PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

ON THE RECORD
2006-D27

PROVIDER -
Phoenix Baptist Hospital
Phoenix, Arizona

Provider No.: 03-0030

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
BlueCross & BlueShield of Arizona

DATE OF HEARING -
October 4, 2005

Cost Reporting Period Ended -
August 31, 1997

CASE NO.: 00-1020

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ISSUE:

Whether the Intermediary improperly failed to offset investment losses incurred by the Provider's home office against interest income earned on funds the Provider deposited with a trustee to retire the debt associated with an advance refunding transaction.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a provider of medical services.

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:

Phoenix Baptist Hospital (Provider) is a non-profit short-term hospital located in Phoenix, Arizona. It is part of a chain organization whose home office was Baptist Hospitals and Health Systems, Inc. (BHHS). During the fiscal year ended August 31, 1997, BHHS incurred a substantial investment loss when it disposed of Arizona Integrated Management Services (AIMS), a company that provided billing, collection and other management services to physician organizations. Since all investment and financing activities for this chain took place at the home office level, and investment losses were deducted from investment income so that the net amount would be offset properly in the computation of allowable interest expense, the home office allocated a pro rata share of the investment loss to all components of the chain, including the Provider.[1] The home office allocated a portion of the investment loss to the income earned on funds held in trust for the advance refunding of two of the Provider's bond issues.

[1] See Provider Supplemental Exhibit P-2.

The Intermediary initially determined that none of the home office loss could be offset against any of the Provider's investment income. However, based upon additional information that the Provider submitted in its position paper, the Intermediary reassessed its position regarding the offset of the loss.

In a May 3, 2005 administrative resolution,[2] the Intermediary agreed that the loss should be included in the calculation of Provider's net investment income to be offset against its allowable interest expense. Based on this resolution, the Intermediary computed the net add back of the Provider's pro rata share of the home office loss to be $492,317.[3] This calculation did not include an allocation of the investment loss to the income earned on funds set aside in trust for the retirement of the Provider's defeased bonds. Hence, the question for the Board to decide in this case is whether a portion of the investment loss should have been allocated to and offset against the investment income earned on funds held in trust for the purpose of meeting the Provider's obligation related to the defeasance transactions.[4]

The Intermediary's treatment of the allocation of the loss resulted in a reduction in Medicare reimbursement of approximately $61,000. The Provider's filing met the jurisdictional requirements of 42 C.F.R. §§405.1835 - 405.1841. The Provider was represented by Mr. James E. Burnside, Consultant to the BHHS Legacy Foundation. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and program instructions, evidence and parties' contentions, the Board finds and concludes that the Intermediary did not properly apply the AIMS investment loss incurred by the Provider's home office (BHHS) against the Provider's bond defeasance funds held in trust for the 1992 and 1993 Provider bonds.

The Intermediary's primary argument is that the Provider improperly followed the Board's decision in Good Samaritan Regional Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Arizona, PRRB Decision 95-D32, March 23, 1995, Medicare and Medicaid Guide ¶43250, (Good Samaritan). In summary the Board found:

(1) The Medicare regulation at 42 C.F.R. §413.153 (b)(2) (iii) requires that interest expense be reduced by investment income.

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2 See Id. Exhibit P-3.

3 See Id. Exhibit P-4.

4 There is no dispute regarding the amount of the loss to be offset, so the Board will not complicate the decision with a thorough presentation of the computational aspects of the case, but will focus on the Medicare reimbursement principles involved here.

(2) HCFA Pub. 15-1 §202.2 provides CMS' interpretive guidelines on the application of the above regulation and requires that all gains and losses be included in investment income.

(3) HCFA Pub. 15-1 §202.2 does not distinguish between interest income earned on an advance refunding and interest income or losses resulting from a Provider's operating fund investments.

(4) The plain language of the regulation, when read together with HCFA Pub. 15-1 §202.2, provides that gains and losses from advance refunding transactions and operating fund investments are to be used in the determination of the amount of investment income which is used to reduce total interest expense.

(5) HCFA Pub. 15-1 §233.3D discusses the treatment of income and expenses associated with the advance refunding transactions. It requires: (1) interest income earned on an advance refunding must be used to reduce the interest expense; (2) the general rules governing the offset of investment income set forth in HCFA Pub. 15-1 §202.1 apply to advance refunding; and (3) although §233.3D may require that the interest income from an advance refunding be netted against the interest expense incurred on the refunded debt, it does not limit any other interest income or expense from being included in the calculation.

The Secretary declined to review the Board's Good Samaritan decision. The Intermediary in this current case is nevertheless asking the Board to make a new interpretation of the above decision. The Board finds this request a usurpation of the Secretary's authority in light of the Secretary's declination to review. That declination was effectively a de facto acceptance of the Board's interpretation of Medicare regulations and program Instructions which the Intermediary essentially either questioned or ignored in this case.

The Board understands the Intermediary's arguments that: (A) offsetting of losses against investment income should be limited to losses outside the advance refunding under HCFA Pub. 15-1 §233.3D; and (B) HCFA Pub. 15-1 §202.2 allows income from an escrow fund to only be applied against interest expense related to the defeased bonds. As stated above, the Board does not agree with the Intermediary's analysis and finds the Good Samaritan findings relevant to this case. The Board finds the Intermediary inconsistent in applying its interpretation of program instructions. In Exhibit P-4 to the Provider Supplemental Position Paper, the Intermediary accepts the methodology used by the home office to allocate the AIMS loss to the various members of BHHS. This allocation included a distribution of the loss to the escrowed bond fund for the 1992 and 1993 defeased bonds. Using the Intermediary's interpretation that only investment income and losses related to the defeased bonds should be applied to that situation and that no new loss after the bond defeasment should be offset against those defeasement bonds, the Board concludes that none of the AIMS loss would have been applied to the defeased bond investment income offset. Under the Intermediary's interpretation, the loss should have been offset against only providers in the chain organization. Thus, Phoenix Baptist Hospital would have received a significantly greater portion of the loss for reduction of the investment income offset than was calculated by the Intermediary.

The Board finds that since the Provider's home office operating fund investment loss was less than the investment income earned by the escrow account of the refunded bonds, the Provider has realized net investment income. This net investment income should be offset accordance with HCFA Pub. §§202.1, 202.2 and 233.3D and apportioned based on interest expense pursuant to 42 C.F.R. §413.153(b)(2)(iii).

DECISION AND ORDER:

The Provider's home office properly applied the AIMS loss against the Provider's escrowed bond defeasement fund investment income. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.

FOR THE BOARD:

DATE: June 2, 2006

Suzanne Cochran
Chairperson