

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2003-D56

PROVIDER –
Hospital San Francisco, Inc.
Rio Piedras, Puerto Rico

Provider No. 40-0098

vs.

INTERMEDIARY –
Cooperativa de Seguros de Vida de Puerto
Rico

DATE OF HEARING -
October 10, 2002

Cost Reporting Period Ended
December 31, 1989

CASE NO. 99-3820

INDEX

	Page No.
Issues.....	2
Statement of the Case and Procedural History.....	2
Provider's Contentions.....	2
Intermediary's Contentions.....	2
Findings of Fact, Conclusions of Law and Discussion.....	4
Decision and Order.....	5

ISSUES:

1. Was the Intermediary's adjustment to interest expense proper?
2. Was the Intermediary's adjustment to deferred organizational cost proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Hospital San Francisco ("Provider") is a duly registered corporation under the laws of the Commonwealth of Puerto Rico. The Provider is an acute care general hospital located in Rio Piedras, Puerto Rico. Cooperativa de Seguros de Vida de Puerto Rico was the servicing intermediary ("Intermediary"). On June 2, 1998, the Provider Reimbursement Review Board ("Board") issued a DECISION AND ORDER affirming the Intermediary's adjustments to the interest expense and deferred organization costs claimed by the Provider in its 1989 cost report.¹ The Intermediary then modified the adjustments reviewed by the Board and issued a Revised Notice of Program Reimbursement ("NPR").

The Provider disagreed with the Intermediary's adjustments and properly requested a hearing before the Board. The Provider met the jurisdictional requirements of the regulations at 42 C.F.R. §§ 405.1835-.1841. The amount of Medicare funds in contention is approximately \$51,485.

The Provider was represented at the hearing by Edward A. Moore, of Universal Health Services, Inc. The Intermediary was represented by Wallace Vasquez Sanabria, Esq. of Cooperativa de Seguros de Vida.

ISSUE 1 - INTEREST EXPENSE:PROVIDER'S CONTENTIONS:

The Provider contends that the Board's affirmation of the Intermediary's adjustment, without mention of modification, concluded the subject of interest expense with regard to both the Intermediary and the Provider in that the Board is the administrative body that rendered the last decision on the issues. The Provider contends that the Board's decision was, in essence, that the Intermediary's original adjustment was proper since it was merely "affirmed" without further instructions to "modify" the original adjustment. The Provider contends that the Intermediary was, therefore, precluded from making further adjustments to the Provider's Medicare cost report pertaining to interest expense.

INTERMEDIARY'S CONTENTIONS:

The Intermediary refers to the Board's prior decision in "Hospital San Francisco, in which the Board concluded as follows:

¹ Hospital San Francisco, inc. v. Cooperativa de Seguros de Vida de Puerto, PRRB Dec. No. 98-D59, June 2, 1998, Medicare & Medicaid Guide (CCH) ¶ 80,003 CMS Administrator declined review, July 30, 1998 ("Hospital San Francisco").

Interest expense must be allocated in accordance with § 4507.02 of CMS Pub. 13-4 . . . the interest expense incurred to borrow working capital is not a related expense, although it may be an operating expense. This is in accordance with the Medicare regulation at 42 C.F.R. § 413.130(i)(3).

The Intermediary contends that the real issue before the Board is what the Board meant when it affirmed the Intermediary's adjustment in its decision in Hospital San Francisco. The Intermediary agrees with the Provider's contention that under the regulation at 42 C.F.R. § 405.1885, the Intermediary is precluded from reopening a final determination of the Board because a final determination can only be reopened by the authority which rendered the final determination in the case, and because the three year period allowed for a reopening has elapsed.²

The Intermediary argues that it has never attempted to act beyond the authority of the regulation at 42 C.F.R. § 405.1885. However, the Intermediary interpreted the Board's decision as an integrated decision because the Board ordered the Intermediary to conform to § 4507.2 of CMS Pub. 13-4 and CMS Pub. 15-1 § 203 as well as the Medicare regulation at 42 C.F.R. § 413.130(i)(3). In order to ensure that the adjustment complied with the authorities cited in the Board's decision, the Intermediary concluded that the original adjustment should be modified. Accordingly, it modified the original adjustment to interest expense.

The Intermediary maintains that the Board's authority lies within the boundaries of the regulations and its decisions and orders must comply with the regulations. Therefore, the affirmed adjustment must comply with the regulations.

ISSUE 2 - DEFERRED ORGANIZATION COSTS:

PROVIDER'S CONTENTIONS:

The Provider contends that the Board's affirmation of the Intermediary's deferred organization cost adjustment, without the mention of modifications, finalized the adjustment originally made by the Intermediary, inasmuch as the Board is the administrative body that rendered the last decision on this issue.³ The Provider argues that the Intermediary was, therefore, precluded from further adjustments to the Provider's Medicare cost report pertaining to deferred organization cost.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the real issue before the Board is what the Board meant when it affirmed the Intermediary's adjustment in its decision in Hospital San Francisco. The Intermediary agrees with the Provider's contention that under the regulation at 42 C.F.R. § 405.1885, the Intermediary is precluded from reopening a final determination of the Board because a final determination . . . "can only be reopened by the authority which rendered the

² Intermediary's P.H. Brief, page 8.

³ Provider's Post Hearing Brief, at 2.

final determination in the case, and because the three-year period allowed for a reopening has elapsed.”⁴

The Intermediary argues that it has never attempted to act beyond the authority of the regulation at 42 C.F.R. § 405.1885. However, the Intermediary interpreted the Board’s decision as an integrated decision because the Board ordered the Intermediary to conform to § 4507.2 of CMS Pub. 13-4 and CMS Pub. 15-1 § 203 as well as the Medicare regulation at 42 C.F.R. § 413.130(i)(3). In order to comply with the Board’s decision that adjustment should conform to the cited regulations and manual provisions, the Intermediary concluded that the original adjustment should be modified. Accordingly, it modified the original adjustment to deferred organization cost.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the Medicare law and guidelines, parties’ contentions and evidence presented, finds and concludes that the Intermediary improperly reopened the Provider’s cost report for the period ended December 31, 1989.

The Board finds that its prior decision in Hospital San Francisco was clear and concise. That decision stated:

Issue 3 -Interest

The Intermediary’s adjustment of the Provider’s interest cost was proper. The Intermediary’s adjustment is affirmed.

Issue 4 – Organization Cost:

The Intermediary’s adjustment of the Provider’s organization cost was proper. The Intermediary’s adjustment is affirmed.

The Board finds that its prior decision did not require or order the Intermediary to make any changes in its determination or to make any new calculations of the amount in contention. The Board also notes that the CMS Administrator accepted the Board’s decision in that it declined to review the decision.

The Board finds that its prior decision in Hospital San Francisco was a decision that was in accordance with the Medicare regulation at 42 C.F.R. § 405.1871(b) which states:

The decision of the Board provided for in paragraph (a) of this section shall be final and binding upon all parties to the hearing before the Board unless it is reviewed by the Secretary in accordance with § 405.1875, or revised in accordance with §405.1885.

⁴ Intermediary’s Post Hearing Brief, at 8.

The Board concludes that the Intermediary improperly adjusted the Provider's cost report, since the decision of the Board in Hospital San Francisco was a final decision and was not subject to reopening by the Intermediary.

DECISION:

The Intermediary's adjustment to the Provider's interest expense was not proper. The Intermediary's adjustment is reversed.

The Intermediary's adjustment to the Provider's deferred organization cost was not proper. The Intermediary's adjustment is reversed.

Board Members Participating:

Suzanne Cochran, Esq.
Dr. Gary B. Blodgett
Martin W. Hoover, Jr. Esq.
Elaine Crews Powell, CPA

DATE: September 12, 2003

FOR THE BOARD:

Suzanne Cochran, Esq.
Chairman