

**PROVIDER REIMBURSEMENT REVIEW BOARD  
HEARING DECISION**

ON-THE-RECORD  
98-D102

**PROVIDER** -Saint Luke's Medical  
Center  
Cleveland, Ohio

**DATE OF HEARING-**  
September 1, 1998

Provider No. 36-0045

Cost Reporting Period Ended -  
December 31, 1989

**vs.**

**INTERMEDIARY** -  
Administar Federal, Inc.

**CASE NO.** 94-1146

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ISSUE:

Was the Intermediary's calculation of the number of full-time equivalents ("FTEs") when counting the number of interns and residents for FYE December 31, 1989 proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Saint Luke's Medical Center ("Provider") is a non-profit short-term acute-care teaching hospital in Cleveland, Ohio that also operates an approved Graduate Medical Education ("GME") program. In 1993, Administar Federal ("Intermediary") conducted an audit to determine the Provider's Intern and Resident ("I&R") count and GME reimbursement for fiscal year 1989, the year under appeal.<sup>1</sup> The Intermediary issued a Notice of Program Reimbursement ("NPR") on July 30, 1993 that incorporated the results of this audit.

On January 20, 1994, the Provider appealed three issues related to the NPR to the Provider Reimbursement Review Board ("Board"). The Provider has since decided not to pursue one of the issues, and it has resolved a second with the Intermediary. The parties have agreed to a partial resolution of the third issue under which the Intermediary would increase the I&R count by 6.601 FTEs.<sup>2</sup> They disagree, however, on whether the six months spent by one resident physician in the Provider's Spine Fellowship Program should be included in the count.

The Provider's appeal has met the jurisdictional requirements of 42 C.F.R. §§ 405.1835-.1841. The estimated reimbursement effect of the remaining issue is approximately \$6,500.

The Provider was represented by Dorothy Regas Richards, Esq., of Calfee, Halter & Griswold LLP, and the Intermediary, by Bernard M. Talbert, Esq., of Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the Intermediary did not count the number of FTEs in accordance with 42 C.F.R. § 413.86(f)(ii) which provides, in pertinent part, that no individual may be counted as more than one FTE. This section further states that:

If a resident spends time in more than one hospital or, except as provided in paragraph (f)(1)(iii) of this section, in a nonprovider setting, the resident counts as a partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the

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<sup>1</sup> Provider's Position Paper at 4.

<sup>2</sup> Provider's Position Paper, at 5/Intermediary's Position Paper, Exhibit I-1.

proportion of time worked as compared to the average time spent by other residents working in the same specialty program.

42 C.F.R. § 413.86(f)(ii).

For the 1989 resident count, the Intermediary incorrectly calculated the FTE for one resident physician enrolled for six months in the Provider's Spine Fellowship Program.<sup>3</sup> The Intermediary's determination resulted in an understatement of the Provider's FTEs.

The Provider argues that the Intermediary mistakenly asserts that the Spine Fellowship Program was not reimbursable because it did not satisfy the requirements of 42 C.F.R. § 413.86(b). Among other things, this section requires that a program be certified either as a specialty or subspecialty in either the Directory of Graduate Medical Education Programs published by the American Medical Association ("AMA") or the annual Report and Reference Handbook published by the American Board of Medical Specialties or accredited by the American College of Graduate Medical Education ("ACGME"). However, the Spine Fellowship Program could not have been certified by any of these authorities since ACGME did not accredit fellowships in spine surgery prior to July 1, 1993.<sup>4</sup>

The Provider asserts that the Spine Fellowship Program was an integral part of its GME program. The Provider developed the Program in conjunction with the Advisory Council for Orthopaedic Resident Education and offered it to residents who had completed a full orthopaedic residency. These residents, who spent twelve months in the Program, devoted the majority of their time to activities related to patient care, including participating in surgery, patient clinics, patient office visits, and hospital rounds. Additionally, the residents submitted no professional bills for patient care activities.

The Provider also points out that other local and national providers offer spine fellowships. It has no reason to believe that intermediaries do not reimburse providers for these programs, in accordance with the GME regulations.

The Provider concludes that it is entitled to an addition of .250 FTEs, based, in part, on a prior Board decision. The Board, in Valley Hospital Medical Center (Las Vegas, Nev.) v. Aetna Life Insurance Company, PRRB Dec. Nos. 93-D15 and 93-D16, Medicare and Medicaid Guide ("CCH") ¶ 41,098, noted, in reference to one of the issues under appeal, that the regulation at 42 C.F.R. § 413.9(c)(1) requires that Medicare payments to providers should be fair.

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<sup>3</sup> The resident was enrolled in the Program from July 1, 1989 through June 30 1990. See Provider's Position Paper, Exhibit F.

<sup>4</sup> Provider's Position Paper, Exhibit G.

INTERMEDIARY'S CONTENTIONS:

The Intermediary argues that its determination regarding the Spine Fellowship Program resident complies with the requirements of 42 C.F.R. § 413.86(b) for approved residency programs. The Provider has not shown that the Program was approved by one of the national organizations listed, or was certified and included as a specialty or subspecialty by either the Directory of Graduate Medical Education Programs published by the AMA or the Report and Reference Handbook of the American Board of Medical Specialties. Additionally, the Accreditation Council for Graduate Medical Education has not approved the Program as a fellowship program in geriatric medicine or as one related to induced abortions.

CITATION OF LAWS, REGULATIONS AND PROGRAM INSTRUCTIONS:1. Laws - Title XVIII of the Social Security Act:

Section 1861(v)(1)(A) - Reasonable Cost

2. Regulations - 42 C.F.R.

§§ 405.1835-.1841 - Board Jurisdiction

§ 413.86(f)(ii) - Direct Graduate Medical Education Payments, Determining the Total Number of FTE Residents

§ 413.86(b) - Direct Graduate Medical Education Payments, Definitions

§ 413.9(c)(1) - Cost Related to Patient Care, Application

3. Cases:

Valley Hospital Medical Center (Las Vegas, Nev.) v. Aetna Life Insurance Company, PRRB Dec. Nos. 93-D15 and 93-D16, Medicare and Medicaid Guide ("CCH") ¶ 41,098.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board after consideration of the facts, parties' contentions and evidence presented, finds and concludes as follows:

The Board finds that 42 C.F.R. § 413.86(b) applies to this case. The key question to be answered is whether or not the resident fellow was part of an approved program as defined by section 413.86(b). The Board finds that the resident fellow in question was in a residency program at St. Luke's, but finds that the program was not accredited or approved by the appropriate body. The Board notes that after the year in question, the program did receive approval from the ACGME. See Provider Exhibit P-6.

DECISION AND ORDER:

The Intermediary's adjustment is affirmed. The resident fellow in question was not a part of an approved GME program.

Board Members Participating:

Irvin W. Kues  
James G. Sleep  
Henry C. Wessman, Esq.  
Martin W. Hoover, Jr., Esq.  
Charles R. Barker

FOR THE BOARD:

Irvin W. Kues  
Chairman