

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Vera Vitt, RN,
(PTAN: 161685),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-14-1723

Decision No. CR3623

Date: February 4, 2015

DECISION

Wisconsin Physicians Service Insurance Corporation (WPS), an administrative contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS), denied the Medicare enrollment application of Petitioner, Vera Vitt, RN, finding she did not meet all Medicare requirements for nurse practitioners. Petitioner appeals this denial. I find that WPS properly denied Petitioner's application because she does not have a certification by a recognized national certifying body that has established standards for nurse practitioners.

I. Background

In a letter dated May 21, 2014, WPS denied Petitioner's Medicare enrollment application because Petitioner was not certified by a recognized national certifying body that has established standards for nurse practitioners. CMS Ex. 1. Petitioner sought reconsideration. In the reconsidered determination, dated July 9, 2014, WPS's hearing officer affirmed the denial.¹ CMS Ex. 3.

¹ The reconsidered determination incorrectly cited the applicable regulation but quoted the correct language of the applicable regulation.

Petitioner timely filed a request for hearing before an administrative law judge. The case was assigned to me, and I issued an Acknowledgment and Pre-hearing Order (Pre-hearing Order). In accordance with my Pre-hearing Order, CMS timely filed its pre-hearing exchange consisting of a motion to dismiss, a motion for summary judgment, supporting briefs, and CMS Exhibits (Exs.) 1-3. Petitioner did not file a response as I directed. On November 19, 2014, I issued an order indicating that due to her failure to respond, Petitioner appeared to have abandoned her hearing request. I directed her to respond, showing cause why I should not dismiss her hearing request and also directed her to explain, at a minimum, whether she disagreed with CMS's arguments and evidence. Petitioner responded, submitting a one-page response, a four-page attachment consisting of a letter from the Director of Graduate Programs for the School of Nursing at Wichita State University, and a three-page form titled "Validation of Advanced Practice Nursing Education," indicating the coursework and clinical hours Petitioner completed for her concentration as a Psychiatric/Mental Health Clinical Nurse Specialist. I refer to this attachment as P. Ex. 1.

I admit CMS's Exs. 1-3 and P. Ex. 1 without objection from the parties. Neither party submitted a list of proposed witnesses, nor filed written direct testimony as my Pre-hearing Order directed. Pre-hearing Order ¶¶8-10. Therefore, as explained in that order, there is no need for cross-examination, an in-person hearing is not necessary, and I will decide this matter on the written record. Pre-hearing Order ¶11; *Marcus Singel, D.P.M.*, DAB No. 2609 at 5-6 (2014).

Section 1831 of the Social Security Act (the Act) (42 U.S.C. § 1395j) establishes the supplementary medical insurance benefits program for the aged and disabled known as Medicare Part B. Payment under the program for services rendered to Medicare-eligible beneficiaries may only be made to eligible providers of services and suppliers.² Act §§ 1835(a) (42 U.S.C. § 1395n(a)); 1842(h)(1) (42 U.S.C. § 1395u(h)(1)). The Act requires the Secretary of Health and Human Services to issue regulations that establish a process for the enrollment of providers and suppliers, including the right to a hearing and judicial review of certain enrollment determinations. Act § 1866(j) (42 U.S.C. § 1395cc(j)).

² A "supplier" can also furnish services under Medicare, and the term applies to physicians, other non-physician practitioners, and facilities that are not included within the definition of the phrase "provider of services." Act §1861(d) (42 U.S.C. § 1395x(d)).

II. Findings of Fact and Conclusions of Law

1. CMS had a legitimate basis to deny Petitioner's application for Medicare enrollment and billing privileges because she does not have a certification by a recognized national certifying body that has established standards for nurse practitioners.

The regulations for Medicare Part B coverage for nurse practitioner services at 42 C.F.R. § 410.75(b) provide:

Qualifications. For Medicare Part B coverage of his or her services, a nurse practitioner must be a registered 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.

CMS may deny a provider or supplier's enrollment in the Medicare program if the provider or supplier at any time is found not to be in compliance with Medicare enrollment requirements. 42 C.F.R. § 424.530(a)(1).

Petitioner represents to me that she graduated in 2000 and received Medicare billing privileges as a nurse practitioner for the first time in 2001. P. Ex. 1. Similarly, WPS had no record that she had billing privileges before January 1, 2001. CMS Ex. 3, at 2. Only a nurse practitioner who obtained Medicare billing privileges prior to January 1, 2001, is excused from the Medicare requirement of certification by a national certifying body.

There is no dispute that Petitioner is not certified as a nurse practitioner by any national certifying body that has established standards for nurse practitioners. Therefore, WPS had a legitimate basis for denying Petitioner's application for not meeting this certification requirement.

2. State requirements for nurse practitioners do not preempt the regulatory requirements for nurse practitioners in the Medicare program.

Petitioner argues that her lack of certification should not preclude her Medicare enrollment. P. Ex. 1. She filed a letter signed by the Director of Graduate Programs, Wichita State University, School of Nursing, explaining that the Kansas State Board of Nursing does not require nurse practitioners to be nationally certified. P. Ex. 1. However, a state's requirements do not preempt Medicare requirements, and I am not authorized to ignore the regulations that establish a nurse practitioner's eligibility for Medicare enrollment.

/s/
Joseph Grow
Administrative Law Judge