x(s)(1)).

Medicare pays a supplier directly for covered services if the beneficiary assigns the claim to the supplier and the supplier accepts it. Medicare may pay a supplier's employer if the supplier is required, as a condition of employment, to turn over the fees for the supplier's services. Medicare will also pay an entity billing for a supplier's services if the entity is enrolled in Medicare and there is a contractual arrangement between the entity and the supplier. Act § 1842(b)(6) (42 U.S.C. § 1395u(b)(6)); 42 C.F.R. §§ 424.55(a), 424.80(a) and (b).

CMS may deny a supplier's enrollment application if a supplier does not meet Medicare enrollment requirements. 42 C.F.R. § 424.530(a)(1). A supplier enrollment is considered denied when a supplier is determined to be "ineligible to receive Medicare billing privileges for Medicare covered items or services provided to Medicare beneficiaries" for one or more of the reasons listed in 42 C.F.R. § 424.530. 42 C.F.R. § 424.502. CMS, through its contractor, notifies a supplier in writing when it denies enrollment and explains the reasons for the determination and information regarding the supplier's right to appeal. 42 C.F.R. § 498.20(a); MPIM Ch. 10, §§ 6.2, 13.2. The supplier may submit a written request for reconsideration to CMS. 42 C.F.R. § 498.22(a). CMS must give notice of its reconsidered determination to the supplier, giving the reasons for its determination and specifying the conditions or requirements the supplier failed to meet. 42 C.F.R. § 498.25. If the CMS decision on reconsideration is unfavorable to the supplier, the Act and regulations provides for a hearing by an administrative law judge and judicial review. Act § 1866(j)(2) (42 U.S.C. § 1395cc(j)(2)); 42 C.F.R. §§ 424.545, 498.5.

## **B. Issue**

Whether Petitioner's application for enrollment as a Medicare supplier was properly denied.

## **C. Findings of Fact, Conclusions of Law, and Analysis**

My conclusions of law are set forth in bold followed by a statement of the pertinent facts and analysis.

### **1. Summary Judgment is appropriate.**

There are no genuine issues of material fact in dispute in this case and summary judgment is appropriate. Petitioner does not deny that she does not have a master's or doctor's degree in social work and admits that her degree is a master's degree in "Human Development." Rather, Petitioner argues that her "qualification and experience meet the intention of the regulation." P. Br. at 1. Petitioner's challenge to the statutory and regulatory language must be resolved against her as a matter of law.

Summary judgment is appropriate and no hearing is required where either: there are no disputed issues of material fact and the only questions that must be decided involve application of law to the undisputed facts; or, the moving party must prevail as a matter of law even if all disputed facts are resolved in favor of the party against whom the motion is made. *See White Lake Family Medicine, P.C.*, DAB No. 1951 (2004); *Lebanon Nursing and Rehabilitation Center*, DAB No. 1918 (2004). A party opposing summary judgment must allege facts which, if true, would refute the facts relied upon by the moving party. *See, e.g.*, Fed. R. Civ. P. 56(c); *Garden City Medical Clinic*, DAB No. 1763 (2001); *Everett Rehabilitation and Medical Center*, DAB No. 1628, at 3 (1997) (in-person hearing required where non-movant shows there are material facts in dispute that require testimony); *Thelma Walley*, DAB No. 1367 (1992); *see also New Millennium CMHC, Inc.*, DAB CR672 (2000); *New Life Plus Center, CMHC*, DAB CR700 (2000).

CMS prevails in this case as a matter of law, even if I accept the facts alleged by Petitioner and draw all inferences in her favor. Accordingly, summary judgment is appropriate in this case.

**2. Petitioner does not meet the requirements to participate in the Medicare program as a clinical social worker as defined by 42 C.F.R. § 410.73.**

**3. Petitioner's application to enroll in Medicare as a clinical social worker was properly denied.**

Medicare Part B will cover the cost of clinical social worker services. Act § 1861(hh)(2) (42 U.S.C. § 1395x(hh)(2)); 42 C.F.R. § 410.73(b). Clinical social worker services are “furnished for the diagnosis and treatment of mental illness that the clinical social worker is legally authorized to perform” under the laws of the state where the services are performed and that meet the other requirements of the regulations. 42 C.F.R. § 410.73(b)(1). A supplier who wishes to bill Medicare for clinical social worker services must be enrolled in Medicare to have billing privileges. The requirements to qualify as a clinical social worker are found in both the Act and the Secretary’s regulations.

Section 1861(hh)(1)(A) of the Act (42 U.S.C. § 1395x(hh)(1)) defines “clinical social worker” as an individual who “possesses a master’s or doctor’s degree in social work.” The Secretary has, accordingly, provided by regulation that a clinical social worker is an individual who “[p]ossesses a master’s or doctor’s degree in social work.” 42 C.F.R. § 410.73(a)(1). Both the Act and regulation establish additional requirements to qualify as a clinical social worker. However, even if I accept for purposes of this decision that Petitioner satisfies the other requirements of the law, my decision turns on her failure to meet the requirement to possess a master’s or doctor’s degree in social work.

Petitioner admits that she does not have a master's or a doctor's degree in social work. However, she argues that she should be enrolled in Medicare as a supplier of clinical social worker services because her qualification and experience meet the regulatory intention of ensuring that the public is protected from practitioners who do not hold a standard of competency and expertise needed to provide the delivery of services. P. Br. at 1. She asserts that she has been a licensed independent clinical social worker in Minnesota since 1989, a fact that is not disputed. P. Br. at 1-2; CMS Ex. 1, at 54-57. Petitioner further contends that while the regulation states that a clinical social worker must have a master's degree or doctor's degree in social work, to require her to complete such a program would require a duplication of competencies that she already possesses through formal education, training, and years of clinical experience and continued studies. P. Br. at 2. She asserts that her studies – undergraduate, graduate, and continuing education – covered much the same curriculum as that required to obtain a master's degree in social work. P. Br. at 2; CMS Ex. 1, at 58-62.

Even if I accept as true Petitioner's characterization of her education as equivalent to that of one granted a master's degree in social work, I must nevertheless decide this case against her. Congress specifically requires that one who seeks to be reimbursed from Medicare for delivery of clinical social work services to a Medicare eligible beneficiary, must have a master's or doctor's degree in "social work." Act § 1861(hh)(1)(A) (42 U.S.C. § 1395x(hh)(1)(A)). The Secretary's regulation merely mirrors the requirement imposed by Congress. 42 C.F.R. § 410.73(a)(1). Congress has granted no discretion to the Secretary to accept a degree as qualifying on the basis that it is functionally equivalent to a master's or doctor's degree in social work. CMS and I are bound by the statute and the regulations.

### **III. Conclusion**

For the foregoing reasons, I conclude that Petitioner does not meet the requirements to enroll in Medicare as a clinical social worker and her application was appropriately denied by CMS.

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/s/  
Keith W. Sickendick  
Administrative Law Judge