PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON-THE-RECORD
98-D41

PROVIDER -St. Anthony Medical Center
Columbus, Ohio

Provider No. 36-0062

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Adminastar Federal, Inc.

DATE OF HEARING-
March 18, 1998

Cost Reporting Period Ended -
December 31, 1990

CASE NO. 93-0590

INDEX

ISSUE:

Was the Intermediary’s adjustment offsetting employee benefits proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

St. Anthony Medical Center (“Provider”) is a general, short term, acute care hospital located in Columbus, Ohio. The Provider participated with other Franciscan Sisters of the Poor entities in a multiple employer pension plan covering substantially all of the Provider’s employees. On December 31, 1990, the Franciscan Health System of Central Ohio,Inc. settled the accumulated benefit obligation related to its portion of the Multiple Employer Plan through purchase of annuity contracts. This transaction resulted in a gain of $6,199,472 for the Provider. The Provider did not make any type of offset for this transaction in its December 31, 1990 Medicare cost report.

Adminastar Inc. (“Intermediary”) offset the gain on reversion but limited the offset to $6,060,665 which was the amount of benefit expenses claimed in the December 31, 1990 cost report. The Provider disagreed with the Intermediary’s adjustment and timely filed an appeal with the Provider Reimbursement Review Board (“Board”) pursuant to 42 C.F.R. §§ 405.1835-.1841 and has met the jurisdictional requirements of those regulations. The Medicare reimbursement effect is approximately $120,000.

PROVIDER’S CONTENTIONS:

The Provider contends that according to the Medicare regulations, transactions within an approved pension plan should be identical to those applied within a funded depreciation account. The Provider points out that the Provider Reimbursement Manual HCFA Pub. 15-1 at § 228 defines a qualified pension plan as follows:

> Generally, a qualified pension plan under Internal Revenue Service regulations is a plan established and maintained by a provider primarily to provide systematically for the payment of definitely determinable benefits to the provider’s employees for a period, usually for life, after retirement. The trust instrument establishing the plan would provide for a fund to be accumulated by the trust in accordance with the plan. Deposits of cash or other liquid assets are made to the fund in accordance with the pension plan. In the establishment of such pension funds, a trustee relationship is created with the provider in regard to the deposits into the fund and their use in accordance with the pension plan. The same treatment accorded to deposits of funded depreciation are accorded deposits in the qualified pension fund.

The Provider also points out that HCFA Pub. 15-1 § 226.3 sets forth the following restrictions regarding deposits in a funded depreciation account:

> The providers cumulative deposits in this account cannot exceed its total cumulative allowable depreciation expense (not including gains or losses on the depreciation of depreciable assets and recapture of accelerated depreciation) from the date of acquisition of all provider depreciable assets used to provide patient care services under the Medicare program, including periods before and after the providers participation in the Medicare program. (See Chapter 1) Hence, funding of such amounts is permitted even though depreciation expense applicable to a period prior to the provider's participation in the program is not an allowable cost. If the total deposits do not exceed total cumulative depreciation expense of assets used to provide services under the Medicare program at the time of the deposit, the provisions of §§ 226.1 and 226.3 apply. Total cumulative allowable depreciation expense must not be confused with the balance sheet valuation account, accumulated depreciation. Total allowable depreciation expense is computed by totaling all depreciation expense incurred on all assets used to provide services under the Medicare program. This total is compared with total deposits (excluding income earned) to the funded depreciation account. Investment income from such funded depreciation deposits retains its identity and becomes a part of the funded depreciation fund if deposited in the funded depreciation account at the time of receipt by the provider. Such investment income remains funded depreciation even if the deposit of such funds results in a fund balance in excess of total cumulative allowable depreciation expense. If the provider makes "extra" deposits of funds in excess of the accumulated depreciation, the provisions of §§ 226.1 and 226.2 do not apply. Thus any income earned by such "extra" deposits is applied as a reduction of interest expense.
>
> Deposits to the funded depreciation account must remain for 6 months or more to be considered as valid funding transaction and to permit application of §§ 226.1 and 226.2. Deposits of less that 6 months' duration are not eligible for the benefits of those sections. Investment income earned prior to elapse of the 6-month period will not be offset unless the deposits are actually withdrawn during this period. A loan to the general fund is considered a withdrawal for this purpose.

The Provider also cites HCFA Pub. § 226.2 which states:

> Where the provider funds depreciation, it is expected that the money in the fund will be invested to earn revenues. Investment income earned by the funded depreciation account attributable to cumulative allowable depreciation expense funded in periods either before or after the provider's participation in the Medicare program is not a reduction of allowable interest expense, provided such investment income is deposited in and becomes part of the funded depreciation account. Note - Section 226.1 referenced in Section 226.3,

> relates to interest paid from the funded depreciation account and, thus, is not applicable to this discussion).

The Provider further points out that HCFA Pub. 15-1 § 226.4 describes the appropriate treatment of withdrawals from the fund. It states in part:

> Because deposits in the funded depreciation account may be used for a variety of purposes, the following provisions apply:
>
> A. Withdrawals for the Acquisition of Depreciable Assets Used to Render Patient Care of Other Patient Care-Related Capital Purposes and for Investments,- These withdrawals must be made on a first-in, first-out basis. The oldest deposits must be withdrawn first. These withdrawals must be related to the acquisition of such assets of the same provider maintaining the fund from which such withdrawals are made. The program does not recognize the use of one provider's funded account to acquire patient care assets of another provider because a funded depreciation account is limited to the use of the provider maintaining it.
>
> B. Withdrawals for Other Than the Acquisition of Depreciable Assets Used to Render Patient Care or for Other Patient Care Related Capital Purposes and Investments.- These withdrawals must be made on a last-in, first-out basis. The latest deposit made must be considered the deposit withdrawn for these purposes. For example, if a loan is made to the general fund on February 1, 1980, and deposit of an equal or greater amount is in the funded account since January 1, 1980, the withdrawal will be considered to be made from the January 1 deposit and interest, if any, paid by the general fund is not allowable as a cost, because the funds were not on deposit for at least 6 months. (See §§ 226.3).
>
> When funded depreciation is used by the provider for other that (1) the acquisition of depreciable assets used to render patient care; (2) investments; (3) loans to the general fund for current operating costs related to patient care; or (4) other capital purposes as described in § 226, the investment income earned on these funds while on deposit in the funded account shall be used to reduce allowable interest expense incurred during all cost reporting periods subject to reopening.

Id.

The Provider contends that based on the above-cited manual sections the funds withdrawn as a result of the pension settlement and reversion should be handled as follows:

1. All deposits into the pension fund were based upon actuarial determined estimates of the present and future costs of providing a qualified pension plan. As such, they should be considered to be the equivalent of qualified deposits to funded depreciation accounts as described in Section 226.3.

2. All withdrawals from the fund, including the purchase of the nonparticipating annuity contracts acquired as part of the settlement transaction, are considered qualified uses of pension funds. As qualified uses, these withdrawals will be accounted for on a first-in, first-out basis as described in HCFA Pub. 15-1 § 226.4.

3. In applying the principles set forth above, the qualified withdrawals from the fund exceed contributions to the fund. As such, withdrawals of the available actuarial surplus, at termination, would consist entirely of investment income. On this basis, since the amounts previously reported to Medicare as allowable pension expenses have been properly expended, no offset should be reported.

<u>INTERMEDIARY'S CONTENTIONS</u>:

The Intermediary argues that the gain on termination of the pension plan should be used to reduce the Provider's allowable costs in the year of termination. The amount of the gain should be offset against all costs within that cost center,which is employee benefits. The amount of offset would be limited to the costs within that cost center.

The Intermediary contends that the offset was proper and in compliance with HCFA Pub. 15-1
§ 2140.3D which states in part:

> Excess funds arising from the termination of a deferred compensation plan are to be recouped in the year of the plan termination (or the year in which the actuarial surplus is determined, if later) only against the cost center(s) in which the provider reported its deferred compensation plan contributions, usually administrative and general (A&G). The recoupment of the excess funds is treated on the cost report in the same manner for both cost reimbursed providers and prospective payment providers, although the payment impact upon prospective payment providers is limited to cost reimbursed activities. Excess funds exceeding the amount in the A&G (or other) cost center are not further offset in the current or subsequent years. The date of the official notice to the provider that the terminated plan has generated an actuarial surplus, e.g., notice by the Pension Benefit Guaranty Corporation (PBGC), or similar entity, of the surplus amount, represents the year in which the actuarial surplus is determined. . . .

<u>Id</u>.

The Intermediary points out that the excess pension funds represent a refund of prior period pension expense and must be offset against the related expenses. The Medicare regulation at 42 C.F.R. § 413.98(c) states in part:

> Normal accounting treatment -- Reduction of costs, all discounts, allowances, and refunds of expenses are reduction in the cost of goods or services purchased and are not income. If they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, if they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

Id.

The Intermediary points out that its position is further supported by St. John's Mercy Health Center (Pittsburgh, Pa.) v. Blue Cross and Blue Shield Association/Blue Cross of Western Pennsylvania, PRRB Hearing Dec. No. 93-D76, Aug. 13, 1993, Medicare and Medicaid Guide (CCH) ¶ 41,653, HCFA Adm. declined to review, October 7, 1993. In that case the Board found that the amount received from the conversion of a pension plan represented a refund of prior period expense and must be offset against the related expenses.

The Intermediary disagrees with the Provider's argument that previously contributed funds to the pension fund have met the qualifications of a funded depreciation account, thus sheltering the withdrawal of investment income from offset, and that the withdrawals of the available actuarial surplus, at termination, would consist entirely of interest income. The Intermediary further contends that interest income on a Provider's qualified pension fund is generally, not used to reduce interest expense. However, the regulation at 42 C.F.R. § 413.153(c)(3) provides an exception to this offset rule. That section states in part: "[a] similar treatment is accorded deposits in the provider's qualified pension fund if such deposits are used for other than the purpose for which the fund was established." Id. Therefore, the Intermediary argues that upon termination of the fund, any actuarial surplus, regardless of the mix in the surplus from contributions or from interest earned during the life of the pension plan, should be offset against the cost center in which contributions to the pension fund were included.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Law - 42 U.S.C.:

   § 1395x(v)(1)(A) - Reasonable Cost

2. Regulations - 42 C.F.R.:

§ 413.98	-	Purchase Discounts and Allowances and Refunds of Expenses
§ 413.153(c)(3)	-	Interest Expense

3. Program Instructions - Provider Reimbursement Manual, Part I (HCFA Pub. 15-1):

§ 226.2	-	Interest or Other Income Earned by the Funded Depreciation Account
§ 226.3	-	Deposits in the Funded Depreciation Account
§ 226.4	-	Withdrawals From the Funded Depreciation Account
§ 228	-	Qualified Pension Plan
§ 2140.3D	-	Deferred Compensation - Vested Benefits

4. Cases:

St. John's Mercy Health Center (Pittsburgh, Pa.) v. Blue Cross and Blue Shield Association/Blue Cross of Western Pennsylvania, PRRB Hearing Dec. No. 93-D76, Aug. 13, 1993, Medicare and Medicaid Guide (CCH) ¶ 41,653. HCFA Adm. Dec. To Review, Oct. 7, 1993.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions and evidence presented finds and concludes that the Intermediary properly offset the gain on the conversion of the Provider's pension plan. The Board finds that the amount of the gain realized by the Provider from the conversion of its former pension plan to the new plan represents a refund of prior pension expense payments which must be applied as a reduction to the operating expenses to which they relate. The Intermediary's application of the refund against the Provider's employee benefits cost center is a reasonable interpretation of the accounting treatment instructions contained in 42 C.F.R.
§ 413.98(c). That regulation states in part:

> All discounts, allowances, and refunds of expenses are reductions in the cost of goods or services purchased and are not income. If they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, if they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

Id.

The Board agrees that the Intermediary's offset is in conformity with HCFA Pub. 15-1 § 2140.3D which states in part: "[e]xcess funds arising from the termination of a deferred compensation plan are to be recouped in the year of the plan termination. . . only against the cost center(s) in which the provider reported its deferred compensation plan contributions,. . . ." Id. The Board finds that the regulatory instructions permit the gain to be offset against the Provider's employee benefit cost center.

The Board rejects the Provider's contention that this situation is analogous to a funded depreciation account. The Board also does not agree with the Provider's contention that the excess funds in the pension fund consisted entirely of interest income, as there was no evidence presented by the Provider to substantiate this contention.

DECISION AND ORDER:

The Intermediary properly offset the gain on the conversion of the pension plan. The Intermediary's adjustment is affirmed.

Board Members Participating:

Irvin W. Kues
James G. Sleep
Henry C. Wessman, Esquire

Date of Decision: April 16, 1998

FOR THE BOARD:

Irvin W. Kues
Chairman