

PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2005-D22

PROVIDER –
Heritage House of Richmond
Richmond, Indiana

Provider No.: 15-5228

vs.

INTERMEDIARY –
Blue Cross Blue Shield Association/
AdminaStar Federal, Inc.

DATE OF HEARING –
December 9, 2004

Cost Reporting Period Ended -
July 31, 1998

CASE NO.: 01-0700

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ISSUES:

Whether the Intermediary's adjustment to disallow a portion of the owner's compensation was proper.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the proper amount of Medicare reimbursement 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:

Heritage House of Richmond (Provider) is a 119 bed skilled nursing facility located in Richmond, Indiana. The Provider is owned by a single individual who maintains other business interests that are unrelated to the Provider's operations. For the cost reporting period ended 7/31/98, the Provider paid \$113,933 to its owner. AdminaStar Federal (Intermediary) audited the cost report and determined that the documentation offered in its support was inadequate to establish that the owner rendered direct or indirect patient care services. Consequently, the Intermediary eliminated all owner's compensation (\$111,533) in excess of \$200 per month paid to the owner for his attendance at board meetings, leaving \$2,400 in allowable owner's compensation.

PARTIES' CONTENTIONS:

The Provider contends that the owner's job responsibilities include managerial, administrative and professional services that are necessary for the operation of the

facility. The Provider further contends that the owner provided valuable services to the Provider in negotiating health insurance coverage. The owner's expertise was especially valuable during non-routine situations, including surveys and legal matters.

The Intermediary contends that the Provider's Owner's Compensation Survey Questionnaire (Schedule IV of HCFA Form 339) indicated that the owner attended quarterly board meetings, but otherwise devoted little or no time to the Provider's operations. Further, the Provider employs one full-time Administrator, one full-time Director of Nursing and one part-time Medical Director as well as full-time office personnel. Consequently, the owner does not render services to the facility as its manager or administrator. Further, the Provider offered no documentation to support that the owner is involved in the operation or management of the facility's delivery of patient services.

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:

The dispute over the amounts claimed for owner's compensation centers on the nature/need of the services provided by the owner. The controlling regulation for owner's compensation appears at 42 C.F.R. §413.102(a), which recognizes compensation of owners as an allowable expense provided the services are actually performed in a necessary function. In addition, 42 C.F.R. §413.102(b)(3)(i) requires that, for a service to be necessary, the institution would have had to employ another individual to perform the services had the owner not furnished the services.

The Provider argued that the owner provided services that were necessary for the operation and supervision of the facility. However, the Provider was unable to supply auditable documentation in support of its contention and no testimony was offered to support its claims. Despite the opportunity to offer testimony or other evidence, the Provider limited its evidence to an un-sworn listing of the owner's general duties. As submitted, the listing provides no foundation upon which the Board can conclude that the owner actually provided the services that are listed or that the owner was involved, directly or indirectly, with patient care at the facility.

It is undisputed that the owner had other business enterprises to which he also devoted time and that the Provider employed full-time staff to manage and direct the day-to-day operations and patient service delivery functions of the facility. Absent evidence to the contrary, the Board must conclude that the staff discharged its managerial and patient service responsibilities and, in so doing, obviated the need for significant involvement by the owner in the facility's daily operations. Accordingly, the Board must also conclude that the Intermediary properly adjusted the amounts claimed by the Provider for the owner's involvement in the operation of the facility.

DECISION AND ORDER:

The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING:

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

FOR THE BOARD:

DATE: January 13, 2005

Suzanne Cochran, Esquire
Chairperson