

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

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IN THE CASE OF:	)	
	)	
Steven K. Neunkirchner,	)	Date: October 16, 2007
	)	
Petitioner,	)	
	)	
- v. -	)	Docket No. C-07-367
	)	Decision No. CR1672
Centers for Medicare & Medicaid	)	
Services.	)	

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**DECISION**

Petitioner, Steven K. Neunkirchner, does not qualify for a Medicare Part B provider enrollment number as a physician assistant, and his application was properly denied.<sup>1</sup>

**I. Background**

Petitioner requested a hearing before an administrative law judge (ALJ) by letter dated April 10, 2007. Petitioner challenges the February 23, 2007 reconsideration decision of a Medicare Hearing Officer for CIGNA Government Services 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, from the Medicare program, for services he provides.

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<sup>1</sup> In his request for hearing Petitioner asserted that he was credentialed by Medicare in 1993 as a physician assistant while at Durham Orthopedic Clinic. In October 2006, his provider number was terminated due to non-use. The termination occurred during the pendency of an August 2006 application to add a practice when he accepted an additional position at Chapel Hill Orthopedics.

On May 16, 2007, I held a prehearing conference at which both parties were represented by their respective attorneys. During the conference, the parties agreed that this matter could be decided based on written submissions, and that an in person hearing was not necessary.

Upon further discussion, the parties concurred that the issue in this matter is whether Petitioner graduated from an accredited institution. Thus, it was agreed that the case may be held in abeyance until June 15, 2007, to provide Petitioner an opportunity to present supporting documentation in order to establish that he met the educational requirement to qualify for a Medicare Part B provider enrollment number as a physician assistant.

Petitioner timely submitted documentation reflecting that he obtained an orthopedic assistant degree from Cerritos College in Norwalk, California on June 19, 1977. CMS Ex. 9. In reponse to that submission, the Centers for Medicare and Medicaid Services (CMS) argued that the hearing officer's denial must be upheld in that Petitioner's degree is from an "orthopedic" assistant program, which is not covered for payments under Medicare, as opposed to a "physician" assistant program.

Upon consideration of the aforementioned assertions, I issued an order on July 3, 2007, directing the parties to submit a joint stipulation of facts and proposed exhibits by July 16, 2007. In response to my order, CMS submitted nine exhibits, and amended its submission by adding an additional exhibit on July 24, 2007. Exhibit (Ex.) number 10 is a declaration of Mr. John McCarty, Executive Director of the Accreditation Review Commission on Education for the Physician Assistant. CMS's exhibits have been marked as CMS Exs. 1-10. Petitioner submitted six exhibits (P. Exs. 1-6). Neither party objected to the admissibility of any of the exhibits and they are all hereby admitted into the record. My July 3, 2007 order also established a briefing schedule. Thus, CMS filed a brief in support of its contentions on July 30, 2007, and Petitioner filed a response on August 31, 2007.

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

Section 1831 of the Social Security Act (Act) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B.

Only providers of health care services with whom the Secretary of Health and Human Services (Secretary) has entered into an agreement are eligible for payments under the Medicare Part B program. Act, section 1866(a)(1).

The Act defines a physician assistant as an individual that is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law) and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations. Act, section 1861(a)(5)(A).

Pursuant to the Act, the Secretary has promulgated regulations establishing that Medicare Part B covers physician assistants only if the services would be covered as physicians' services if furnished by a physician (a doctor of medicine or osteopathy, as set forth in section 1861(r)(1) of the Act). 42 C.F.R. § 410.74(a)(1).

The Secretary has also determined, pursuant to 42 C.F.R. § 410.74(c), that Medicare Part B coverage of services requires that a physician assistant must meet all of the following conditions:

- (1) Have graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or
- (2) Have passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants (NCCPA); and
- (3) Be licensed by the State to practice as a physician assistant.

A prospective provider dissatisfied with a reconsidered determination is entitled to a hearing before an ALJ. 42 C.F.R. § 498.5(a)(2).

## **B. Findings and Conclusions**

***1. Orthopedic physician assistant services are not a Medicare Part B covered benefit.***

***2. Petitioner is licensed to practice as a physician assistant in the State of North Carolina.***

***3. Petitioner has not established that he has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs, or that he has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants.***

***4. Petitioner does not meet all of the qualifications for enrollment as a provider of Medicare Part B reimbursable services.***

On November 6, 2006, CIGNA Government Services informed Petitioner that he did not meet the conditions of enrollment or qualify as a health care provider because the “services of an orthopedic physician assistant are not a Medicare Part B-covered benefit.” CMS Ex. 2.

Petitioner appealed to a Medicare Hearing Officer CIGNA’s denial of his application for Medicare provider enrollment as an orthopedic physician assistant. The basis for Petitioner’s request for reconsideration was his certification from the National Board for Certification of Orthopedic Physician Assistants, and his licensure as a physician assistant in the State of North Carolina. CMS Ex. 1, at 2.

The Hearing Officer concluded that Petitioner presented no evidence of certification by the National Commission on Certification of Physician Assistants, and the Medicare program does not recognize an orthopedic physician assistant as a specialty. The Hearing Officer also determined that Petitioner’s certification as a physician assistant by the State of North Carolina does not exempt him from other enrollment requirements. Consequently, she upheld the contractor’s denial of Petitioner’s application for enrollment in the Medicare Part B program as an orthopedic physician assistant. CMS Ex. 1, at 3.

In his request for hearing by an ALJ, Petitioner contends that he graduated from a physician assistant educational program that is accredited by the Accreditation Review Commission on Education, and is licensed by the State of North Carolina to practice as a physician assistant.

Petitioner does not dispute, and I conclude, that the Medicare program does not recognize an orthopedic assistant as a specialty and that the services of an orthopedic physician assistant are not a Medicare covered benefit. Petitioner also admits, and the documentary evidence shows, that he has not passed the NCCPA examination. *See P. Ex. 4; see also, P. Br. at 7.*

Inasmuch as Petitioner is licensed to practice as a physician assistant in the State of North Carolina, the sole remaining issue is whether he has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs (CAHEA).

Petitioner argues that I must overturn the Hearing Officer's decision because he meets the requirements of 42 C.F.R. § 410.74(c). Specifically, Petitioner contends that he graduated from a physician assistant education program that was accredited by CAHEA and is currently licensed by State of North Carolina to practice as a physician assistant. Of these two contentions, I only need to consider the former.

I find that Petitioner's use of the title of "physician assistant" when referring to the course he completed at Cerritos College in 1977, is wholly misplaced. In his declaration, Mr. John McCarty, Executive Director of the Accreditation Review Commission on Education for the Physician Assistant, clearly states that neither the commission he directs nor any of the predecessor organizations, as well as the American Medical Association, ever accredited a physician assistant program at Cerritos College in Norwalk, California. He went on to add that orthopedic physician assistants were trained as assistants to orthopedic surgeons, with an emphasis on orthopedic disease and injury, management of equipment and supplies, operating room techniques, cast applications and removal, office procedures, and an orientation to prosthetics and orthotics. Moreover, the diploma extended to Petitioner upon completion of the degree of Associate in Arts is for the satisfactory completion of a two-year curriculum in "Orthopedic Assistant." CMS Ex. 9. It is true that the program offered by Cerritos College was accredited, but not for a physician assistant program.

Furthermore, Petitioner's allegation that the term "orthopedic" as applied to his physician assistant program, was merely for descriptive purposes, and that the curriculum, course work, and training did not differ from "other" physician assistant programs being offered across the country during that period of time, begs the question. This conclusory and far flung allegation not only rests on the baseless premise that Cerritos College offered a physician assistant program, but is also bare of any evidence that the orthopedic assistant program offered there followed the same curriculum as the physician assistant programs offered across the country. In fact, Mr. John McCarty, the Executive Director of the Accreditation Review Commission on Education for the Physician Assistant, states in his declaration that "orthopedic" physician assistants were not trained as physician assistants. Mr. McCarty further stated that "[o]rthopedic physician assistants were trained at separate programs with a different curriculum, were accredited by different standards, and took a

separate exam.”<sup>2</sup> CMS Ex. 10.

In view of the foregoing, Petitioner has not shown that he is eligible for a provider enrollment number as a provider of physician assistant services, and his application is appropriately denied. Because Petitioner does not meet the qualification requirements set forth at 42 C.F.R. § 410.74(c), he is not eligible to participate in Medicare as a physician assistant. 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 physician assistant and his application was properly denied.

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/s/

José A. Anglada  
Administrative Law Judge

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<sup>2</sup> In a stipulation of facts filed by Petitioner on July 16, 2007, he stated that the Orthopedic assistant program curriculum at Cerritos College included anatomy, physiology, medical and behavioral science, pharmacology, clinical diagnosis, and physical diagnosis. These courses are not reflected in the transcript of credits completed by Petitioner, except for a three credit course in human anatomy and physiology. CMS Ex. 9, at 1, 2,