

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)

Roger Aveyard,)

Petitioner,)

v.)

Centers for Medicare & Medicaid Services.)

) Date: January 24, 2007

) Docket No. C-06-241

) Decision No. CR1558

DECISION

Petitioner, Roger Aveyard, does not qualify for a Medicare Part B provider enrollment number as a psychologist and his application was properly denied.

I. Background

Petitioner requested a hearing by an administrative law judge (ALJ) by letter dated January 9, 2006. Petitioner challenges the December 19, 2005 decision of a Medicare Hearing Officer for Blue Cross Blue Shield of Kansas that he is not qualified to be issued a Medicare Part B provider enrollment number. Because Petitioner has been denied a provider number, he is not eligible to seek compensation for services he provides from the Medicare program.

On March 3, 2006, this case was assigned to ALJ Anne E. Blair for hearing and decision. On April 13, 2006, Judge Blair convened a prehearing conference by telephone, the substance of which is set forth in her Amended Order and Schedule for Filing Briefs dated May 1, 2006. According to Judge Blair's order, the parties agreed that this case can be decided on written submissions without the need for an in-person, oral hearing. Judge Blair set a briefing schedule. This case was reassigned to me for hearing and decision on September 6, 2006, upon Judge Blair's retirement and the parties were so advised by letter of the same date.

The Centers for Medicare and Medicaid Services (CMS) filed its “Brief in Support of an Order Affirming the Medicare Hearing Officer” with three exhibits (CMS Ex.), on May 15, 2006. Petitioner filed a response to the CMS brief with three exhibits (P. Ex.) on May 23, 2006. Previously on May 4, 2006, Petitioner submitted a packet of documents marked P. Ex. 1 through 25, that he requested be considered in support of his position. The exhibits submitted with his brief on May 23, 2006 are marked P. Ex. 1, 2, and 3. To avoid confusion, I have remarked the exhibits attached to Petitioner’s response as P. Ex. 26, 27 and 28. Neither party has objected to the admissibility of any of the exhibits and they are all admitted and considered as evidence.

II. Discussion

A. Law Applicable

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medial insurance benefits program for the aged and disabled known as Medicare Part B. Qualified psychologist services are covered by the program for those enrolled, subject to some limitations. Act, §§ 1832(a), 1861(s)(2)(M) (42 U.S.C. §§ 1395k(a), 1395x(s)(2)(M)). “Qualified psychologist services” means those services furnished by a clinical psychologist that the psychologist is legally authorized to perform under state law. Act, § 1861(ii) (42 U.S.C. § 1395x(ii)). Payment under the program may only be made to eligible providers of services. Act, § 1835(a) (42 U.S.C. § 1395n(a)), *see also* Act, § 1842(b)(18)(C) (42 U.S.C. § 1395u(b)(18)(C)). The Act requires the Secretary of Health and Human Services (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. 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 receive a billing number to have billing privileges and to be eligible to receive payment for services rendered. When applying for enrollment, the provider or supplier is required to submit information and documents specified by the regulations, including documents that show that the provider or supplier meets “all applicable Federal and State licensure and regulatory requirements that apply to the specific provider or supplier type that relate to providing health care services. . . .” 42 C.F.R. § 424.510(d)(2)(iii). The Secretary requires that a clinical psychologist hold a doctoral degree in psychology and be licensed or certified in the state in which he or she practices to practice psychology independently. 42 C.F.R. § 410.71(d). A provider or supplier denied enrollment may appeal the decision and obtain review by an ALJ. 42 C.F.R. § 424.545.

B. Findings and Conclusions

My conclusions of law are set forth in the following numbered paragraphs followed by my factual findings and analysis.

1. Petitioner has not established that he is licensed as a psychologist in the State of Nebraska.

Petitioner applied for enrollment in Medicare as a psychologist billing independently. P. Ex. 26. His application was denied and the hearing officer agreed with the denial. CMS asserts in its brief that Petitioner's application was denied on October 10, 2005, because he was not licensed to perform the services he intends to render. CMS Brief at 4. However, neither party has provided me a document that shows the initial determination to deny enrollment. The hearing officer also indicated in her decision that Petitioner's enrollment was denied on October 10, 2005, because Petitioner was not licensed to render the services he intended to render. Request for Hearing (Hearing Officer Decision at 2). The hearing officer, while alluding to the licensure requirement, never specifically articulates whether she agreed that Petitioner should be denied enrollment because he was not licensed to practice as a psychologist in the State of Nebraska.

CMS argues to me that there are two grounds upon which I should deny Petitioner enrollment: (a) Petitioner does not hold a doctoral degree in psychology (CMS Brief at 4); and (b) Petitioner is not licensed in Nebraska as a psychologist. *Id.* at 5. The Secretary requires that to qualify as a psychologist to participate in Medicare, an applicant must have both a degree in psychology and be licensed to practice as a psychologist. 42 C.F.R. § 410.71(d). An individual who fails to meet either requirement is ineligible to enroll in the Medicare program as a psychologist. In this case, Petitioner has not shown he is licensed to practice as a psychologist and denial of his application to participate as a psychologist in Medicare is required.

CMS has presented evidence that Petitioner is only licensed in the State of Nebraska as a "Mental Health Practitioner" and a "Professional Counselor." CMS Ex. 3. The State of Nebraska requires licensure for one to practice as a Psychologist (Nebraska Revised Statutes (Neb. Rev. Stat.) § 71-1,206.15), a Mental Health Practitioner (Neb. Rev. Stat. § 71-1,314), or a Professional Counselor (Neb. Rev. Stat. § 71-1,325) and each has separate licensing requirements. Petitioner asserts in his brief that he has licenses in Nebraska as a Mental Health Practitioner and as a Certified Professional Counselor and that should qualify him to provide mental health services to Medicare clients. However, Petitioner applied to enroll as a psychologist and he has presented no evidence that he is licensed as a "psychologist" by the State of Nebraska or any other jurisdiction.

2. Petitioner has not shown that he is eligible for a provider enrollment number as a provider of qualified psychologist services and his application is appropriately denied.

Because Petitioner has not shown that he is licensed as a psychologist as required by 42 C.F.R. § 410.71(d)(2), he is not eligible to participate in Medicare as a psychologist. Accordingly his application for an enrollment number must be denied.

III. Conclusion

Petitioner does not qualify for a Medicare Part B provider enrollment number as a psychologist and his application was properly denied.

/s/

Keith W. Sickendick
Administrative Law Judge