Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
	)	
Karen Armento, CRNA, ARNP,	)	
	)	Date: September 25, 2007
Petitioner,	)	
	)	Docket No. C-06-237
- v. -	)	Decision No. CR1658
	)	
Centers for Medicare & Medicaid Services.	)	
	)	

DECISION

I affirm the determination of the Medicare Part B Hearing Officer (Hearing Officer) to uphold the denial by the Medicare Part B Carrier, National Heritage Insurance Company (Carrier), of Petitioner, Karen Armento's application for a Medicare provider number (provider number or billing number). I find that the Hearing Officer correctly determined that Petitioner does not meet the regulatory requirements for obtaining a provider number as a nurse practitioner.

I. Applicable Authority

Section 1866(j)(1) of the Social Security Act (Act), as amended by section 936 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, authorized the Secretary of Health and Human Services (Secretary) to establish a process for the enrollment in the Medicare Part B program of providers of services and suppliers. Section 1866(j)(2) of the Act gives providers and suppliers appeal rights for certain determinations involving enrollment, using the procedures that apply under section 1866(h)(1)(A) of the Act. These procedures are set out at 42 C.F.R. Part 498, *et. seq.*, and provide for hearings by Administrative Law Judges (ALJs) and review of ALJ decisions by the Departmental Appeals Board (Board).

In provider appeals under 42 C.F.R. Part 498, the Board has determined that CMS must make a *prima facie* case that an entity has failed to comply substantially with federal requirements. *See MediSource Corporation*, DAB No. 2011 (2006). "*Prima facie"* means that the evidence is "[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted." *Rosalyn L. Olian,* DAB CR1472, at 2 (2006); *see also Hillman Rehabilitation Center*, DAB No. 1611, at 8 (1997), *aff'd, Hillman Rehabilitation Ctr. v. U.S. Dep't. of Health and Human Services,* No. 98-3789 (GEB) (D.N.J. May 13, 1999). To prevail, the entity must overcome CMS's showing by a preponderance of the evidence. *Batavia Nursing and Convalescent Center,* DAB No. 1904 (2004), *aff'd, Batavia Nursing and Convalescent Center v. Thompson,* 129 Fed. Appx.187 (6th Cir. 2005); *Emerald Oaks,* DAB No. 1800 (2001); *Cross Creek Health Care Center,* DAB No. 1665 (1998).

Medicare Part B is a supplementary medical insurance program for the aged and disabled. Act, sections 1831-1848. Section 1861(s) of the Act defines medical and other health services that are eligible for Medicare reimbursement by a non-physician practitioner or an allied health professional. Under section 1842(b)(18)(C) of the Act, the types of "practitioners" include the following: a physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse-midwife, clinical social worker, clinical psychologist, registered dietician, and nutrition professional.

Federal regulations define the credentialing requirements and criteria for providers and provider eligible services at 42 C.F.R. §§ 410.69-410.78. The regulation at 42 C.F.R. § 410.75(b) sets forth the qualifications required to be enrolled in the Medicare program as a nurse practitioner. For Medicare Part B coverage for his or her services, a nurse practitioner must:

> (1)(i) 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
>
> (ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; or
>
> (2) 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 have been granted a Medicare billing number as a nurse practitioner by December 31, 2000; or
>
> (3) Be a nurse practitioner who on or after January 1, 2001, applies for a Medicare billing number for the first time and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or

> (4) Be a nurse practitioner who on or after January 1, 2003, applies for a Medicare billing number for the first time and possesses a master's degree in nursing and meets the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

42 C.F.R. § 410.75(b).

II. Background

By letter dated April 5, 2005, the Carrier notified Petitioner that her application[1] for a Medicare provider number had been approved.[2] CMS Exhibit (CMS Ex.) 1, at 1, 3. By letter dated June 7, 2005, the Carrier notified Petitioner that her provider number would be revoked 15 days from the date of the letter because she "[did] not meet CMS regulatory requirements for a Nurse Practitioner." CMS Ex. 2.

Petitioner appealed the decision to the Carrier, and a Hearing Officer conducted a hearing by telephone on November 11, 2005. The Hearing Officer subsequently issued a decision (Hearing Officer decision) on November 15, 2005 upholding the Carrier's revocation of Petitioner's Medicare provider number. Specifically, the Hearing Officer noted that Petitioner is licensed in New Hampshire as a nurse practitioner. However, the Hearing Officer determined that based on the information provided in the appeal, Petitioner did not meet the educational requirements nor national certification requirements for a nurse practitioner set forth in 42 C.F.R. § 410.75. The Hearing Officer also found that Petitioner first enrolled in the Medicare program as a nurse practitioner in March 2005, and, as a result, Petitioner did not meet the qualifications for the "grandfathering" provision of 42 C.F.R. § 410.75(b)(2). Because Petitioner lacked the requisite educational and national certification requirements, the Hearing Officer found that the Carrier's revocation of Petitioner's provider number had been correct. The Hearing Officer advised Petitioner of her appeal rights and that she could appeal the decision to an ALJ.

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[1] Petitioner had applied for a Medicare provider number as a nurse practitioner on or about March 2005. Petitioner had already received a provider number as a certified registered nurse anesthetist (CRNA) in December 1993. Petitioner Exhibit (P. Ex.) 1.

[2] A revised letter dated April 11, 2005, notified Petitioner of the same. CMS Ex. 1, at 1.

By letter dated January 12, 2006 (hearing request), Petitioner, acting *pro se*, filed a timely appeal of the Hearing Officer's decision. The case was assigned to me for a hearing and decision. I held a telephone prehearing conference with the parties on April 25, 2006. I informed Petitioner that she had a right to retain an attorney to represent her; however, Petitioner elected to proceed *pro se.* I set a schedule for the parties to file submissions and directed that a copy of all submissions be served on the other party. *See* Order, dated May 3, 2006.

CMS has submitted its brief in support of the Hearing Officer's decision (CMS Br.). CMS has also submitted exhibits marked CMS Exs. 1-6. Petitioner has submitted her response brief in opposition (P. Br.) to CMS's brief. Petitioner also submitted exhibits, marked KA Exs. 1-7. In order to conform with the Civil Remedies Division procedures that accompanied the March 3, 2006 acknowledgment letter to Petitioner, I have re-marked Petitioner's exhibits as P. Exs. 1-7. Prior to the telephone prehearing conference, Petitioner submitted a brief in support of her position along with exhibits she marked as A-L. I labeled this submission and the attached exhibits as Petitioner's Introductory Brief (P. Intro. Br.), and re-marked the exhibits as P. Intro. Exs. 1-12. Neither party objected to the admission of any of the exhibits. Therefore, I admit CMS Exs. 1-6, P. Exs. 1-7, and P. Intro. Exs. 1-12 into the record.

By Order dated October 5, 2006, I gave CMS two weeks from the date of the Order to file a Reply to Petitioner's response brief. CMS did not submit a reply and the record was closed.

III. Issue, and findings of fact and conclusions of law

A. Issue

The issue in this case is whether Petitioner satisfied the necessary requirements to obtain a Medicare provider number as a nurse practitioner, as set out at 42 C.F.R. § 410.75(b).

B. Findings of fact and conclusions of law

Petitioner has not satisfied the nurse practitioner requirements set forth at 42 C.F.R. § 410.75(b).

Petitioner must show that she has met all statutory and regulatory requirements in order to qualify for a Medicare provider number as a nurse practitioner.[3] Petitioner contends that

[3] Petitioner's Introductory Brief and CMS's Brief make reference to Petitioner's pain management services that she provided as a CRNA and the denial of claims by the

she meets the requirements for Medicare Part B coverage of a nurse practitioner's services because she qualifies under 42 C.F.R. § 410.75(b)(1). P. Br. at 3. According to Petitioner, she has been authorized by the State of New Hampshire to practice as an advanced registered nurse practitioner and has been certified as a nurse practitioner by the American Association of Nurse Anesthetists (AANA). *Id.* at 4-5; P. Exs. 3, 4. Petitioner maintains that because she was licensed by New Hampshire in 1994 and received certification by the AANA, a recognized national certifying body, in 1984, she has fulfilled the regulatory requirements for Medicare coverage of her services as a nurse practitioner pursuant to subsections (i) and (ii) of 42 C.F.R. § 410.75(b)(1). P. Br. at 3-5.

Petitioner asserts that she is not a first time applicant for a Medicare number because she was granted a number in 1993 and has been recognized in the State of New Hampshire as a nurse practitioner since 1994. P. Br. at 3-4. Petitioner indicated that she billed Medicare for pain management services she provided to patients in a hospital setting. *Id.* Petitioner contends that because she was licensed by New Hampshire in 1994 and granted a Medicare billing number in 1993, she has fulfilled the "grandfathering" regulatory requirements for Medicare coverage of her services as a nurse practitioner pursuant to 42 C.F.R § 410.75(b)(2). *Id.* at 3-5.

Petitioner further maintains that because she received a Medicare provider number as a CRNA, which Petitioner asserts is a specialty of advanced registered nurse practitioners under state law, that provider number should qualify her for Medicare Part B payment as a nurse practitioner, as well as a CRNA. P. Br. at 5-6. Furthermore, Petitioner asserts that she is licensed by the State of New Hampshire to perform all services advanced registered nurse practitioners are permitted to perform, plus additional services that may be performed by CRNAs. P. Intro. Br. at 1.

Based on the record before me, Petitioner does not meet any of the regulatory requirements under 42 C.F.R. § 410.75(b) and therefore is not entitled to a Medicare provider number as a nurse practitioner.

Pursuant to 42 C.F.R. § 410.75(b), one of four conditions must be met in order for Petitioner to qualify for a Medicare provider number as a nurse practitioner. To satisfy the first subsection of 42 C.F.R. § 410.75(b), a nurse practitioner must be certified by a recognized national certifying body that has established standards for nurse practitioners.

Carrier for these services under Petitioner's CRNA Medicare provider number. I will not address this issue because the sole issue that I am authorized to decide in this case is whether Petitioner qualifies for a Medicare provider number as a nurse practitioner under the explicit requirements of the regulation at 42 C.F.R. § 410.75(b). *See* 42 C.F.R. § 498.5(a).

42 C.F.R. § 410.75(b)(1)(ii). According to Petitioner, she is a member of the AANA. P. Br. at 5; P. Ex. 4; CMS Ex. 6, at 2. The AANA does not qualify as an organization that has established standards for nurse practitioners. It is a professional association for CRNAs. As CMS contends, "the requirement for certification by a national certifying body [is] separate for CRNAs from that for nurse practitioners." CMS Br. at 8.

The Medicare Carriers Manual § 2158 lists the following as national organizations that establish standards for nurse practitioners: American Academy of Nurse Practitioners (AANP); American Nurses Credentialing Center (ANCC); National Certification Corporation for Obstetric, Gynecologic and Neonatal Nursing Specialties; National Certification Board of Pediatric Nurse Practitioners & Nurses; Oncology Nurses Certification Corporation (ONCC); and Critical Care Certification Corporation. CMS Ex. 5, at 3, 4. Petitioner has not listed any of the organizations nor an acronym used by one of these organizations on her curriculum vitae. CMS Ex. 6; P. Intro. Ex. 1. Because Petitioner has not shown that she is certified by a recognized national nursing practitioner certifying body, she does not fall under those recognized as nurse practitioners pursuant to 42 C.F.R. § 410.75(b)(1).

A nurse practitioner's services may be covered under Medicare Part B if she meets the requirements listed in 42 C.F.R. § 410.75(b)(2). That section of the regulation provides that a licensed nurse practitioner that has received her Medicare billing number *as a nurse practitioner* by December 31, 2000, can receive reimbursement from Medicare for her services as a nurse practitioner. Petitioner has not received a Medicare billing number as a nurse practitioner; thus, she does not meet the requirements under 42 C.F.R. § 410.75(b)(2).

Petitioner argues that she received a Medicare billing number as early as 1993 and that this billing number would allow her to receive Medicare reimbursement pursuant to 42 C.F.R. § 410.75(b)(2). CMS counters that "there is no provision [in 42 C.F.R. § 410.75(b)(2)] for an individual to qualify for the period on or before December 31, 2000 with a Medicare billing number for a CRNA." CMS Br. at 6. One of the primary reasons this section of the regulation, 42 C.F.R. § 410.75(b)(2), was promulgated was so that nurse practitioners who had received a Medicare billing number before January 1, 2001, would not be subject to the newly included requirements of national certification and the educational requirement of possessing a master's degree. *See* 64 Fed. Reg. at 59,412 (Nov. 2, 1999). Essentially, CMS did not want to disqualify many nurse practitioners, who were otherwise qualified, from receiving Medicare reimbursement as a result of final promulgation of 42 C.F.R. § 410.75(b)(2). CMS is correct in that there is no provision in the regulations that allows a Medicare billing number for a CRNA to be used as a substitute for a billing number for nurse practitioners. The regulation does not provide me with the authority to substitute or allow a CRNA billing number to satisfy the nurse practitioner billing number requirement in section 42 C.F.R. § 410.75(b)(2).

Although Petitioner was a licensed nurse practitioner in the State of New Hampshire as early as 1994, she had not received a Medicare billing number as a nurse practitioner by December 31, 2000. Thus, her services do not qualify for Medicare reimbursement under 42 C.F.R. § 410.75(b)(2).

Because Petitioner never received a Medicare billing number as a nurse practitioner, she is, in fact, applying for a Medicare billing number as a nurse practitioner for the first time and is subject to the requirements in 42 C.F.R. § 410.75(b)(4). Under 42 C.F.R. § 410.75(b)(4), an applicant for Medicare coverage as a nurse practitioner must possess a master's degree in nursing and meet subsections (b)(1)(i) and (b)(1)(ii) of 42 C.F.R. § 410.75. As discussed previously, Petitioner does not meet the standard at 42 C.F.R. § 410.75(b)(1)(ii) because she has not been certified by a recognized national certifying body that has established standards for nurse practitioners. 42 C.F.R. § 410.75(b)(1)(ii). In addition, Petitioner does not meet the requirements of 42 C.F.R. § 410.75(b)(4) because Petitioner does not possess a master's degree in nursing. P. Intro. Ex. 1; CMS Ex. 6.

IV. Conclusion

Based on my review of all of the evidence and arguments before me, I conclude that Petitioner does not qualify for Medicare reimbursement of services as a nurse practitioner because she is not certified by a recognized national certifying body for nurse practitioners and she does not possess the requisite educational degree. Petitioner thus fails to satisfy the statutory and regulatory requirements. Accordingly, I find that Petitioner is not entitled to obtain a Medicare provider number as a nurse practitioner. I therefore affirm the Hearing Officer's determination to uphold the denial by the Carrier of Petitioner's application for a Medicare provider number.

/s/
Alfonso J. Montano
Administrative Law Judge