PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

2004-D46

PROVIDER –
Spectrum Home Care, Inc.

Provider No. 23-7251

vs.

INTERMEDIARY –
Blue Cross Blue Shield Association/
United Government Services

DATE OF HEARING –
August 25, 2004

Cost Reporting Periods Ended
December 31, 1996
December 31, 1998
December 31, 1999

CASE NOs. 01-2860
01-1540
02-1247

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ISSUE:

Was the Intermediary's adjustment to start-up costs proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)) is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due the providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. § 1395(h), 42 C.F.R. §§ 413.20(b) and 413.24(b)

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and the proportion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. §405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Spectrum Home Care, Inc. (Provider) is a freestanding home health agency located in Warren, Michigan. The Provider incurred start-up costs beginning in December of 1993, and saw its first patient on February 17, 1994. However, the Provider was not certified to participate in the Medicare program until May 26, 1994. The Provider filed its first cost report for the period covering May 26, 1994 to December 31, 1994. The Provider computed its start-up costs as $58,989.72 and amortized it over sixty months as follows:

FYE 1994 -	$ 6,882.00
1995 -	11,797.93
1996 -	11,797.93
1997 -	11,797.93
1998 -	11,797.93
1999 -	6,585.00
	$60,658.72

United Government Services (Intermediary) determined that the 1999 amortization appears to be an error, and should have been $4,916.00. The Provider has not disputed the Intermediary's finding.

The Intermediary did not audit the 1994 and 1995 claimed amortization cost, and the full

amounts claimed were allowed. However, the Intermediary audited the 1998 cost report for the first time in 2000 and determined that the start-up costs claimed were incorrect as stated. The Intermediary concluded that the start-up period ended on February 17, 1994 when the Provider saw its first patient. Therefore, the Intermediary reduced the total start up costs to $4,931.60, removing operating costs incurred after the agency became operational on February 17, 1994. The Intermediary determined that the correct annual amortization amount should be $986.00 and adjusted the cost reports that were still subject to reopening, i.e., 12/31/96, 12/31/98, and 12/31/99 cost reports, accordingly. The cost reports for fiscal years ended 1994, 1995 and 1997 were final and beyond the three-year limitation for reopening[1]. Therefore, they were not affected by the audit adjustments.

The effect of the Intermediary's adjustment was to deny reimbursement for the Provider's operating costs of $54,073.72 (less the amount of over-amortization recognized in 1994, 1995 and 1997).

Thomas E. Boyd, Esq., of Boyd and Nichols, Inc., represented the Provider. James R. Grimes, Esq., of the Blue Cross/Blue Shield Association, represented the Intermediary.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

There is no statutory or regulatory provision that directly addresses this issue.

Section 2132.2 of the Provider Reimbursement Manual (PRM) defines start-up costs as those costs incurred in developing the provider's ability to furnish patient care services up to the date the provider sees its first patient, whether Medicare or non-Medicare. Applying the Program instructions to this case, the Provider began to incur start-up costs in December of 1993. When the first patient was seen on February 17, 1994, the start-up period ended, and the Provider began the operation of rendering health care services to homebound patients. The Intermediary determined that the correct start-up cost was $4,931.60.

The Provider incurred $54,073.72 in operating expenses between February 17, 1994 and May 26, 1994 when the agency was certified to participate in the Medicare program. Those costs could have been included the Provider's initial cost report as operating costs if the provider had elected to begin its cost reporting period on the date operations began rather than the date when it was certified by Medicare. This election is spelled out in PRM 15 Part II section 102.2 (B), which states that:

> …if a provider…began operations on February 1, 1977 and entered the program on July 1, 1977, it could have filed its initial cost report for the period beginning February 1, 1977, and ending December 31, 1977, or,

[1] The time for reopening a determination on the amount of program payment contained in a notice of program reimbursement is limited to within 3 years of the date of such notice. See HIM 15-2 §2931.1.

> alternatively, for the period beginning July 1, 1977 and ending December 31, 1977.

The Provider chose the alternative and filed its initial cost report beginning May 26, 1994, the date of Medicare certification. As a result, the Provider could not include all of its operating costs incurred between the date operations began and the date of certification.

The provisions contained in section 2132 of the PRM provide clear and specific instructions as to the start and end date for the accumulation of start-up costs as well as the proper method of amortizing those costs. The record establishes that the Provider saw its first patient on February 17, 1994 and was certified under the Medicare program on May 26, 1994. Therefore, the Provider became operational on February 17, 1994, and the accumulation of start-up costs stopped. The costs incurred between February 17 and May 26, 1994 were operating costs associated with delivery of patient care services, and therefore were not start-up costs under the definition contained in the Manual.

The Provider had the option of claiming the costs incurred during the period between February 17 and May 26, 1994 on its initial cost report by electing a cost reporting period beginning on February 17, 1994 (PRM 15 II § 102.1). Nonetheless, the costs can only be considered operating costs, and their inclusion on the cost report is the Provider's responsibility.

The Provider's objection to the Board's consideration of the Intermediary's amended position paper is overruled. The submission is identical to the paper supplied to the Provider except for the addition of publicly available manual provisions and prior decisions of the Board. The Intermediary's position was not changed by the submission, and the Board has no basis upon which to sustain the objection.

DECISION AND ORDER:

The Intermediary has computed the correct amortization of start-up costs in the cost years under appeal. Although the costs could have been claimed on the 1994 cost report as allowable operating costs, the error in the way that the Provider claimed the costs was not discovered until the time for re-opening had passed. The Board does not have the authority to reopen the cost reports for the fiscal years ended 12/31/94, 12/31/95 and 12/31/97 as they are not properly before the Board. This result leaves the Provider with no recourse for claiming the additional operating costs in the amount of $54,073. The Intermediary's adjustments are affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West

FOR THE BOARD:

DATE: September 30, 2004

Martin W. Hoover, Jr., Esquire