PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2007-D60

PROVIDER -
Guam Memorial Hospital Authority

Provider No.: 65-0001

vs.

INTERMEDIARY -
BlueCross BlueShield Association/
United Government Services, LLC-CA
(n/k/a National Government Services-CA)

DATE OF HEARING -
October 19, 2005

Cost Reporting Periods Ended -
September 30, 2000 and September 30, 1998

CASE NOs.: 04-1341 and 04-1369
(respectively)

INDEX

ISSUE:

Whether the Intermediary's adjustment disallowing the Provider's claimed withholding tax expense was proper.[1]

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper 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 providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. §1395h, 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 portion 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:

Guam Memorial Hospital Authority (Provider) is a general acute care hospital that is a component unit of the Guam government and located in Tamuning, Guam. For the periods in dispute, the Provider withheld payroll taxes from the wages that it paid its employees. However, the Provider was delinquent in remitting the withheld taxes to Guam's Department of Revenue and Taxation (Department). As a result, the Department placed a lien on the Provider's bank accounts to recover the outstanding and overdue payroll taxes.

Due to its ongoing cash crisis, the Provider approached the Guam legislature for a subsidy to pay the Department the outstanding payroll taxes. The Legislature passed, and the Governor signed, Guam Public Law 25-122 which authorized a $7.8 million appropriation from Guam's General

[1] Although the issue statement and much of the discussion in the parties' position papers and in the transcript address the costs at issue in this case as "withholding tax expense" the costs at issue are actually salary expenses – a portion of which was not paid to the employees but withheld as the employees' withholding taxes. The withholdings are not the Provider's expenses, but rather, a liability for which the Provider is responsible unless and until the taxes are remitted to the taxing authority, in this case the Government of Guam. The issue to be decided by the Board is whether the Provider properly liquidated the liability associated with the withheld payroll taxes and thus, whether the underlying salary costs that represent the withheld taxes are allowable Medicare costs.

Fund to the Provider to pay the outstanding taxes and remove the levy imposed by the Department. Guam's Department of Administration handled the appropriation and, using journal entries, created a three-way transaction to report the fund transfers. The transaction: 1) transferred funds from the Government of Guam's General Fund to the Provider; 2) transferred the funds from the Provider to the Department and; 3) completed the transaction by transferring all funds collected by the Department back to the General Fund.

United Government Services (Intermediary) examined the transaction during its audit of the Provider's 1998 and 2000 cost reports and disallowed the costs associated with the unpaid withholdings on the basis that the liability for the withheld taxes was forgiven rather than liquidated. The Intermediary held that since the expenses were forgiven, they were never incurred and should not be allowed. The Intermediary posted its adjustments to the Administrative and General cost center on the Provider's cost report. At issue in this appeal is whether the journal entries made by the Guam Government constituted a proper liquidation of the payroll tax liability under the Medicare regulation at 42 C.F.R. §413.100.

Pursuant to 42 C.F.R. §§405.1835-1841, the Provider filed appeal requests with the Board for the two years at issue on March 9, 2004 and met the jurisdictional requirements of those regulations. The Provider was represented by Lloyd Bookman, Esq., of Hooper, Lundy and Bookman, Inc. The Intermediary was represented by Bernard M. Talbert, Esq. of Blue Cross Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider argues that the transaction was a lawful liquidation of the payroll tax withholdings, and that Guam P.L. 25-122 authorized the appropriation of $7.8 million for the specific purpose of paying the tax liability. The P.L. 25-122 did not forgive any amounts owed to the Department, and at section 1(a) instructed the Department to deposit amounts collected for back taxes to the General Fund. The language of the P.L. clearly demonstrated the Government of Guam's expectation that the Department would collect the tax obligation owed by the Provider and does not support any conclusion that the obligation was forgiven.

The Provider also argues that the Department considers the taxes to have been paid by a subsidy from the Government of Guam. The subsidy was a legal transfer of assets utilized to satisfy the tax liability, not a forgiveness of the liability. Further, the Provider argues that the amounts owed were withholdings that were mandated by the Federal Government and for which the Government of Guam holds no authority to forgive.

The Provider also contends that its financial auditors examined the transaction and independently concluded that it was a legal transfer of assets under GAAP and Financial Accounting Standards Board Interpretation No. 39. The Provider argues further that the transaction was a legal transfer as discussed in Provider Reimbursement Manual (PRM), Part 1 §2305.

INTERMEDIARY'S CONTENTIONS:

The Intermediary argues that the transaction was not a liquidation of the tax liability. PRM-1 §2305 requires that liquidation of liability must be made by a legal transfer of assets. In this case, the journal entries were a paper action that eliminated the debt but made no actual transfer of assets. The Intermediary argues further that the reduction in the withholding taxes owed to the Department amounted to forgiveness of the debt, and that in a creditor/debtor relationship, debt satisfaction makes the parties whole. In this case, the debtor (Provider) no longer owes the withheld taxes to Guam's Department of Revenue and Taxation, but the creditor (i.e., Guam General Fund) remains short the amount of the withheld taxes that was never paid by the Provider. The debt was therefore, forgiven, rather than satisfied.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering Medicare law and guidelines, the parties' contentions and the evidence presented at the hearing, the Board finds as follows.

There is no dispute that the controlling regulation at 42 C.F.R. §413.100 requires the timely liquidation of an accrued short-term liability in order for the underlying costs associated with that liability to be allowable in the cost reporting period of the accrual. The regulation states in relevant part:

> Special treatment of certain accrued costs.
>
> (a) Principle. As described in § 413.24(b)(2), under the accrual basis of accounting, revenue is reported in the period in which it is earned and expenses are reported in the period in which they are incurred. In the case of accrued costs described in this section, for Medicare payment purposes the costs are allowable in the year in which the costs are accrued and claimed for Medicare payment only under the conditions set forth in paragraph (c) of this section.
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> * * * * *
>
> (2) Requirements for liquidation of liabilities. For accrued costs to be recognized for Medicare payment in the year of the accrual, the requirements set forth below must be met with respect to the liquidation of related liabilities. If liquidation does not meet these requirements, the cost is disallowed, generally in the year of accrual, except as specified in paragraph (c)(2)(ii) of this section.
>
> (i) A short-term liability.
>
> (A) Except as provided in paragraph (c)(2)(i)(B) of this section, a short-term liability … must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred.

The language of the related manual provision, PRM-1 §2305A, states in relevant part:

> A. General.--A short term liability must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred, subject to the exceptions specified in §§2305.1 and 2305.2. Liquidation must be made by check or other negotiable instrument, cash or legal transfer of assets such as stocks, bonds, real property, etc. Where liquidation is made by check or other negotiable instrument, these forms of payment must be redeemed through an actual transfer of the provider's assets within the time limits specified in this section. Where the liability (1) is not liquidated within the 1-year time limit, or (2) does not qualify under the exceptions specified in §§2305.1 and 2305.2, the cost incurred for the related goods and services is not allowable in the cost reporting period when the liability is incurred, but is allowable in the cost reporting period when the liquidation of the liability occurs.

The Intermediary maintains that the transaction by which the Provider's liability was satisfied did not constitute a legal transfer of the Provider's assets; it was a forgiveness of the Provider's debt and, therefore, not a reimbursable Medicare expense.

As a "component unit of the Government of Guam,"[2] the Provider petitioned the Guam Legislature for special funding to pay its withholding tax liability. In response, the Legislature passed Guam Public Law 25-122 which authorized funding from Guam's General Fund to the Provider to pay the outstanding withholdings. The Board considers the enactment of the public law significant and does not dispute the Legislature's authority to identify assets, appropriate monies and delegate spending authorities for their disbursement. In this case, the Legislature enacted a public law that was a formal appropriation of funds to the Provider for the purpose of discharging the withholding tax liability. Once the appropriation was made, the funds became an asset of the Provider; therefore, the Board finds that the series of journal entries made by the Government to implement the provisions of the Public Law was an execution of the law's disbursement mandate and constituted a legal transfer of the Provider's assets in satisfaction of the withholding amounts due the Department.

The liquidation of the 1998 accrued tax liability, however, was not made within the one-year deadline established in the controlling regulation. Therefore, the salary costs that gave rise to the accrued tax liability cannot be allowed in the year of the accrual; however, in accordance with PRM-1 §2305A, they would be allowable in the year in which they were paid.

The Board examined the adjustments made by the Intermediary related to the withholding taxes and found that the Intermediary made its adjustments to the Administrative and General Cost center on both the 1998 and 2000 final settled cost reports. The Board finds that because the adjustments were actually disallowances of salary costs, the adjustments should have been to the salary costs accumulated in each cost center. By simply reversing the disallowance for the 2000 FY, the Provider will be made whole. However, in light of the Board's finding that the liquidation of the payroll tax liability for 1998 was not made timely and that the related salary costs are not allowable in that year, the Intermediary's adjustment must be corrected.

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[2] See, Independent Auditor's Report, Provider Exhibit P-1, pg.2.

DECISION AND ORDER:

The Intermediary's adjustment for the 2000 FY is reversed. The adjustment for the 1998 FY is hereby modified and remanded. The Intermediary is to review the 1998 disallowance and ensure that the adjustment is made to the salary costs in the appropriate cost centers and that the costs are allowed in the year in which the related liability was liquidated, subject to the reopening provisions of 42 C.F.R. §413.1885.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Gary B. Blodgett, D.D.S.
Elaine Crews Powell, C.P.A.
Anjali Mulchandani-West
Yvette C. Hayes

DATE: August 9, 2007

FOR THE BOARD:

Suzanne Cochran, Esquire
Chairperson