

**PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION
ON THE RECORD
2008-D31**

PROVIDER –
Medical Center of North Hollywood
North Hollywood, California

Provider No.: 05-0241

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
National Government Services-CA

DATE OF HEARING –
February 8, 2008

Cost Reporting Period Ended –
December 31, 1987

CASE NO.: 02-0705

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ISSUE:

Whether the Intermediary may recoup an overpayment relative to the Provider's 1987 cost reporting period through a revised Notice of Program Reimbursement (NPR) issued in January 2002.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the 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 the 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:

Medical Center of North Hollywood (Provider) is an acute care hospital located in North Hollywood, California. During its fiscal year ended December 31, 1987, the Provider was owned by American Medical International, Inc (AMI). Tenet Healthcare Corporation subsequently acquired AMI and is the current owner of the Provider.

The Provider timely filed its Medicare cost report for the fiscal year 1987 on March 31, 1988. The fiscal Intermediary¹ subsequently conducted a field audit of the 1987 cost report and computed a final settlement which was included in the NPR issued on September 7, 1990.² According to that NPR, the Provider owed Medicare \$258,667 in "final settlement" of the 1987 cost report. Included in this original NPR was Adjustment

¹ The fiscal Intermediary has changed its name numerous times since 1987 (Blue Cross of California to United Government Services to National Government Services).

² See Provider Exhibit P-1.

No. 56 which reflects a retroactive lump-sum adjustment of \$695,142 made from the Provider to the Program per a notice dated June 15, 1987.

On June 22, 2001, the Intermediary issued a Notice of Reopening³ of a June 14, 2001 revised NPR for the FYE 12/31/87. The Notice stated, in relevant part:

A letter was issued on June 15, 1987 requesting an amount due the Medicare program of \$695,142. When reconciling the payments due to/from the provider for the appeal settlement issued on June 14, 2001, our accounting department was unable to find any record of collecting the \$695,142. If you are unable to show documentation that this amount was paid by American Medical International, Inc., we will revise the cost report, and collect the money.

No documentation was furnished by the Provider to support that the payment had been made to the program; accordingly, on January 29, 2002⁴ the Intermediary's issued a revised NPR to recoup the \$695,142 overpayment. The revised NPR stated:

To eliminate an amount due the program that was shown on Worksheet E-1 of the cost report, that was never collected by Blue Cross of California.

By letter dated February 1, 2002, the Provider timely requested a hearing before the Board to challenge the Intermediary's untimely effort to reverse Adjustment No. 56 on the September 7, 1990 original NPR and to collect the alleged overpayment, which was Adjustment No. 1 of the January 29, 2002 revised NPR.

The Provider is represented by Patric Hooper, Esquire, of Hooper, Lundy & Bookman, Inc. The Intermediary is represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

PARTIES' CONTENTIONS:

The Provider contends that there is no longer any alleged overpayment to recoup because of the passage of time and the untimeliness of the Intermediary's issuance of the revised NPR (nearly 14 years after the original NPR). The Medicare Intermediary Manual (MIM) §3707.1 prohibits the reopening of a cost report to recover an alleged overpayment if the cost report is not reopened within four years after the date of payment. Construing the June 15, 1987 notice as the "date of payment," the cost report should have been reopened by June 15, 1991. Furthermore, 42 C.F.R. §405.1885(a) states that an NPR may be reopened within three years of the date of the notice of the determination. Finally, the Provider observes that the Intermediary cites Charlotte Memorial Hospital and Medical Center v. Blue Cross Blue Shield Association/Blue Cross of North California, PRRB Dec. No. 2000-D62, June 6, 2000, Medicare & Medicaid Guide (CCH)

³ See Exhibit P-2.

⁴ Id.

¶80,508, rev'd. by CMS Admin. Dec., August 9, 2000 (CCH) ¶80,560, (Charlotte Memorial) to support its untimely action in this case. However, in Charlotte Memorial, the CMS Administrator points out the provider had previously requested a reopening of the original NPR within the three-year allowable period. In the current case, the Provider did not request a reopening. In fact, no action was taken to reopen the 1987 cost report for the matter at issue until June 2001.

The Intermediary contends that it issued a proposed retroactive lump-sum adjustment of \$695,142 due to Medicare on June 15, 1987 for the Provider to review prior to issuing an official demand for payment letter. The Provider was never issued that demand letter but was removed from the Periodic Interim Payments (PIP) program instead. Further, the Intermediary contends that the June 22, 2001 Notice of Reopening is in accordance with 42 C.F.R. §405.1885 and that the CMS Administrator's decision in Charlotte Memorial supports the Intermediary's position in the instant case. The Administrator also found that the inclusion of an omitted intermediary payment on Worksheet E-1 was in accordance with Medicare Program instructions and the resulting net recoupment pursuant to the revised NPR was proper.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the facts, parties' contentions and evidence, the Board finds that the Intermediary improperly recouped an overpayment relating to the 1987 cost reporting period by using a revised NPR issued in January 2002. The Board finds that this issue was originally adjusted in the original NPR of September 7, 1990⁵ on Worksheet E-1. It was included in the listing of retroactive lump-sum adjustments based on the subsequent revision of interim payments for the cost reporting period. The amount in dispute of \$695,142 was supported by the Intermediary's June 15, 1987 letter notifying the Provider of a proposed retroactive lump-sum adjustment payment due. Further evidence shows that the Intermediary notified the Provider on June 19, 1987 that its PIP status would be eliminated effective with discharges on or after July 1, 1987.⁶ The last biweekly payment under PIP was made in July 10, 1987. From that point until June 22, 2001, the date when the Intermediary issued its Notice of Reopening,⁷ there was no evidence of any collection effort by the Intermediary to recoup the \$695,142 overpayment. The Intermediary's transaction log indicates no retroactive lump-sum adjustment was ever requested or collected for 695,142.⁸ Based on this evidence and with no evidence to the contrary, it is reasonable to presume that no repayment was ever made.

42 C.F.R. §405.1885 provides that a Medicare cost report may be reopened within three years of a final determination. Since the original NPR for the Provider's December 31, 1987 cost reporting period was dated September 7, 1990, the Intermediary had until September 7, 1993 to reopen the cost report to recoup the overpayment. The Board finds

⁵ See Provider Exhibit P-1.

⁶ See Intermediary Exhibit I-6.

⁷ See Provider Exhibit P-2

⁸ Id.

that the Intermediary's June 22, 2001 reopening⁹ was well beyond the prescribed reopening period and was, therefore, improper.

The Board notes that both sides cited the CMS Administrator's decision in Charlotte Memorial. That decision allowed an adjustment to settlement data beyond the 3-year reopening period since as a part of the settlement process governed by CMS Pub. 15-2 §1242, all tentative settlement payments after desk review are to be reported on line 5 of Worksheet E-1. That section is not completed by the Provider; it is used by the Intermediary to input settlement payments made after the fiscal year end that are not reported on the cost report. Therefore, it is not part of the NPR determination and is changed with each reopening as needed.

In the current case the proposed retroactive lump-sum adjustment was reported on line 3 of Worksheet E-1. This line is used to list each retroactive lump-sum adjustment amount based on subsequent revision of the interim rate for the cost reporting period. It is part of the NPR determination and does not change with settlements made at and after the initial NPR. This is the line on which the Intermediary erred in finalizing the September 7, 1990 NPR. Based on the requirements of 42 C.F.R. §405.1885, the cost report cannot be reopened after September 7, 1993 even when an obvious error occurs, absent fraud or similar fault.

Based on the above findings, the Board concludes that the Intermediary cannot recover the 1987 overpayment by using a revised NPR issued in January 2002.

DECISION AND ORDER:

The Intermediary improperly used a revised NPR issued in January 2002 to recover a 1987 overpayment. The Intermediary's adjustment is reversed.

BOARD MEMBERS PARTICIPATING:

Elaine Crews Powell, C.P.A.
Yvette C. Hayes
Michael D. Richards, C.P.A.

FOR THE BOARD

Elaine Crews Powell
Acting Chairperson

DATE: June 16, 2008

⁹ See Provider Exhibit P-2.