

# PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2009-D40

## **PROVIDERS -**

National Parkinson Foundation CORF  
NPF Rehab of Florida/Pompano  
NPF Rehab Florida North Miami Beach

Provider Nos.:

10-4504; 10-4561 and 10-4560  
(respectively)

**vs.**

## **INTERMEDIARY -**

BlueCross BlueShield Association/  
First Coast Service Options, Inc.

## **DATE OF HEARING -**

August 26, 2008

Cost Reporting Periods Ended -

December 31, 1994 (CN: 05-1292)  
and

May 31, 1995 (CNs: 05-1291 and 05-1293)

**CASE NOS.:** 05-1291; 05-1292 and  
05-1293

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ISSUE:

Whether the Intermediary's adjustments reflected in the revised Notices of Program Reimbursement (NPR), that reduced allowable home office costs, were proper.

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. 42 U.S.C. §1395h, 42 C.F.R. §§413.20 and 413.24.

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.

The Medicare regulation at 42 C.F.R. §405.1885(a) provides that a determination of an intermediary may be reopened with respect to findings on matters at issue in a cost report. A request to reopen must be made within three years of the date of the notice of the intermediary determination. No reopening of an intermediary determination is permitted after three years unless it is determined to have been procured by fraud or similar fault. 42 C.F.R. §405.1885(d). Additional rules concerning reopening and correction of intermediary determinations are addressed in CMS Pub. 15-1 §§2930, 2931 and 2932. CMS Pub. 15-1 §2932(A) states the following with regard to notices of reopening and correction: "[t]he provider or other party will be advised in the notice as to the circumstances surrounding the reopening, i.e., why it was necessary to take such action, and the opportunity to comment, object, or submit evidence in rebuttal."

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

National Parkinson Foundation (NPF) Comprehensive Outpatient Rehabilitation Facility

(CORF), NPF Rehab of Florida/Pompano, and NPF Rehab of Florida/North Miami Beach, the Providers, were outpatient rehabilitation facilities located in Florida.<sup>1</sup> The Providers were components of a chain organization, National Parkinson Foundation, Inc.

The Intermediary, First Coast Service Options, Inc., issued Notices of Program Reimbursement (NPRs) to NPF Rehab of Florida/North Miami Beach, on September 4, 1996 and to National Parkinson Foundation CORF and NPF Rehab of Florida/Pompano on September 27, 1996.<sup>2</sup> Subsequently, the Intermediary issued Notices of Reopening to NPF Rehab of Florida/North Miami Beach on September 11, 1996, and to National Parkinson Foundation CORF and NPF Rehab of Florida/Pompano on October 4, 1996.<sup>3</sup> The Notices of Reopening indicate the Intermediary reopened the cost reports for the following reason: “Audit branch request to revise cost report for effect of audited home office cost statement when received.”

On August 15, 1998, the Providers’ consultant forwarded amended home office cost statements to its Intermediary.<sup>4</sup> The Intermediary final settled the home office cost statement for FYE May 31, 1995 and issued an NPR on September 30, 1998.<sup>5</sup>

On September 22, 2004, the Intermediary issued revised NPRs for each of the Providers to adjust home office costs to the audited home office cost statement.<sup>6</sup> The Providers appealed the Intermediary adjustments to the Board and met the jurisdictional requirements of 42 C.F.R. §§405.1835-405.1841. The Providers were represented by Matthew J. Long, CPA, of Provider Reimbursement, Inc. The Intermediary was represented by Bernard M. Talbert, Esquire, of Blue Cross Blue Shield Association.

#### PARTIES’ CONTENTIONS:

The Providers contend that the revised NPRs dated September 22, 2004 are improper because the Intermediary failed to reopen the cost reports within three years from the date of the original NPRs or within three years from the Providers’ home office cost statement NPR dated September 30, 1998.<sup>7</sup> The Providers contend that they never received the Notices of Reopening dated September 11, 1996 and October 4, 1996, respectively, and that the Intermediary did not provide any evidence that these notices were mailed by the Intermediary. The Providers submitted a general affidavit of Pamela Olmo from National Parkinson Foundation, Inc., the Providers’ home office, attesting that she did not find the

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<sup>1</sup> National Parkinson Foundation (NPF) Rehab of Florida/Pompano and NPF Rehab of Florida/North Miami Beach were terminated from the Medicare program in December 1998. See case nos. 05-1292 and 05-1293, Brief in Support for Provider’s Position at 1 (November 30, 2005). National Parkinson Foundation Comprehensive Outpatient Rehabilitation Facility (CORF) was terminated from the Medicare program in April 2002. Case No. 05-1291, Brief in Support for Provider’s Position at 1 (November 30, 2005).

<sup>2</sup> Intermediary Exhibit I-2.

<sup>3</sup> Intermediary Exhibit I-1 and Provider Exhibit P-I.

<sup>4</sup> Intermediary Exhibit I-3.

<sup>5</sup> Intermediary Exhibit I-4.

<sup>6</sup> Intermediary Exhibit I-5 (includes NPF Rehab of Florida/Pompano, CN: 05-1292 only as an example). Also noted in Brief(s) in support of Provider’s Position at 1.

<sup>7</sup> Transcript (Tr.) at 10. Intermediary’s Exhibit 4 at 26.

Medicare letters dated September 11, 1996.<sup>8</sup> The Providers further point out that included in the notes to the original NPRs was a reference to a memo adjustment to correct the home office cost allocation; however, the actual adjustment report did not include a memo adjustment to reopen the cost report for the audited home office allocation.<sup>9</sup>

The Intermediary contends that the adjustments reflected in the revised NPRs are proper because the Notices of Reopening were issued within three years of the date of the original NPRs.<sup>10</sup> The Intermediary notes that the Providers are not disputing any specific home office adjustment, rather just the timeliness of the reopening. The Intermediary represented that, during the period at issue, it was standard practice to issue a notice of reopening to adjust for audited home office costs and to send the reopening notices by first class mail. This type of mailing does not provide receipt confirming the delivery of the letter. The Intermediary also argued that it does not have the burden to show delivery of the letter; rather it is the Providers who bear the burden of proof.<sup>11</sup> The Intermediary acknowledged that the Notices of Reopening dated October 4, 1996 were unsigned; however, the lack of a signature does not suggest that the notices were not sent. Indeed, the original NPRs were also unsigned and there are no complaints from the Providers that those notices were never received.<sup>12</sup>

In response to the Providers' affidavit, the Intermediary argued that it is not clear from the general affidavit which files were maintained by the home office or the integrity of its filing system where every document that was ever sent can be accounted for except for the one particular letter.<sup>13</sup> While not questioning the good faith of the affiant, the Intermediary contends that the affidavit merely establishes that the home office could not locate a Medicare letter dated September 11, 1996 addressed to R. Brian Morton. It does not establish that the Notices of Reopening were never sent.

In reply to the Providers' contention that the reference to a proposed memo adjustment to reopen the cost reports was included in the original NPRs but was lacking in the actual adjustment report, the Intermediary asserted that a memo adjustment serves as an extra warning to the Providers and has no effect on reimbursement.<sup>14</sup>

The Intermediary acknowledged there was an extended delay from the settlement of the home office cost statement in September 1998 to the issuance of the revised NPRs in September 2004.<sup>15</sup> The Intermediary states, however, that as a matter of law there is no established deadline in issuing the revised NPRs.<sup>16</sup> The Intermediary argued that the

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<sup>8</sup> Provider Exhibit P-3.

<sup>9</sup> Tr. at 9. Intermediary's Exhibit 2 at 24.

<sup>10</sup> Intermediary's Final Position Paper at 2.

<sup>11</sup> Tr. at 17.

<sup>12</sup> Tr. at 18. Intermediary's Exhibit 2 at 3.

<sup>13</sup> Tr. at 20 and Provider Exhibit P-3.

<sup>14</sup> Tr. at 19, 31-33.

<sup>15</sup> Tr. at 21.

<sup>16</sup> Woodruff Community Hospital v. Sullivan, 1992- 2 Medicare and Medicaid Guide TB (CCH) ¶40,108 (C.D Cal.) (Feb. 27, 1992); Leo N. Levi Memorial Hospital Hot Springs, Arkansas v. Blue Cross Blue Shield Association/Blue Cross Blue Shield of Arkansas, PRRB Hearing Dec. No. 2001-D51 (Sept. 26, 2001).

Providers have not been prejudiced by the delay, and instead have enjoyed the benefit of the time value of money.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After considering the Medicare law and guidelines, the parties contentions and evidence submitted, the Board, finds and concludes that the Intermediary's revised NPRs that reduced allowable home office costs were proper.

The factual dispute in these cases is whether the Notices of Reopening were sent. The Board finds that neither party was able to prove that said notices were ever sent and/or never received, as it is as possible that the Providers lost the notices and just as possible that the Intermediary did not send them. The Board notes that while there may be some instances where a notice prepared is not sent, it is unlikely that this occurred with all three Notices of Reopening in these cases.

The Board considered the Providers' argument that since the Intermediary did not include a memo adjustment to reopen the cost report in the actual adjustment report, it is just as likely that the Intermediary did not send the Notices of Reopening. The Board finds the Providers' argument unpersuasive in light of the fact that the amended home office cost statements were filed by the Provider's consultant on August 15, 1998.<sup>17</sup> By virtue of filing an amended home office cost statement, the Providers notified the Intermediary of corrections needed to be made to their home office cost statement and affected hospital cost reports. The Intermediary's reopening adjustments constituted the Providers' acceptance of those corrections as filed. As such, the Providers were not prejudiced or disadvantaged and the Intermediary's reopening of the original NPRs was proper.

DECISION AND ORDER:

The Intermediary's adjustments reflected in the revised NPRs that reduced the allowable home office costs were proper. The Intermediary's adjustments are affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire  
Yvette C. Hayes  
Michael D. Richards, C.P.A.  
Keith E. Braganza, C.P.A.  
John Gary Bowers, C.P.A.

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<sup>17</sup> Intermediary Exhibit I-3.

FOR THE BOARD:

Suzanne Cochran, Esquire  
Chairperson

DATE: September 22, 2009