

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Tammie Harder, NP,

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-15-455

Decision No. CR3626

Date: February 5, 2015

DECISION

The Centers for Medicare & Medicaid Services (CMS), through its administrative contractor Noridian Healthcare Solutions, LLC (Noridian), denied the revalidation enrollment application of Petitioner, Tammie Harder, as a nurse practitioner because Petitioner does not possess a master's degree in nursing or a Doctor of Nursing Practice and was not previously enrolled in the Medicare program as a nurse practitioner before January 1, 2003. Petitioner requested a hearing. For the reasons stated below, I affirm the denial of Petitioner's application to revalidate her enrollment.

I. Background and Procedural History

Effective May 4, 2009, Noridian enrolled Petitioner as a nurse practitioner in the Medicare program. CMS Exhibit (Ex.) 7. On December 12, 2013, Petitioner signed an enrollment application to revalidate her enrollment as a nurse practitioner. CMS Ex. 8. Noridian received the application on December 16, 2013. CMS Ex. 9. On March 21, 2014, Noridian denied Petitioner's revalidation enrollment application because Petitioner did not possess a master's degree in nursing or a Doctor of Nursing Practice. CMS Ex. 10.

On May 19, 2014, Petitioner requested reconsideration and argued that she meets the grandfathering provision for enrollment without a master's or doctoral degree because she: has been licensed as a nurse practitioner since December 23, 1992; applied to enroll as both a physician assistant and nurse practitioner in 2000; and was enrolled as a nurse practitioner in the Medicare program, effective May 4, 2009. CMS Ex. 11. On September 11, 2014, Noridian issued an unfavorable reconsidered determination explaining that Petitioner was only enrolled in the Medicare program as a physician assistant in 2000 and was not enrolled as a nurse practitioner until 2009; therefore, Petitioner must possess a master's in nursing or a Doctor of Nursing Practice in order to revalidate her enrollment as a nurse practitioner. CMS Ex. 12.

Petitioner timely filed a request for hearing (RFH) with supporting documents. In response to my November 25, 2014 Acknowledgement and Pre-Hearing Order (Order), CMS filed a motion for summary disposition (CMS Mot.) and 12 exhibits (CMS Exs. 1-12). Petitioner filed a response stating she had no other documents to submit.

II. Decision on the Record

In the absence of objection, I admit CMS Exs. 1-12.

My Order advised the parties that they must submit written direct testimony for each proposed witness and that an in-person hearing would be necessary only if the opposing party requested an opportunity to cross-examine a witness. Order ¶¶ 8-10. CMS submitted written direct testimony for a Noridian employee (CMS Ex. 1), but Petitioner did not request to cross-examine the witness. Petitioner did not submit any written direct testimony. Therefore, a hearing in this case is unnecessary and I issue this decision based on the written record. Order ¶ 11.

III. Issue

Whether CMS had a legitimate basis to deny Petitioner's revalidation of enrollment as a nurse practitioner under 42 C.F.R. § 424.530(a)(1).

IV. Jurisdiction

I have jurisdiction to decide this issue. 42 C.F.R. §§ 498.3(b)(17), 498.5(l)(2); *see also* 42 U.S.C. § 1395cc(j)(8).

V. Findings of Fact, Conclusions of Law, and Analysis¹

In order to maintain Medicare billing privileges, suppliers enrolled in the Medicare program must periodically revalidate their enrollment by submitting an enrollment application to CMS. 42 C.F.R. § 424.515. For Medicare program purposes, nurse practitioners are suppliers. *See* 42 C.F.R. §§ 400.202 (definition of *Supplier*); 498.2 (definition of *Supplier*). CMS may deny a supplier's enrollment application in the Medicare program if a supplier is found not to be in compliance with Medicare enrollment requirements applicable to the type of supplier enrolling. *See* 42 C.F.R. § 424.530(a)(1).

The qualification requirements for an individual to enroll in the Medicare program as a nurse practitioner are as follows:

(b) *Qualifications*. For Medicare Part B coverage of his or her services, a nurse practitioner must be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law, and must meet one of the following:

(1) Obtained Medicare billing privileges as a nurse practitioner for the first time on or after January 1, 2003, and meets the following requirements:

(i) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners.

(ii) Possess a master's degree in nursing or a Doctor of Nursing Practice (DNP) doctoral degree.

(2) Obtained Medicare billing privileges as a nurse practitioner for the first time before January 1, 2003, and meets the standards in paragraph (b)(1)(i) of this section.

(3) Obtained Medicare billing privileges as a nurse practitioner for the first time before January 1, 2001

42 C.F.R. § 410.75(b).

¹ My findings of fact and conclusions of law in this case are set forth in italics and bold font.

1. *The University of North Dakota, School of Medicine, awarded Petitioner a certificate on January 12, 1990 for being a Family Nurse Practitioner Graduate. CMS Ex. 8 at 30.*
2. *Petitioner has been enrolled in the Medicare program as a physician assistant since June 1992, with billing privileges that began in January 1990. CMS Ex. 1 ¶ 4; CMS Ex. 3.*
3. *Petitioner has been licensed as a nurse practitioner in the state of North Dakota since December 23, 1992. CMS Ex. 8 at 29.*
4. *Petitioner was first enrolled in the Medicare program as a nurse practitioner effective May 4, 2009. CMS Ex. 7.*
5. *Petitioner does not possess a master's degree in nursing or a Doctor of Nursing Practice. CMS Ex. 11.*
6. *Petitioner was erroneously enrolled as a nurse practitioner in the Medicare program effective May 4, 2009. CMS Ex. 1 ¶ 6; CMS Ex. 7.*
7. *Because Petitioner was not enrolled in the Medicare program as a nurse practitioner before January 1, 2003, Petitioner must possess a master's degree in nursing or a Doctor of Nursing Practice in order for her to qualify for revalidation of enrollment in the Medicare program. 42 C.F.R. § 410.75(b).*

Petitioner has been enrolled in the Medicare program as a physician assistant since mid-1992. Petitioner is also a licensed nurse practitioner since December 1992. Because Petitioner does not have a master's degree in nursing or a Doctor of Nurse Practice, she may only be enrolled in the Medicare program as a nurse practitioner if she had been enrolled as a nurse practitioner for first time before January 1, 2001, or if a national nurse practitioner certifying body certified Petitioner before January 1, 2003. 42 C.F.R. § 410.75(b).

Petitioner argues that she meets the requirement for having been enrolled in the Medicare program before the January 1, 2001 date because, in March 2000, she filed a reassignment application seeking enrollment as both a physician assistant and a nurse practitioner, but that she was only enrolled as a physician assistant. RFH at 1. However, Petitioner concedes that she filed an application for the purpose of reassignment of benefits. A review of the application shows that Petitioner checked the box indicating the purpose of the application was for "Adding a Reassignment." CMS Ex. 4 at 1. Although Petitioner indicated she was a nurse practitioner in several places on the application by placing the letters "FNPC" on it, this provides scant support for the assertion that

Petitioner was actually seeking enrollment as a nurse practitioner using a reassignment form. CMS Ex. 4. Petitioner also asserts that her intent to enroll as a nurse practitioner in 2000 is shown by Petitioner's nearly contemporaneous enrollment as a nurse practitioner participating provider with BlueCross BlueShield of North Dakota. CMS Ex. 6. While this may provide some indication that in 2000 Petitioner wanted to be able to bill insurance programs for nurse practitioner services, it does not prove that Petitioner filed the proper application with Noridian to do so.

Further, as Petitioner concedes, Noridian did not actually enroll Petitioner as a nurse practitioner. Noridian's May 1, 2000 letter approving the reassignment lists Petitioner's name with a "PA" after it, evidencing that Noridian considered Petitioner enrolled as a physician assistant. CMS Ex. 5. As a Noridian employee who researched the records concerning Petitioner's enrollment testified:

In March 2000, Petitioner applied to reassign her billing benefits. Her application identified her as both a [physician assistant] and a [nurse practitioner]. There is no record showing she was enrolled as a [nurse practitioner] when she applied to reassign her benefits. She was approved to reassign her benefits as a [physician assistant].

CMS Ex. 1 ¶ 5. The reconsidered determination came to the same conclusion. CMS Ex. 12 at 1. I find that the record supports this conclusion as well. Therefore, Petitioner must possess a master's degree in nursing or a Doctor of Nursing Practice in order to enroll as a nurse practitioner.

VI. Conclusion

For the reasons stated above, I affirm CMS's determination to deny Petitioner's revalidation enrollment application.

/s/
Scott Anderson
Administrative Law Judge