

**Department of Health and Human Services**

**DEPARTMENTAL APPEALS BOARD**

**Civil Remedies Division**

Vikki L. Green, LMSW,

Petitioner

v.

Centers for Medicare and Medicaid Services.

Docket No. C-10-941

Decision No. CR2318

Date: February 7, 2011

**DECISION**

Petitioner, Vikki L. Green, Licensed Master Social Worker (LMSW), appeals the determination of the Centers for Medicare and Medicaid Services (CMS) to deny her enrollment application into the Medicare program as a clinical social worker. Considering it is undisputed that Petitioner does not possess a Master's Degree in Social Work, as the Social Security Act (Act) and the implementing regulations require, I affirm CMS's denial. A legitimate legal basis exists for CMS to deny Petitioner's application; accordingly, I grant CMS's motion for summary judgment.

**I. Background**

New Center Community Mental Health Services in Detroit, Michigan currently employs Petitioner. CMS Memorandum in Support of Motion for Summary Disposition at 2 (Sept. 30, 2010) (CMS Memorandum). Although Petitioner was a licensed social worker at all relevant times, New Center Community Mental Health Services could not bill Medicare for payment for any clinical social work Petitioner rendered to Medicare beneficiaries. On March 8, 2010, Petitioner attempted to enroll in the Medicare program and applied for billing privileges. CMS Exhibit (Ex.) 1 at 19-49. As part of her application, Petitioner

provided copies of her graduate school diploma and transcript from Kent State University, where she earned a Master's of Education degree. CMS Ex. 1, at 15-16; CMS Ex. 2.

On April 1, 2010, Wisconsin Physician Services (WPS), a CMS contractor, denied Petitioner's enrollment request into Medicare. CMS Ex. 1 at 3-4. In its denial, WPS explained that Petitioner did not meet the enrollment conditions to qualify as a clinical social worker because she lacked a Master's or Doctorate degree in social work, pursuant to the requirement at 42 C.F.R. § 410.73. *Id.* at 3. Petitioner subsequently sought reconsideration on April 15, 2010 and admitted in her request that her Master's degree was in education. *Id.* at 1. On July 19, 2010, a Hearing Officer affirmed the denial of Petitioner's Medicare enrollment application on the grounds she did not satisfy the regulatory requirements for a clinical social worker. CMS Ex. 3.

On August 23, 2010, Petitioner filed a hearing request to appeal the reconsideration decision. This case was initially assigned to Departmental Appeals Board (Board) Member Leslie A. Sussan pursuant to 42 C.F.R. § 498.44, which permits a Board Member to hear appeals under part 498. An Acknowledgment and Pre-Hearing Order was sent to the parties on August 31, 2010. On September 30, 2010, CMS submitted its Motion for Summary Disposition, supporting CMS Memorandum, and four proposed exhibits. Petitioner did not file any documents subsequent to her hearing request. On October 25, 2010, the case was reassigned to me for hearing and decision. Absent any objections to CMS's submitted exhibits, I admit all four exhibits into the record.

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

A supplier<sup>1</sup> who wishes to bill Medicare for clinical social worker services must be enrolled in Medicare to have billing privileges. Specifically, Medicare Part B will pay for services from clinical social workers who accept Medicare assignment. Act § 1842(b)(18)(A), (C)(iv); 42 C.F.R. § 410.150(b)(18). The Act and the regulations define a "clinical social worker" as an individual who: (1) possesses a master's degree or doctorate in social work; (2) has performed at least two years of supervised clinical work after receiving the degree; and (3) is licensed, or certified, in the state that the services are performed. Act § 1861(hh)(1); 42 C.F.R. § 410.73(a).

## **III. Issue**

The sole issue in this case is whether Petitioner satisfied the necessary requirements to enroll into the Medicare Program as a clinical social worker.

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<sup>1</sup> Medicare 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).

### III. Discussion

#### **A. Petitioner was Ineligible to Enroll in the Medicare Program as a Clinical Social Worker because she did not have a Master's Degree in Social Work, as the Statute and Regulations Require.**

In her hearing request, Petitioner described her extensive experience as a social worker as evidenced by her attainment of a Social Workers license in 1986, a Professional Counselor's License in 2001, and her work at New Center Community Mental Health Services for the past thirteen years. Petitioner's Request for Hearing (HR). I accept as true, for purposes of summary judgment, that Petitioner has all of the education and experience that she states in her hearing request.

However, to enroll in Medicare as a clinical social worker, the language of the statute and regulation is plain and clear. An individual must possess a Master's Degree in Social Work to qualify for enrollment in Medicare. Prior Administrative Law Judge (ALJ) decisions reflect that CMS has consistently denied billing privileges under Medicare to individuals similarly situated to Petitioner. *See Jeanne E. Daly-McIntee*, DAB CR2073 (2010), *Elizabeth M. Prokay*, DAB CR1860 (2008), *Sherry K. Jose*, LICSW, DAB CR1750 (2008), *Dorothy Rose Hrynyk*, DAB CR1444 (2006). Petitioner does not have a Master's Degree in Social Work and does not dispute this. In her request for hearing, however, Petitioner argues that CMS should grant her enrollment request as a supplier of clinical social worker services because her educational qualifications and work experience ensure that Medicare beneficiaries will receive services from a competent practitioner, as the statute and regulation intend.

Nothing in the Act or the regulations provides that an individual may qualify to provide clinical social worker services with education or experience that fails to precisely satisfy the criteria to participate as a clinical social worker with Medicare. Additionally, nothing in the Act or the regulations permits the Secretary of the Department of Health and Human Services (Secretary) to waive the statutory or regulatory qualifying criteria and allow an individual to participate as a clinical social worker. Congress has not granted the Secretary any discretion to accept a another degree as functionally equivalent to a Master's or Doctorate degree in social work. *See McIntee*, DAB CR2073 at 4-5; *see also Prokay*, DAB CR1860 at 3-4 (holding Act does not allow for "functional equivalent" exception to participation criteria), *Rosalyn L. Olian*, DAB CR1472 (2006) (rejecting equivalency argument). Accordingly, the statute and regulations restrict me, and I lack authority to direct CMS to make such an exception. A legitimate legal basis exists for CMS to deny Petitioner's enrollment request, and therefore I must affirm the denial.

## **B. Summary Judgment is Appropriate in This Case**

CMS seeks summary disposition in the nature of summary judgment. The Board stated 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 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 their evidentiary burden under the relevant substantive law.” *Dumas Nursing and Rehab., L.P.*, DAB No. 2347, at 5 (2010).

In this case, Petitioner did not submit any facts beyond those set forth in her request for hearing. I have accepted all of those facts as true. In addition, I have drawn all reasonable inferences in her favor. However, no dispute exists that Petitioner lacks the requisite degree required for enrollment into Medicare. Accordingly, summary judgment is appropriate, and I grant CMS’s motion.

## **IV. Conclusion**

I sustain CMS’s determination to deny Petitioner enrollment into Medicare because Petitioner does not possess the requisite degree and does not satisfy the statutory and regulatory requirements. Considering Petitioner had no Master’s Degree in Social Work,

