

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Donna M. Jolley, LCSW
(PTAN: 0010084003),

Petitioner,

v.

Centers for Medicare and Medicaid Services.

Docket No. C-12-1245

Decision No. CR2692

Date: January 17, 2013

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare and Medicaid Services (CMS), determined that Petitioner did not meet Medicare enrollment criteria to enroll as a clinical social worker. Petitioner appealed. For the reasons stated below, I affirm the determination to deny Petitioner's June 15, 2012 enrollment application.

I. Background and Procedural History

On June 15, 2012, Petitioner applied to enroll in Medicare as a clinical social worker. CMS Exhibit (Ex.) 1. On July 9, 2012, WPS denied Petitioner's application stating she "d[id] not meet the conditions of enrollment or meet the requirements to qualify as a Clinical Social Worker." CMS Ex. 5, at 1. Petitioner requested reconsideration and indicated that Petitioner had been previously enrolled as a clinical social worker. CMS Ex. 6. WPS issued an unfavorable reconsidered determination on September 6, 2012, stating that, under 42 C.F.R. § 410.73, "a Clinical Social Worker is an individual who possesses a master's or doctor's degree in social work," and concluding that Petitioner "does not meet the compliance requirements" for enrollment because "[o]ur records

indicate that the diploma states Masters in Science and the transcripts only indicate counseling classes and counseling as the major.” CMS Ex. 7.

On September 11, 2012, Petitioner filed a request for a hearing. I was assigned to hear and decide this case. In response to my September 21, 2012 Acknowledgment and Pre-hearing Order (Order), CMS timely filed a motion for summary disposition and brief and seven proposed exhibits. Petitioner filed an untimely response and five proposed exhibits on January 4, 2013. However, because neither party objects to any of the exhibits, I admit CMS Exs. 1 through 7 and Petitioner’s Exhibits (P. Exs.) 1 through 5 into the record.¹ Neither party offered any witnesses. Accordingly, the record is closed and I issue this decision based on the written record. *See* Order ¶ 12.

II. Discussion

In order to participate in the Medicare program as a supplier,² individuals and entities must meet certain criteria to enroll and receive billing privileges. 42 C.F.R. §§ 424.505, 424.510. For Medicare purposes, a clinical social worker is an individual who: (1) possesses a master’s degree or doctor’s degree in social work; (2) has performed at least two years of supervised clinical social work after receiving the degree; and (3) as applicable here, is licensed or certified in the state in which the services are performed. 42 U.S.C. § 1395x(hh)(1)(A); 42 C.F.R. § 410.73(a).

A. Issue

Whether CMS had a legitimate basis to deny Petitioner enrollment in the Medicare program as a clinical social worker.

B. Finding of Fact, Conclusion of Law, and Analysis³

1. Petitioner possesses a Master of Science degree with a concentration in counseling and does not possess a master’s or doctor’s degree in social work.

Petitioner admits that she does not possess a master’s degree or doctor’s degree in social work. P. Br. at 2. The evidence of record supports Petitioner’s admission, showing that Petitioner possesses a Master of Science degree with a major in counseling and a

¹ Petitioner has titled her exhibits “DMJ” exhibits. I refer to them as P. Exs.

² A “supplier” is “a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services.” 42 U.S.C. § 1395x(d).

³ My findings of fact and conclusions of law are set forth in italics and bold font.

Wisconsin license as a clinical social worker, but no master's degree or doctor's degree in social work. CMS Ex. 2, at 1, 5; P. Exs. 2–4.

2. *Petitioner is ineligible to enroll in the Medicare program as a clinical social worker because she does not have a master's degree or doctor's degree in social work, as required by the applicable statute and regulations.*

To enroll in Medicare as a clinical social worker, the statute and regulations are clear that an individual must possess at least a master's degree or a doctor's degree in social work. 42 U.S.C. § 1395x(hh)(1)(A); 42 C.F.R. § 410.73(a)(1). Nothing in the statute or the regulations provides that an individual may qualify to provide clinical social work services with a degree that fails to precisely satisfy the criteria to participate as a clinical social worker. Individuals have been consistently denied enrollment in Medicare when their credentials do not satisfy the statutory and regulatory criteria. *Sheldon Pinsky, Ph.D., LICSW*, DAB No. 2412 (2011); *Vikki L. Green, LMSW*, DAB CR2318 (2011); *Jeanne E. Daly-McIntee*, DAB CR2073 (2010); *Sherry K. Jose, LICSW*, DAB CR1750 (2008); *Dorothy Rose Hrynvk*, DAB CR1444 (2006).

In her brief, Petitioner asks that she be allowed to continue to participate in Medicare as a clinical social worker. She states that she was enrolled in Medicare as a clinical social worker on December 17, 2007, and that she filed her June 15, 2012 enrollment application simply due to a change in employment. Petitioner argues that precedent has thus been established to grant her participation based on the same credentials she had when she was previously enrolled as a clinical social worker. Petitioner also asserts that she provides her services in a poor rural area where 14% of her clinic's clients have Medicare as their primary insurance. Petitioner asserts that CMS's determination has adversely affected the lives of her clients because there are only two female enrolled clinicians within 31.8 miles of her location.

Nothing in the statute or regulations permits me to accept another degree as functionally equivalent to a master's or doctor's degree in social work. *See* 42 U.S.C. § 1395x(hh)(1)(A); *Pinsky*, DAB No. 2412, at 3; *Daly-McIntee*, DAB CR2073, at 4-5; *see also 1866ICPayday.com, L.L.C.*, DAB No. 2289, at 14 (2009) (an administrative law judge is bound by a law or regulation); *Elizabeth M. Prokay*, DAB CR1860, at 3-4 (2008) (holding statute does not allow for a "functional equivalent" exception to participation criteria); *Rosalyn L. Olian*, DAB CR1472 (2006) (rejecting equivalency argument). While I recognize that Petitioner was previously enrolled in Medicare as a clinical social worker and understand her expectation that she should be re-enrolled in Medicare as a clinical social worker because nothing has changed in her status, I am unable to provide Petitioner the equitable relief she seeks. CMS has the authority to deny Medicare enrollment to an individual or entity at any time, without regard to CMS's prior actions, where the individual or entity does not meet applicable enrollment requirements.

42 C.F.R. § 424.530(a)(1); *Pepper Hill Nursing & Rehab. Ctr., LLC*, DAB No. 2395, at 10-11 (2011); *U.S. Ultrasound*, DAB No. 2302, at 6-8 (2010).

III. Conclusion

Because Petitioner does not meet the statutory or regulatory requirements to enroll in Medicare as a clinical social worker, CMS's denial of Petitioner's June 15, 2012 application to enroll as a supplier in the Medicare program is affirmed.

/s/

Scott Anderson
Administrative Law Judge