

# PROVIDER REIMBURSEMENT REVIEW BOARD HEARING DECISION

ON-THE-RECORD

2000-D29

**PROVIDER** -Edgewater Hospital  
Chicago, Illinois

**DATE OF HEARING-**  
February 24, 2000

Provider No. 14-0087

Cost Reporting Period Ended -  
January 21, 1989

**vs.**

**INTERMEDIARY -**  
Blue Cross and Blue Shield Association/  
Blue Cross and Blue Shield of Illinois

**CASE NO.** 91-2887

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ISSUE:

Was the Intermediary's netting of the balance due to Edgewater Hospital of liabilities owed to the program by Edgewater Medical Center proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Edgewater Hospital, Inc. ("Provider"), is a not-for-profit corporation located in Chicago, Illinois. The issue above was decided by the Provider Reimbursement Review Board ("Board") on April 6, 1999. On September 21, 1999 the Provider's representative, Thomas W. Coons, Esquire, of Ober, Kaler, Grimes and Shriver and the U.S. Government's representative, Donna Morros Weinstein, Esquire, Chief Counsel of the Office of the General Counsel, Region V, signed a settlement agreement which stated the following:

1. Foundation shall file a notice of dismissal pursuant to Fed. R. Civ. P. 41 (a)(1)(I) of the complaint in Edgewater Foundation v. Shalala, No. 99 C 3651 (N.D. 111.).
2. The Secretary shall vacate the decision of the Provider Reimbursement Review Board ("PRRB") dated April 6, 1999, which dismissed for lack of jurisdiction the Hospital's administrative appeal in PRRB Case No. 91-2887. The administrative appeal in Case No. 91-2887 shall be reinstated, with the following instructions to the PRRB:
  - a. Within 60 days after reinstatement, the Hospital's appeal will be ready for decision
  - b. The PRRB will make its best efforts to issue a decision on the merits of the Hospital's appeal promptly and expeditiously.

On December 3, 1999 the Attorney Advisor of the Health Care Financing Administration ("HCFA") issued an Administrator's Order remanding the case to the Board. The Administrator ordered:

THAT, the decision of the PRRB, dated April 6, 1999, which dismissed for lack of jurisdiction is vacated and that case is remanded to the PRRB for further proceedings consistent with the Settlement Agreement.

THAT, consistent with the Settlement Agreement, the PRRB will reinstate Case No. 91-2887.

THAT, within 60 days after reinstatement, the Hospital's appeal will be ready for decision and that the PRRB will make its best efforts to issue a decision on the merits of the Hospital's appeal promptly and expeditiously.

THAT, the decision of the PRRB will follow the provisions of section 1878 of the Social Security Act [42 U.S.C. 1395oo] and 42 C.F.R. 405.1801 et seq.

On January 7, 2000, the Board issued a Notice of Reopening and Board Order implementing the Administrator's Order.

#### PROVIDER'S CONTENTIONS:

The Provider contends that given the fact that the jurisdictional issue raised by the Intermediary is now moot, there are no material factual issues and the Board has already made factual findings in its Statement of the Case and Procedural History ("Statement"), this case is properly situated for a Board decision in favor of the Provider. The only factual disagreement between the parties relates to whether the Provider, Edgewater Hospital, and Edgewater Operating Company (d/b/a Edgewater Medical Center) - whose Medicare liability was improperly recovered by the Intermediary from the Provider - were Medicare related parties. This issue is not material, since, as discussed in the Provider's position paper, Medicare regulations do not permit an intermediary to collect liabilities due Medicare by one entity from another entity even if they are related parties. The Medicare Intermediary has not even attempted to find a regulatory basis for its actions. Even the more expansive collection authorities included in regulations promulgated after the offset at issue (which could not be applied here), would not support the Intermediary's actions. See 42 C.F.R. § 405.371. Moreover, the Intermediary recognized the loss on a transaction involving various entities including the Provider and Edgewater Operating Co., reflecting its determination that the parties were not related.

#### INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Provider is not entitled to interest attributable to a perceived underpayment. This conclusion can be reached through two separate analytical routes. First, the Board can disregard the issue framed in its prior decision and enter a final determination that generally follows the earlier findings and conclusions with one exception. The Board can make an affirmative finding that the appealing Provider is entitled to no additional payments from the Medicare program for the cost of caring for Medicare beneficiaries during the fiscal period that ended on January 21, 1989. No statute, regulation including 42 C.F.R. § 405.376, manual provision or case interpretation supports the awarding of interest.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Law - Title XVIII of the Social Security Act:

§ 1861 (v)(1)(A) - Reasonable Cost

2. Regulations - 42 C.F.R.:

§ 405.371 - Proceeding For Suspension

§405.376 - Interest Charges on Overpayments and Underpayments to Providers, Suppliers, and Other Entities

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

After reconsidering the issue, facts and parties contentions associated with this remanded case, the Board stands by the findings of fact and conclusions of law in its original decision. See attached. The Board finds that it does not have jurisdiction in this case.

DECISION AND ORDER:

The Board reaffirms its original decision that it lacks jurisdiction in this case. The case is dismissed.

Board Members Participating:

Irvin W. Kues  
Henry C. Wessman. Esq.  
Martin W. Hoover, Jr., Esq.  
Charles R. Barker  
Stanley J. Sokolove

**Date of Decision:** March 3, 2000

For the Board

Irvin W. Kues  
Chairman