

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:)	
)	
Hilary Saltzman, M.A., LCAT, ATR,)	Date: October 22, 2009
)	
Petitioner,)	
)	
- v. -)	Docket No. C-09-629
)	Decision No. CR2022
Centers for Medicare & Medicaid)	
Services.)	

DECISION

I sustain the determination of the Centers for Medicare & Medicaid Services (CMS), as was affirmed on reconsideration, to deny the request of Petitioner, Hilary Saltzman, to participate in the Medicare program.

I. Background

In February 2009 Petitioner, a licensed and registered creative arts therapist, applied to participate in the Medicare program. CMS determined to deny the application. Petitioner requested reconsideration and reconsideration was denied on June 22, 2009. She then requested a hearing by letter dated July 26, 2009, and the case was assigned to me for a hearing and a decision.

I issued an Acknowledgment and Pre-Hearing Order on August 6, 2009, directing the parties to file exchanges of evidence and argument.

CMS filed a brief and five proposed exhibits which it identified as CMS Ex. 1 - CMS Ex. 5. Petitioner filed a letter in reply on October 8, 2009, but did not file any exhibits. CMS informed me by e-mail dated October 19, 2009 that it would not be submitting a reply.

Neither Petitioner nor CMS requested that I convene an in-person hearing.¹ I receive into the record CMS Ex. 1 - CMS Ex. 5.

II. Issue, findings of fact and conclusions of law

A. Issue

The issue in this case is whether CMS is authorized to deny Petitioner's application for enrollment as a Medicare supplier.

B. Finding of fact and conclusions of law

I make findings of fact and conclusions of law to support my decision in this case. I set forth each Finding below as a separate heading.

1. Petitioner is not eligible to enroll in the Medicare program as a supplier and CMS is thus authorized to deny her application for enrollment.

Petitioner submitted an application for enrollment in Medicare on February 18, 2009. CMS Ex. 4. Petitioner stated her intent to enroll as a non-physician practitioner and specified that she wanted to enroll as a licensed creative arts therapist. *Id.*, at 7. Petitioner attached a copy of a limited permit to practice creative arts therapy issued by the State of New York, as well as documents regarding her master's degree in expressive therapies. *Id.*, at 29-30.

After reviewing Petitioner's application, National Government Services (NGS), the Medicare contractor with the initial authority to approve or deny enrollment, denied the application. CMS Ex. 3. NGS stated as its rationale that "[t]here is no statutory or regulatory basis which permits a Licensed Creative Arts Therapist to enroll or receive payment in the Medicare program." *Id.*, at 1. NGS reaffirmed its decision after Petitioner requested reconsideration, stating that Petitioner's "request for enrollment was denied because there is no statutory or regulatory basis which permits a Licensed Creative Arts Therapist to enroll or receive payment in the Medicare program." CMS Ex. 1.

¹ CMS styled its brief as a motion for summary judgment. I find it unnecessary to decide whether the criteria for summary disposition are present in this case inasmuch as neither party has requested that I receive evidence in person.

Part B of the Medicare program is a voluntary supplemental insurance program covering outpatient services and is the program in which Petitioner seeks to provide her services. Social Security Act (Act) §§ 1831-1848 [42 U.S.C. §§ 1395j – 1395w-4]. The program provides reimbursement for physician services and certain “medical and other health services” provided by non-physician practitioners, including physician assistants, nurse practitioners, physical therapists, occupational therapists, clinical nurse specialists, certified nurse-midwives, clinical social workers, clinical psychologists, registered dietitians or nutrition professionals, anesthesiology assistants, and speech language pathologists and audiologists. *See* Act §§ 1861(s) [42 U.S.C. § 1395x(s)]; 1842(b)(18)(C) [42 U.S.C. § 1395u(b)(18)(C)]; 1861(bb) [42 C.F.R. § 1395x(bb)]; 1861(ll) [42 U.S.C. § 1395x(ll)]. The entities or individuals furnishing such health care services are known as “suppliers.” 42 C.F.R. § 400.202.

The Act requires the Secretary to issue regulations establishing a process for the enrollment of suppliers. Act § 1866(j) [42 U.S.C. § 1395cc(j)]. To receive payment a supplier must be enrolled in the Medicare program. 42 C.F.R. § 424.505. The Medicare Program Integrity Manual (MPIM), Chapter 10, Pub. 100-8, Section 12.4, lists the types of non-physician practitioners that may be enrolled in the Medicare program as suppliers, referencing the statutory and regulatory basis for Medicare payment to these suppliers. CMS Ex. 5. A licensed creative arts therapist is not included among the types of non-physician practitioners authorized to receive payment for services as a supplier under the Medicare program. *Id.*

Petitioner now recognizes that her profession is not one the Medicare program is authorized to pay for. Her letter of October 8, 2009 instead requests that “special permission” or “exceptional authorization” be accorded to her and that she be granted supplier status. She notes that she provides therapeutic services for a special population of Holocaust survivors and their descendents and that without her services their care might be more costly with “the emotional and psychological manifesting itself into physical problems.”

I do not doubt that Petitioner provides a valuable service to her clients. However, I have no authority, nor does CMS, to grant Petitioner the remedy she seeks. As CMS notes in its brief, the decision to allow reimbursement for the services of a licensed creative arts therapist must be made by Congress through amendment of the Act. CMS Br. at 7.

/s/
Steven T. Kessel
Administrative Law Judge