CENTERS FOR MEDICARE AND MEDICAID SERVICES

Decision of the Administrator

In the case of:	Claim for:
Family Home Care	**Medicare Reimbursement** **Fiscal Year Ending: 06/30/98**
Provider	
vs.	**Review of:**
Blue Cross and Blue Shield Assn.	**PRRB Dec. No. 2005-D19** **Dated: January 7, 2005**
Intermediary	

This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the Provider Reimbursement Review Board (Board) decision. The review is during the sixty-day period mandated in §1878(f)(1) of the Social Security Act (Act) [42 USC 1395oo(f)(1)], as amended. The Provider and the Intermediary submitted comments in this case. Accordingly, the Board's decision is now before the Administrator for final administrative review.

ISSUE AND BOARD DECISION

The issue is whether the Intermediary's adjustment to disallow accrued salaries was proper.

The Board found that the Intermediary's adjustment was not proper because the Provider liquidated the owners' accrued compensation in accordance with the requirements set forth at §906.4 of the Provider Reimbursement Manual (PRM). The liquidation was made with regular payroll checks at the beginning of the Provider's fiscal year ending (FYE) June 30, 1999, consistent with the requirement of §906.4 that liquidation be made within 75 days of the end of the cost year in which the compensation was accrued. The Board found that, contrary to the Intermediary's argument, there is no provision in Medicare law or guidance which prohibits liquidation by means of regular payroll checks. Thus, the Board reversed the Intermediary's disallowance.

SUMMARY OF COMMENTS

The Intermediary requested reversal on the grounds that the Board incorrectly ruled that salaries paid for services rendered in 1999 could be used to liquidate the Provider's salary accruals, contrary to the regulations and program instructions. The Intermediary argued that the Provider sought to characterize the salary amounts earned for payroll periods in the following cost year, i.e., 1999, as the liquidation of the amounts accrued in 1998. The Intermediary contended that, at the end of 1999, the Provider merely continued the accrual. Thus, the Intermediary concluded that the 1998 accruals were not liquidated; rather, the 1999 salaries were paid instead.

The Provider argued that the Board correctly held that the Provider documented that it made accruals of salaries which were properly liquidated in accordance with Medicare regulations, the PRM, and generally accepted accounting procedures. On the other hand, the Provider continued, the Intermediary cited no authority for its position. Thus, the Provider requested affirmance of the Board's decision.

DISCUSSION

The entire record furnished by the Board has been examined, including all correspondence, position papers, exhibits, and subsequent submissions. All comments timely received have been considered and included in the record.

The regulations at 42 CFR 413.20 require providers to maintain sufficient financial records and statistical data for the accurate determination of costs payable under Medicare. Section 413.20(a) establishes that:

> the methods of determining costs payable under Medicare involve making use of data available from <u>the institution's basic accounts, as usually maintained</u>, to arrive at equitable and proper payment for services to beneficiaries. [Emphasis added.]

Section 413.24 requires providers to furnish adequate cost data based on the provider's financial and statistical records "capable of verification by qualified auditors." The regulation states that the cost data must be based on an approved method of cost finding and on the accrual basis of accounting.[1] Section 413.24(b)(2) establishes that the "accrual basis of accounting," as used in the regulation, means that revenue is reported in the period in which it is collected, and expenses are reported in the period in which

---

[1] The regulation permits one exception, i.e., where there is a case of a governmental institution operating on a cash basis of accounting, which is not applicable in the instant case.

they are incurred, regardless of when they are paid, except as provided at §412.100. That regulation establishes special treatment of certain accrued costs. The regulation states that, for Medicare payment purposes, accrued costs are allowable in the year in which the costs are accrued and claimed for Medicaid payment only under the conditions established in section (c) the regulation. That section reiterates the principle that Medicare does not recognize the accrual of costs in the year of accrual unless the liabilities are timely liquidated. Accrued liability for the compensation of owners other than sole proprietors and partners is required to be liquidated within 75 days after the close of the cost year in which the liability occurs.[2]

Section 906.4 of the PRM sets forth guidance on the proper liquidation of accrued compensation for owners. It states that the compensation of owners is included for a cost reporting period if earned within the period, even if not paid until after the close of the period, if payment is made within 75 days after the close of the period. Payment may be made by check or other negotiable instrument, cash, or legal transfer of assets. Where payment is made by check or other negotiable instrument, liquidation of the payment must be made through an actual transfer of the provider's assets within 75 days after the close of the period, or the unpaid compensation is not allowable either in the period when earned or in the period when actually paid.

This case involves the salary accruals of the Provider's chief executive officer (CEO) and the Director of Nursing (DN), who are also owners of the Provider. In the Provider's FYE June 30, 1998, the Provider paid the CEO $94,854 in salary. At the end of the cost year, an additional $4000 was accrued by the Provider as salary payable to the CEO, which brought the total salary to the figure indicated on the Provider's Schedule of Owner's Compensation as $98,854.[3] Likewise, the DN was paid $73,847 in FY 1998 and an additional amount of $10,318 was “accrued” by the Provider at the end of FY 1998. Thus, the total salary of $84,165 was claimed for the Director of Nursing. In doing so, the Provider claimed that the routine payroll checks for the first few pay periods in its FY 1999 constituted liquidations of the prior year's salary accrual.[4] The Provider's contemporaneous documentation primarily consisted of its regular payroll registers.

[2] The Administrator notes that the regulation at 42 CFR 412.102 defines the requirements of reasonableness and necessity of compensation. However, the issue of whether the Provider's owners' compensation was reasonable pursuant to the regulations was never reached in this case.
[3] See Provider's Exhibit P-2.
[4] For the CEO, the Provider claimed that the first regular pay period in FY 1999 liquidated the salary accrual in FY 1998. For the DN, the Provider claimed that it was the first three regular payroll periods in FY 1999 that liquidated the prior year's accrual. See the Transcript of Proceedings, pp. 15-16.

Applying the above regulations and manual guidance to the facts of this case, the Administrator finds that the Provider in this case has not met its burden of proof. The basic principle of the accrual method for purposes of Medicare reimbursement is that the costs are allowable in the year in which the costs are incurred. Thus, a fundamental issue in this case is in which cost year the costs were incurred. In this case, the record fails to support the Provider's claim that the costs were incurred for the owners' services performed in FY 1998, as opposed to FY 1999. The Provider's characterization of the first paychecks in FY 1999 as liquidations of accruals for work performed in FY 1998 is not demonstrated by the facts as documented in the record. The Provider failed to relate the compensation at issue to work performed (i.e., liabilities incurred) in FY 1998. Rather, the contemporaneous documentation in the record, i.e., the Provider's routine check registers, appears to be regular payroll checks rather than the liquidation of accrued salary for FY 1998. Logically, if the Provider had, in fact, used the payroll to liquidate the accrued amounts in FY 1998, one would expect to see amounts paid above the regular payroll. However, the record fails to indicate any deviation from the normal payroll. In fact, it is not clear from the record that the accruals booked for the last pay period of FY 1998 were ever liquidated by a transfer of Provider assets; much less within 75 days of the close of the cost period of accrual, as required by 42 CFR 413.100 and §906.4 of the PRM.

As set forth above, the regulation at §413.20(a) states that, to determine costs payable under Medicare requires the examination of "data available from <u>the institution's basic accounts, as usually maintained</u>." [Emphasis added.] The Provider's submission of summaries and charts which are not contemporaneous with the time period at issue does not satisfy the Provider's burden of proving its costs with its normally-maintained records. The Provider failed to put forth sufficient evidence to support a conclusion that the payroll checks equaled a liquidation of the FY 1998 accruals.

Accordingly, because the Provider has failed to meet its burden of proof in this case, as set forth in §§413.20 and 413.24, the Administrator reverses the Board's decision.

DECISION

The Administrator reverses the decision of the Board in this case.

THIS CONSTITUTES THE FINAL ADMINISTRATIVE DECISION
OF THE SECRETARY OF HEALTH AND HUMAN SERVICES

Date: 3/1/05

/s/
Leslie V. Norwalk, Esq.
Deputy Administrator
Centers for Medicare & Medicaid Services