PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

99-D37

PROVIDER -
Ozark Mountain Rehabilitation Center

Provider No. 26-6512

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association
Blue Cross and Blue Shield of
Blue Cross and Blue Shield of Missouri

DATE OF HEARING-
November 17, 1998

Cost Reporting Period Ended -
August 31, 1980
August 31, 1981
August 31, 1982

CASE NO. 84-0407
88-1478

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ISSUES:

Jurisdiction

Were the Intermediary's PSRO and PIP deductions from the remittance advices in payment checks in the amount of $ 25,455 proper?

Did the Intermediary fail to make timely reimbursement to the Provider for its covered services?

Should the Intermediary reimburse the Provider for its cost of money by paying interest on all payments or awards granted by the PRRB?

Was the Intermediary's adjustment to interim payments proper?

Was the Intermediary's adjustment to errors on non-covered charges proper?

Did the Intermediary fail to make proper state Medicaid filings?

Was the Intermediary's adjustment to the Provider of remittance advices and payment checks proper?

Did the Intermediary fail to make timely reimbursement to the Provider for its covered services thereby entitling the Provider to interest on such late payments and on all payments and awards granted by the PRRB?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Ozark Mountain Regional Rehabilitation Center, Inc. ("Provider").was approved as a rehabilitation agency in August of 1979 by the Missouri Division of Health. The Provider did not receive a provider number until late January, 1980. The corporation is owned by Duane Young (50% ownership) and Rodney Jackson (50% ownership). Due to the efforts of its two owners, the Provider grew quickly and its operations encompassed a large geographic area in the State of Missouri. Mr. Young acted as the clinical administrator of the central and southern Missouri regions, and Mr. Jackson served as the clinical administrator of the eastern Missouri region. By the end of FYE 1980, the Provider employed four full time and fifteen part-time therapists, who traveled all over eastern, central and southern Missouri to deliver services to patients in rural convalescent homes.

The Provider was represented by Bruce Yetter, Esq. and the Intermediary was represented by Bernard M. Talbert, Esq. of Blue Cross and Blue Shield Association, Chicago.

PROVIDER'S CONTENTIONS:

The Provider points out that the issues involving jurisdiction relate to matters whose source for merit or entitlement comes from the Provider Statistical Report (PSR), prepared by the Intermediary and used as the basis for all Notices of Program Reimbursement (NPR). The basic costs, reimbursement, and other numbers come from the data collected by the Intermediary and presented as a baseline, against which the Providers cost report is audited.

The Provider contends that there have been unexplained variances in the reporting, making the Provider's cost report and the Intermediary's NPR virtually irreconcilable. The Provider reported total allowable costs of $173,025 in FYE 1980 while the NPR notes $72,139, a variance of $100,886. In FYE 1981, the Provider reported total allowable costs of $477,842 while the NPR notes $409,929, a variance of $67,914. In FYE 1983, the Provider reported total allowable costs of $759,117 while the NPR notes $624,136, a variance of $134,981. The Provider points out that these variances are just some of many unexplained variances which may be explained, or at least understood, if the PSR for each of those years would be produced.

The Provider argues that there are numerous differences in the Provider's figures and the Intermediary's figures. The Provider points out that at the hearing, the undisputed testimony of its witness was that the only way a proper accounting for all of the various deductions, credits, charges, and recoupments noted on the Remittance Advices, as well as for determination of the correctness of the baseline information used by the auditors in the NPRs for the three years, would be to have access to the PSR for each of those years.

The Provider contends that the PRRB has jurisdiction limited to the NPR; however, the information necessary for the determination of the correctness of the baseline data used for the NPRs is the PSR, which is the entire basis for the remaining questions in controversy before the Board. The Provider points out that it requested that the Intermediary provide its baseline data, the PSR, for each of the years in contention, and that this Board should compel the Intermediary to do so, so that the baseline data in the NPR can be verified.

The Provider argues that it is entitled to interest on the disputed amounts. It contends that it has made a compelling case for the imposition of interest. There was undisputed testimony of the lack of cooperation, information and assistance by the Intermediary. To compound the problem, the Intermediary then embarked on a pattern of unfair and unjustifiable audit adjustments. The Provider points out it has documented questionable deductions from the cash payments totaling thousands of dollars. Despite repeated requests for review and explanation, the Intermediary waited until November 17, 1998, to finally agree that their position was undefensible.

INTERMEDIARY'S CONTENTIONS:

The Intermediary argues that the Board does not have jurisdiction. The Intermediary points out that the Board has already made a jurisdictional determination in this case. In a letter dated March 10, 1998, the Board informed the Provider that it "does not have jurisdiction over issues six, seven, eight, nine, and ten and dismisses them from the appeal." The Intermediary requests that the Board uphold its prior jurisdictional decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Board, after reviewing the facts, the pertinent laws and regulations, testimony elicited at the hearing and post hearing brief finds and concludes that it does not have jurisdiction of any of the issues except for the issue of occupational therapy. The Board will rule on the occupational therapy issue later in this decision.

The Board considered the parties' positions and finds the following. Pursuant to 42 U.S.C. § 1395oo(a) and 42 C.F.R. § § 4O5.1835 -.1841, a provider has the right to a hearing before the Board with respect to a timely filed cost report if it is dissatisfied with the final determination of the intermediary as to the amount of total reimbursement due the provider for the period covered by the cost report, the amount in controversy is $ 10,000 or more, and the request for the hearing is filed within 180 days of the date of the determinations. The Board finds that for all of the jurisdictional issues, there was no final determination with which the Provider was dissatisfied. While the Provider refers to "determinations" made in the form of interim payments, the Board does not have jurisdiction over rates of payment. The Board also notes that the matter of late payments is a cost outside the cost report for which there is also no final determination. The Board does not have jurisdiction over non-covered charges and PSRO adjustments. The Board, therefore, does not have jurisdiction over any of the issues presented except for the occupational therapy issue.

DECISION:

The Board does not have jurisdiction over any of the issues presented by the Provider except for the issue of occupational therapy.

ISSUE:

Were the Intermediary's adjustments to occupational therapy costs proper?

FACTS:

Blue Cross and Blue Shield of Missouri ("Intermediary") disallowed all of the Provider's occupational therapy costs in its Notice of Program Reimbursement dated September 26,

1984. The Provider disagreed with its Intermediary's determination and filed an appeal with the Provider Reimbursement Review Board ("Board:) pursuant to 42 C.F.R.§§ 1835-.1841 and has met the jurisdictional requirements of those regulations. The Medicare reimbursement amount in contention is approximately $26,963.

PROVIDER'S CONTENTIONS:

The Provider contends that the law, regulations and/or the policy on the allowability of occupational therapy costs was changed after September 1, 1982. The Provider notes that the law was changed prior to the audit and or Notice of Program Reimbursement of September 26, 1984. The retroactive application of the change to disallow occupational therapy costs for which the Provider was paid and whose services the Provider furnished, is contrary to the established principles of accounting, and constitutes unconstitutional taking, without benefit of due process. The Provider contends that the Intermediary contributed to the misunderstanding of the allowability of occupational therapy costs, which the Provider would not have incurred, but for the representation that such costs were reimbursable.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that occupational therapy is a nonreimbursable cost. The cost report form indicates that only outpatient physical therapy and outpatient speech pathology are reimbursable costs. The cost report form indicates that occupational therapy falls under the heading in the cost report as a nonreimbursable cost. The Intermediary also points out that the Provider signed the cost report on December 27, 1982, and that the cost report indicated that occupational therapy was categorized as nonreimbursable.

The Intermediary also points out that the certification in the categories of cost centers, including physical therapy and speech pathology as reimbursable, and occupational therapy as nonreimbursable, was identical in the 1981 cost report. Therefore, the Intermediary argues that the cost reports for periods 1981 and 1982 indicated that occupational therapy was a nonreimbursable cost, even though the Provider contends it was not informed of this until 1984.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

§ 1395 oo (a) - Provider Reimbursement Review Board

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

§ § 405.1835-.1841 - Board Jurisdiction

FINDINGS AND CONCLUSIONS OF LAW:

The Board, after reviewing the pertinent laws and regulations, testimony elicited at the hearing and the Provider's post-hearing brief finds and concludes that occupational therapy cost claimed by the Provider was not a reimbursable cost.

The Board agrees with the Intermediary that occupational therapy cost, as found on the Provider's cost report, is reported under the heading of nonallowable cost. The Board also finds that the Provider knew or should have known that this cost was nonallowable. The Board also notes that the Provider Representative stated (Tr. at 102) that the occupational therapy issue should probably be withdrawn.

DECISION AND ORDER:

The Intermediary properly denied reimbursement for occupational therapy costs on the Provider's cost report. The Intermediary's adjustment is affirmed.

Board Members Participating:

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

Date of Decision: April 21, 1999

FOR THE BOARD:

Irvin W. Kues
Chairman