

PROVIDER REIMBURSEMENT REVIEW BOARD HEARING DECISION

2000-D30

PROVIDER -
Menifee Valley Medical Center
Sun City, California

vs.

DATE OF HEARING-
June 30, 1999

Cost Reporting Period Ended –
June 30, 1992

CASE NO. 95-0459

INTERMEDIARY -
Blue Cross and Blue Shield
Association/Blue Cross of California

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ISSUE:¹

Was the Intermediary's elimination of square footage statistics for the fourth floor storage area correct?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Menifee Valley Medical Center ("Provider") is a general, short-term, district hospital located in Sun City, California. For the fiscal year ended June 30, 1992, Blue Cross and Blue Shield Association/Blue Cross of California ("Intermediary") audited the Provider's Medicare cost report and issued a Notice of Program Reimbursement which included an adjustment relating to the above-stated issue. Based on its determination that the fourth floor storage area was not used for patient care, the Intermediary reclassified all square footage relating to the shelled-in storage space from the Operation of Plant cost center to a non-reimbursable cost center established for non-patient care cost.

The Provider appealed the Intermediary's determination to the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§405.1835-.1841 and has met the jurisdictional requirements of those regulations. The Intermediary estimates the Medicare reimbursement amount in controversy to be approximately \$225,000. The Provider was represented by Robert A. Klein, Esquire, of Foley & Lardner. The Intermediary's representative was Bernard M. Talbert, Esquire, Associate Counsel for the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that the fourth floor space was actually used for the storage of various types of items, including archived medical record files, and unused fixed assets such as beds, office furniture and equipment, and laboratory and radiology equipment. In support of its contention, the Provider submitted five sworn declarations and the live testimony of a witness, all of whom attest that the fourth floor was substantially filled with stored items during 1992.² The declarations included statements from the former and current Administrators, the hospital's Manager of Security since 1990, the Chief Engineer since 1989, and a Reimbursement Analyst from the Provider's home office. All of these witnesses testified that the fourth floor was substantially filled, ranging from 75 percent to 85 percent of the available space except for access ways.

By contrast, the Intermediary's position is based on the testimony of its auditor who testified that the

¹ All other issues previously appealed by the Provider, including the malpractice insurance issue presented at the hearing, have been administratively resolved or withdrawn from this case.

² See Provider Exhibits P-6 - P-10.

floor was 10 to 12 percent filled with scattered boxes based on a 30 minute walk-through in January of 1992. The Provider argues that the Intermediary's workpapers and explanation in its audit adjustment report do not support the testimony of the Intermediary's witness.³ The notation in the audit report reflects a January, 1992 visit to the hospital by the auditors, but mentions nothing as to the isolated (10 to 12 percent) storage on the fourth floor. Instead it reports that "some areas . . . have yet to be used for patient care;" and that the "fourth floor has not yet been commissioned for patient care . . . and is used only for storage" The Provider notes that the audit report recognizes the floor's use for storage, not its lack of use for storage, which is implied from the Intermediary's reclassification of the floor to a non-reimbursable cost center. Further, the workpaper gives no hint that the storage use was minimal as stated in the testimony of the Intermediary's witness. The Intermediary did not produce any other witness or declarations to support its witness' recollection.

The Provider argues that it is clear from the workpapers and adjustment report that the reclassification to a non-reimbursable cost center had no relationship to the proportion of the floor used for storage, or to the scope or volume of the items stored. This is further evidenced by the adjustment report's references to 42 C.F.R. § 413.24 and § 2100 of the Provider Reimbursement Manual (HCFA Pub. 15-1). The regulation at 42 C.F.R. § 413.24 is merely a general section relating to the adequacy of cost data and cost finding, and the manual provision at HCFA Pub. 15-1 § 2100 deals with the requirements that cost must be reasonable. The Provider notes that the provisions of HCFA Pub. 15-1 § 2102.3 deal with the requirement that costs must be related to patient care to be allowable. However, this manual section addresses the types of costs not related to patient care rather than the amount of such costs. In this case, the type of cost is not in question since space used for storage is clearly allowable. The Provider points out that it is the amount of space to be allowed that is in dispute, and that this issue was never addressed by the Intermediary's workpapers, adjustment report, or the cited references.

The Provider believes that the declaratory statements and testimony presented on behalf of the Provider clearly supports the widespread use of the fourth floor for storage purposes during fiscal year 1992. The unsupported testimony of the Intermediary's witness should not be permitted to outweigh the overwhelming evidence presented by the Provider.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Provider has not submitted sufficient information and documentation to support its position, pursuant to the regulatory requirements of 42 C.F.R. §413.20 and §413.24 and the manual provisions of HCFA Pub. 15-1 § 2300, §2304 and §2404.2. These referenced regulations and program instructions explicitly require the Provider to maintain sufficient financial records and statistical data for proper determination of costs payable under the Medicare program. Such data must

³ See Provider Exhibit P-11.

be capable of verification by qualified auditors, and imply that such data be accurate, auditable, and in sufficient detail to accomplish the intended purpose.

At the hearing, the Intermediary expanded upon its position and cited prior decisions by the Board which dealt with the issue of storage and idle space.⁴ The Intermediary notes that the factual records in those decisions are similar to the instant case where an extensive construction process was involved. During the early design and approval stage, the planned use of the new facility concerned in-patient and ancillary services. However, before the new construction is placed into service, circumstances change and the structure is not used in the manner in which it was originally planned. The Intermediary argues that the storage use in the Provider's case is unusual, and from a construction standpoint, the storage space in controversy is an unfinished and incomplete area.⁵

The Intermediary points out that its auditors were at the Provider's facility midway through the fiscal year in contention (January of 1992) for an audit involving an earlier cost reporting period. The Intermediary's witness was one of the on-site auditors who conducted a physical tour of the whole facility as part of a routine audit procedure for a newer hospital. What the Intermediary's auditors observed with respect to the fourth floor of the Provider's facility was that it was basically an unfinished empty area with miscellaneous items scattered about.⁶ In the notes prepared by the auditors describing their tour of the Provider's facility,⁷ the following account was given with respect to the fourth floor storage area:

The fourth floor has not yet been commissioned for patient care - it is an unfinished area, and is used only for storage of miscellaneous items. This area was originally not included in the square feet statistics, and the as-filed cost report does not report any square feet for non-reimbursable areas.

The Intermediary's witness testified at the hearing that his recollection of what was on the floor during

⁴ Cambridge Hospital Association, Inc. v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Minnesota, PRRB Dec. No. 94-D8, January 12, 1994, Medicare and Medicaid Guide (CCH) ¶ 42,060.

Jane Phillips Episcopal Memorial Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Oklahoma, PRRB Dec. Nos. 94-D20, 94-D21 and 94-D22, April 6, 1994, Medicare and Medicaid Guide (CCH) ¶ 42,203.

⁵ Tr. at 16 and 17.

⁶ Tr. at 18 and 19.

⁷ See Intermediary Exhibit I-10.

his tour consisted of boxes that were sporadically scattered over the area. Given the fact that the floor covered a large area, an estimate of the floor space utilized would be difficult. His best effort to quantify the space utilized on the fourth floor was between 10 to 12 percent.⁸ Based on the testimony of its witness and the record made at the time of his inspection, the Intermediary believes that its factual finding affirms that the fourth floor was essentially unused during the period in controversy. Accordingly, the Intermediary concludes that the storage was incidental, and that its categorization of the fourth floor as unused space was a correct and accurate finding.

CITATION OF LAWS, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

- | | | |
|---------------------|---|-------------------------------------|
| §§ 405.1835 - .1841 | - | Board Jurisdiction |
| § 413.9 | - | Cost Related to Patient Care |
| § 413.20 | - | Financial Data and Reports |
| § 413.24 | - | Adequate Cost Data and Cost Finding |

2. Program Instructions - Provider Reimbursement Manual (HCFA Pub. 15-1):

- | | | |
|----------|---|--|
| § 2100 | - | Costs Related to Patient Care - Principle |
| § 2102.3 | - | Costs Not Related to Patient Care |
| § 2300 | - | Adequate Cost Data and Cost Finding -
Principle |
| § 2304 | - | Adequacy of Cost Information |
| § 2404.2 | - | Examination of Pertinent Data and Information |

⁸ Tr. at 113.

3. Case Law:

Cambridge Hospital Association, Inc. v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Minnesota, PRRB Dec. No. 94-D8, January 12, 1994, Medicare and Medicaid Guide (CCH) ¶ 42,060.

Jane Phillips Episcopal Memorial Medical Center v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Oklahoma, PRRB Dec. Nos. 94-D20, 94-D21 and 94-D22, April 6, 1994, Medicare and Medicaid Guide (CCH) ¶ 42,203.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions, evidence presented, testimony elicited at the hearing, and post-hearing submissions, finds and concludes that the Provider has not presented adequate and verifiable documentation, as required under 42 C.F.R. §§ 413.20 and 413.24, to support its contention that the fourth floor space was being used for patient care purposes during the fiscal year in controversy. Accordingly, the Intermediary's adjustment reflects a proper determination of the unused space pursuant to the reasonable cost provisions of 42 C.F.R. § 413.9.

The Board finds that the record for this case is void of any specific evidence as to the extent to which the fourth floor was being utilized for patient care services. This vacuum is further reinforced by the conflicting testimony presented at the hearing by the witnesses for the Provider and the Intermediary. In as much as the Provider has the burden of proof, it is the Board's conclusion that the Provider has not satisfied that burden in refuting the Intermediary's factual finding that the fourth floor was essentially unused during the period in controversy.

DECISION AND ORDER:

The Intermediary's elimination of square footage statistics for the fourth floor storage area was correct. The Intermediary's determination is sustained.

Board Members Participating:

Irvin W. Kues
Henry C. Wessman, Esquire
Martin W. Hoover, Jr., Esquire
Charles R. Barker

Date of Decision: March 22, 2000

For The Board

Irvin W. Kues
Chairman