

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Mariken Wogstad-Hansen, PhD, LP, RN, CNS,  
(NPI: 17807000039)

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-11-823

Decision No. CR2498

Date: February 7, 2012

**DECISION**

Petitioner, Mariken Wogstad-Hansen, appeals the determination of the Centers for Medicare and Medicaid Services (CMS) to deny her enrollment application into the Medicare program as a clinical nurse specialist. Considering it is undisputed that Petitioner does not possess a Master's degree in a defined clinical area of nursing or a Doctor of Nursing Practice (DNP) degree, as the Social Security Act (Act) and the implementing regulations require, I affirm CMS's denial and grant its motion for summary judgment.

**I. Background**

Petitioner is currently certified as a Clinical Nurse Specialist in Adult Psychiatric and Mental Health with the American Nurses Credentialing Center (ANCC). P. Ex. 1. Petitioner is also a Registered Nurse, a Licensed Psychologist, has a Bachelor of Science in Nursing, a Master's degree in Counseling and Student Personnel Psychology, and a Doctoral degree in Philosophy. P. Exs. 1-3; CMS Ex. 2, at 1.

On or about January 14, 2011, Petitioner submitted an application to enroll in the Medicare program as a clinical nurse specialist. CMS Ex. 1. On April 28, 2011, Wisconsin Physician Services (WPS), a Medicare contractor, denied Petitioner's application noting that she did not "meet the conditions of enrollment," specifically, the requirement that she have "a Master's degree in a defined area of nursing or a Doctor of Nursing Practice (DNP) degree." CMS Ex. 3.<sup>1</sup> Petitioner requested reconsideration of her denial. CMS Ex. 5. In her reconsideration request, Petitioner asserted that, when ANCC originally certified her in 1993, she "held a Master's Degree in Counseling and Student Personnel Psychology . . . . At that time, this degree was considered essentially equivalent" to a Master's degree in nursing. Consequently, Petitioner met the requirements to become credentialed as a clinical nurse specialist with the ANCC. *Id.* On August 11, 2011, a Hearing Officer affirmed the denial of Petitioner's enrollment application noting that Petitioner did not meet the educational requirements set out for clinical nurse specialists at 42 C.F.R. § 410.76(b)(2). CMS Ex. 6.

On September 21, 2011, Petitioner filed a hearing request to appeal this reconsideration decision. An Acknowledgment and Pre-Hearing Order was sent to the parties on September 29, 2011. On October 31, 2011, CMS submitted a combined motion for summary judgment and pre-hearing brief (CMS Br.) and six proposed exhibits (CMS Exs. 1-6). On November 30, 2011, Petitioner filed her response (P. Br.) and three proposed exhibits (P. Exs. 1-3). In the absence of objections, I admit into the record CMS Exs. 1-6 and P. Exs. 1-3.

## **II. Applicable Law and Regulations**

A supplier<sup>2</sup> who wishes to directly bill Medicare for services provided to beneficiaries as a clinical nurse specialist must enroll with Medicare. The Act defines a clinical nurse specialist as an individual who: "(i) is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and (ii) holds a master's degree in a defined clinical area of nursing from an accredited educational institution." 42 U.S.C. § 1395x(aa)(5)(B). The implementing regulation requires that a clinical nurse specialist under Medicare must: (1) be a registered nurse who is currently licensed to practice in the State where he or she practices and be authorized to perform the services of a clinical nurse specialist in accordance with State law; (2) have a Master's degree in a defined clinical area of nursing from an accredited educational institution or a Doctor of Nursing Practice doctoral degree (DNP); and (3) be

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<sup>1</sup> Petitioner separately filed a Medicare enrollment application to enroll as a clinical psychologist, which was approved by letter dated April 29, 2011. *See* CMS Ex. 4.

<sup>2</sup> For Medicare purposes, the Act defines "supplier" to mean "a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services." Act § 1861(d); 42 U.S.C. § 1395x(d).

certified as a clinical nurse specialist by a national certifying body that has established standards for clinical nurse specialists and that is approved by the Secretary of Health and Human Services. 42 C.F.R. § 410.76.

### III. Issue

The sole issue in this case is whether Petitioner's application to be enrolled in Medicare as a clinical nurse specialist was properly denied.

### IV. Discussion

My findings of fact and conclusions of law are set forth in italics and bold in the discussion captions of this decision.

*a. This case is appropriate for summary judgment.*

CMS argues that it is entitled to summary judgment. Members of the Departmental Appeals Board Board (Board) explained the standard for summary judgment:

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. . . . The party moving for summary judgment bears the initial burden of showing that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. . . . To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. . . . In determining whether there are genuine issues of material fact for trial, the reviewer must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor.

*Senior Rehab. & Skilled Nursing Ctr.*, DAB No. 2300, at 3 (2010) (citations omitted). An Administrative Law Judge's (ALJ's) role in deciding a summary judgment motion differs from its role in resolving a case after a hearing. The ALJ should not assess credibility or evaluate the weight of conflicting evidence. *Holy Cross Vill. at Notre Dame, Inc*, DAB No. 2291, at 5 (2009). The Board has further stated, "[i]n addition, it is appropriate for the tribunal to consider whether a rational trier of fact could regard the parties' presentation as sufficient to meet the evidentiary burden under the relevant substantive law." *Dumas Nursing and Rehab., L.P.*, DAB No. 2347, at 5 (2010).

I have accepted all of Petitioner's factual assertions as true. In addition, I have drawn all reasonable inferences in her favor. However, no dispute exists that Petitioner lacks the requisite Master's degree in a defined clinical area of nursing or a DNP required for enrollment in the Medicare program.

***b. Petitioner was ineligible to enroll in the Medicare program as a clinical nurse specialist because she did not have the required Master's degree in a defined clinical area of nursing or a Doctor of Nursing Practice degree.***

Petitioner states that she has "been prescribing since 1995 and [has] a DEA number, and [is] dual licensed in the State of Minnesota as a doctoral level psychologist and a Clinical Nurse Specialist in Adult Psychiatric and Mental Health Nursing with prescriptive authority." P. Br. at 1. She also states that the ANCC "made a determination at the time [she] was credentialed that [she] did meet the educational requirements" necessary to be a clinical nurse specialist. *Id.* Further, Petitioner has provided an unofficial transcript showing she earned three credits in a nursing class as part of her doctoral degree in Philosophy. P. Ex. 2, at 7. I accept as true, for the purposes of summary judgment, that Petitioner has all of the educational degrees, background, and credentials that she asserts in her hearing request and her brief.

To enroll in Medicare as a clinical nurse specialist, an individual must possess, among other qualifications, a Master's degree in a defined clinical area of nursing or a DNP. Petitioner's Master's degree is in Counseling and Student Personnel Psychology. CMS Ex. 5. Her doctoral degree is in Philosophy. P. Ex. 2. I find neither of these degrees meets the Medicare educational requirements, and the ANCC certification is not a substitute for it.

This case is similar to the facts in *Jerilyn Mitchell*, CR1657 (2007). The petitioner in *Jerilyn Mitchell* was also a Registered Nurse licensed in Minnesota, authorized to perform services in Minnesota as a clinical nurse specialist, and had been certified by ANCC in 1993 as a clinical nurse specialist. Similarly, the petitioner in *Jerilyn Mitchell* held a Master's degree in counseling, not in nursing. The ALJ held that a Master's degree in counseling does not satisfy the requirement in 42 C.F.R. § 410.76(b)(2) of a Master's degree in nursing and noted that ALJs have "read and applied the relevant statutes and regulations narrowly . . . and have required strict compliance with the literal terms of those statutes' and regulations' credentialing requirements." *Jerilyn Mitchell*, DAB CR1657, at 7 (*citing Revathi Bingi. Ed.D.*, DAB CR1573 (2007); *Roger Aveyard*, DAB CR1558 (2007); *Susan Stevens*, DAB CR1511 (2006); *Rosalyn L. Oliall*, DAB CR1472 (2006); *Dorothy Rose Hrynyk*, DAB CR1444 (2006)).

Although the Petitioner requests that I take a less narrow approach, Congress has not granted CMS any discretion to accept another degree as functionally equivalent to a degree requirement. *See Jeanne E. Day McIntee*, DAB CR2073, at 4-5 (2010); *see also*

*Elizabeth M. Prokay*, DAB CR1860, at 3-4 (2008) (holding that the Act does not allow for a “functional equivalent” exception to the participation criteria and does not permit a waiver of the statutory qualifying criteria); *Rosalyn L. Olian*, DAB CR1472 (2006) (finding a degree in counseling will not even substitute for a statutorily required degree in social work).

Congress establishes the scope of, and the limitations on, Medicare coverage as a matter of federal law. In this instance, Congress has expressly chosen to limit the program’s coverage of clinical nurse specialists to services furnished by individuals holding a Master’s degree or higher in the field of nursing. My discretion in this matter is limited considering nothing in the Medicare statute and regulations authorize an ALJ to ignore, waive, or otherwise make an exception to that limitation on the ground that Petitioner is professionally competent. *See, e.g., Sheldon Pinsky, Phd., LICSW*, DAB No. 2412, at 3 (2011). Accordingly, I grant CMS’s motion for summary judgment.

/s/

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Joseph Grow  
Administrative Law Judge