

**PROVIDER REIMBURSEMENT REVIEW BOARD  
DECISION  
ON THE RECORD  
2005-D10**

**PROVIDER –**  
Haven Home Health, Inc.  
Columbia, Louisiana

Provider No.: 19-7210

**INTERMEDIARY –**  
BlueCross BlueShield Association/  
Palmetto Government Benefits  
Administrators

**DATE OF HEARING -**  
January 16, 2004

Cost Reporting Period Ended -  
February 29, 2000

**CASE NO.:** 02-0355

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ISSUE:

1. Whether the Intermediary's disallowance of owner's accrued salary expense for untimely liquidation was proper?
2. Whether the Intermediary's adjustment to the related party portion of the office supplies and revision of the related party medical supply expense was proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement payable to 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:

Haven Home Health, Inc. (Provider) is a home health agency organized and existing as a proprietary corporation under the laws of the State of Louisiana and having its principal place of business in Columbia, Louisiana. For the cost reporting period ended February 29, 2000, the Provider claimed an accrual for owner's salary in the amount of \$40,000 and medical supplies expenses in the amount of \$15,987, all of which were purchased from Haven Medical Supply, Inc., a related party. The two issues in dispute in this case have to do with the timeliness of the Provider's liquidation of the owner's accrued salary and the proper method of accounting for the related party transactions.

Palmetto GBA (Intermediary) audited the Provider's cost report for the subject period and examined the salary accruals for compliance with the requirements of the Medicare regulations at 42 C.F.R. §413.100 and PRM 15-1, Section 906.4 and 2305. The

Intermediary found that the salary accruals, other than the owner's, had been properly liquidated through the regular payroll. However, the accrual for the owner's salary in the amount of \$40,000 had not been liquidated within the 75-day time frame required by Medicare regulations. The owner's check was dated May 12, 2000, which was 73 days after the February 29, 2000 fiscal year end and within the time limitation. However, the check did not clear the bank until June 30, 2000, which was 48 days beyond the 75-day time limit required for timely liquidation of the owner's accrued salary.

The Intermediary's audit also included an examination of the Provider's office and medical supplies accounts to determine if costs were properly stated and allowable per Medicare regulations. The Provider submitted its cost report disclosing a related party expense on Worksheet A-6 for routine and non-routine medical supplies and it converted the medical supplies expense to cost on the submitted cost report. However, the Provider did not report its office supplies expense on Worksheet A-6. The Intermediary's review indicated that the Provider buys both its medical and office supplies exclusively from Haven Medical Supply Company. This company is owned by Robin Causey, the father of the Provider's owner, Brian Causey. Due to this familial relationship, the Intermediary considered all the transactions between the two organizations to be related party transactions. During their evaluation of these transactions, the Intermediary examined additional information that included Haven Medical Supply's financial statements and the calculations that the Provider used to convert medical supplies to cost on Worksheet A-6. Based upon this review, the Intermediary concluded that the Provider's calculation did not include sales to all related entities, and consequently required recalculation of the cost of medical and office supplies to reflect those entities. The Provider subsequently requested consideration for a related party exception under the provisions of PRM-1, § 1010. The request was reviewed and denied by the Intermediary. The Intermediary revised the calculation of the related party cost and adjusted the related party portions of office supplies expense and medical supplies expense

On August 20, 2001, the Intermediary issued a Notice of Program Reimbursement (NPR) for the fiscal year ended February 29, 2000. The NPR included an adjustment to disallow \$40,000 of owner's accrued salary expense and a second adjustment of \$7,073 to disallow the related party portion of office supply expense and revise the related party medical supplies expense. On December 7, 2001, the Provider appealed the Intermediary's adjustments to the Board pursuant to 42 CFR §§405.1835-.1841 and met the jurisdictional requirements of those regulations. The amount of Medicare funds in controversy is approximately \$39,600 for the salary disallowance and \$7,000 for the supplies adjustments for a cumulative Medicare impact of \$46,900.

The provider was represented by Julie A. Bowman, Esquire, of Copeland, Cook, Taylor & Bush, PA. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross Blue Shield Association.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and guidelines, the parties' contentions and the evidence presented finds and concludes the following:

Issue 1 – Owner's Accrued Compensation:

The pivotal issue in this case is the identification of the proper standard for the timely liquidation of owner's accrued compensation. Neither party disputed that "liquidation" under the statute required an actual transfer of assets from the Provider to the payee.

Citing 48 F.R. 39752, the Provider argued that HCFA intended that the controlling authority for such disbursement should be Section 2305 of the Provider Reimbursement Manual. 48 F.R. 39752 states that Section 2305 contains the necessary safeguards to prevent abuse in the disbursement of owner's compensation and went on to delete the 75-day disbursement rule. Applying Section 2305, the Provider contends that there is a one-year limitation on the disbursement of the accrual, and the subsequent payment was within that time frame.

The Intermediary acknowledged that 48 F.R. 39752 eliminated the 75-day rule. However, the Intermediary contended that 48 F.R. 39752 was not the final rule and did not change the Provider Reimbursement Manual sections that address the 75-day liquidation rule. The Intermediary further argued that the Final Rule, published in 60 F.R. 33126, added the 75-day rule back to the regulations.

The Board's examination established that the Final Rule, as published in 60 F.R. 33126, added the 75-day rule back to the regulations and that the 75-day rule/regulations were in force during the Provider's fiscal year. Consequently, the Board concludes that for a compensation accrual to be an allowable cost in the cost reporting period at issue, an actual transfer of assets must liquidate the accrual within 75 days of the period's end. Where, as here, such a transfer is not completed, the costs may not be reimbursed within that period.

The Board finds that the Intermediary's adjustment for owner's accrued compensation was proper.

Issue 2 - Related Party Transactions:

The Intermediary initially raised the related party issue because of the familial (father-son) relationship between the Provider's owner and the owner of one of its suppliers. PRM-1, §2004 creates an irrebuttable presumption of relatedness through control or an attribution of ownership where such a relationship exists. The Provider did not dispute that relationship, and both parties acknowledged that PRM-1, §1010 was the controlling authority for the dispute.

PRM-1, §1010 lists four elements that must be satisfied for an organization to qualify for an exception to the related organization principle. The Provider contended that it met all four elements and offered empirical data and analysis in support of its claim. The Intermediary acknowledged the Provider's compliance with three of the four elements but challenged the analysis offered in support of the Provider's compliance with PRM-1, §1010(b). The element contained in that section requires that a substantial part of the supplying organization's business activity, of the type carried on with the provider, be transacted with other organizations not related to the provider and the supplier by common ownership.

In support of its compliance with §1010(b), the Provider offered a comparative analysis of the supplier's total sales versus its sales to the Provider. That analysis showed the supplier's sales to the Provider were significant, but that a substantially larger portion of their sales came from sources other than the Provider. The Intermediary contended that the Provider's calculation failed to account for all of the entities that are affected by the familial relationship and recalculated the Provider's original analysis using data from the supplier's financial statements that included sales activities with all of its related enterprises. That analysis indicated that the supplier does an insignificant amount of business with customers other than its related companies.

The Board examined the analysis provided by both parties relative to §1010. As a part of that analysis, the Board also reviewed the requirements of PRM-1, §1004 and §1010. Based upon that review, the Board believes that the irrebuttable presumption of relatedness created under PRM-1 §2004 by the familial relationship between the supplier and the provider, requires that consideration of §1010's elements include the business activities of all of the enterprises affected by that relationship. In this case, the calculations generated by the Intermediary reflect the total activity required by PRM-1, 2004. Those calculations indicate that the supplier does not do a substantial amount of business of the type carried on with the provider with other organizations not related to the provider and the supplier by common ownership. Consequently, the Board concludes that the Provider is not in compliance with PRM-1, §1010 and that the Intermediary's adjustments were proper

#### DECISION AND ORDER:

##### Liquidation of Owner's Compensation:

The Intermediary properly disallowed the Provider's owner's accrued compensation costs. The Intermediary's adjustment is affirmed.

##### Related Party Transactions:

The Intermediary properly adjusted the Provider's office supplies and medical supplies costs. The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

DATE: December 10, 2004

Suzanne Cochran, Esq.  
Chairperson