PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

2001-D2

PROVIDER -
Moyle=s Central Valley Health Care, Inc
Visalia, California

Provider Nos. 05-5916, 05-5053,
05-6261, 55-5658

vs.

INTERMEDIARY -
Blue Cross of California/ Blue Cross and
Blue Shield Association

DATE OF HEARING-
March 10, 2000

Cost Reporting Periods Ended -
12/31/93, 12/31/94, 12/31/95,
12/31/96

CASE NOS. 96-0423G, 99-0448G,
and 99-2082G

INDEX

ISSUE:

Were the Intermediary's adjustments to disallow costs related to the Provider=s airplane proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Moyle's Central Valley Healthcare (AProvider≅) is a proprietary corporation consisting of a chain of four skilled nursing facilities and a home office, all located in and around Visalia, California.[1] The President of Moyle's Central Valley Healthcare is located approximately three hundred miles away in Yucca Valley, California where he also serves as President of Moyle's Health Care. The Provider operated a private airplane, piloted by the company president, to fly staff back and forth from Yucca Valley to Visalia. The Provider included the costs of ownership and operation of the airplane in its cost reports. Blue Cross of California (AIntermediary≅) disallowed a majority of the costs associated with operating the airplane in 1993 and 1994 and disallowed all airplane related expenses in the 1995 and 1996 cost reporting periods because of its position that the cost of maintaining an airplane under the facts in this case were not reasonable, necessary and related to patient care.[2] The Provider=s position is that the airplane expenses (e.g. depreciation, insurance, interest, etc.) were actually incurred and related to the operation of the Medicare certified skilled nursing facilities.

The Provider appealed the Intermediary=s adjustments to the Provider Reimbursement Review Board (ABoard≅) pursuant to 42 C.F.R. ээ 405.1835-.1841, and has met the jurisdictional requirements of those regulations. All other issues related to these cases have either been administratively resolved or withdrawn.[3] The amount of Medicare reimbursement in controversy is approximately $35,000 for 1993, $35,000 for 1994, $45,000 for 1995, and $50,000 for 1996.[4] The Provider was represented by O. Nancy Poopongpaibul, of Keith Reed & Associates. The Intermediary was represented by James Grimes, Esquire, of the Blue Cross and Blue Shield Association.

Background:

As noted above, the Provider in this case has four providers and a home office, all located near Visalia, in the Central Valley of Northern California. The Provider also owns facilities and has a

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1 The Provider owned three facilities during 1993 and 1994. On 12/29/95, the Provider added another facility. See Provider 1995/1996 Position Paper at 3.

2 Transcript (ATr.≅) at 45-46.

3 Provider=s Post Hearing Brief at 4.

4 Id, Intermediary reimbursement effects are slightly different. See Intermediary Position Papers for all years at 3.

home office in Yucca Valley, near Palm Springs, California. The difference is that the facilities in Yucca Valley are owned by Moyle's Management Inc, which has an entirely separate Home Office, (than that referred to in this case) with its own provider number.

Although there is a technical difference in terms of Home Offices, the ownership and management of both Moyle's Central Valley (based in Tulare (previouslyVisalia)) and Moyle's Management Inc. (based in Yucca Valley) are the same.[5] The Provider owns and operates an airplane so that executives may fly to and from facilities in the Central Valley and Yucca Valley, even though the facilities in Yucca Valley are technically owned by an entirely separate Home Office.

In order to manage its facilities, the Home Office in Central Valley owned and operated an airplane to fly its managerial staff between the Yucca Valley location and the Central Valley location.[6] Not only did the Provider use the airplane to fly between Yucca Valley and the Central Valley, it used the airplane to fly between these two areas to the locations of the other four providers in this case.[7] The Provider=s case is based on its belief that since there was no direct commercial airline service between the Central Valley and Palm Springs areas, the purchase of an airplane was essential and necessary for conducting the health care operation.[8] The Provider contends that it used the airplane for conducting health care and non-health care business.[9]

For the 1993 and 1994 years, the Intermediary allowed a portion of the claimed costs based on a Provider log which indicated the number of employees and business related trips, and the cost of a commercial airline ticket between Palm Springs and Visalia.[10] Specifically, in 1993, the Intermediary used an actual Provider log to obtain specific business trips and employees[11], and in 1994, the Intermediary estimated trips per months to come up with an allowable amount .Id. In 1995 and 1996, the Intermediary did not allow any airplane associated expenses. Id

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5 Tr. at 20.

6 Tr. at 28.

7 Tr. at 14.

8 Provider=s 93/94 and 95/96 Position Papers at 6.

9 Id.

10 Tr. at 45-46.

11 Id.

PROVIDER=S CONTENTIONS:

The Provider contends that the airplane is an essential vehicle for purposes of commuting between the home office in Yucca Valley, California and the individual facilities in Northern California. (Re: Delano, Tulare, Porterville, Visalia). The Provider notes that the trips are normally scheduled two to three times per month. The Provider further contends that if it had to use a commercial airline, it would be impossible to visit the Northern California facilities as often because of the limited flights (as Yucca Valley is in a remote area) and the extra travel time it takes. Accordingly, the Provider believes that one additional employee would have to be hired at the Central Valley office to handle the responsibilities the Provider=s President now handles himself. The Provider asserts that the employee would have to be of management quality and would require a salary of 60 to 70 thousand dollars per year.[12]

The Provider explained at the hearing that there is only one flight per day going from Yucca Valley to Visalia. Because of the commercial flight schedule, the Provider contends that one extra day going to Visalia and one extra day returning to Yucca Valley would be necessary to complete the same amount of work that is now being accomplished by using the company airplane. The Provider also notes that it would require two extra nights of lodging and meals for all parties involved.

The Provider refers to the Intermediary's Position Paper in which the Intermediary stated it is legitimate for Hospital Corporation of America (HCA) to own an airplane because they own hundreds of facilities located all over the United States, unlike the Provider who only has three facilities (four as of 1995) located in the Central Valley near Visalia, California and other facilities near Palm Springs, California.[13] The Provider takes exception to the Intermediary=s position that HCA was allowed to own an aircraft, however, it is denied an aircraft because of its size. The Provider argues that the Intermediary has forgotten one important factor; HCA's aircraft can fly all over the United States which means the airplane must be much larger and more expensive to maintain. The Provider contends that it owns a much smaller airplane, therefore, the expenses would be much less.

The Provider also notes the Intermediary=s argument of the basic principle of Medicare reimbursement which states: AReasonable cost, not the actual costs, of patient care are reimbursed.≅ As stated in 42 C.F.R. ∍ 413.9, AAll payments to the provider of services must be based on reasonable cost of services covered under the Medicare program and related to the care

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12 Provider Post Hearing Brief (APPHB≅) at 9.

13 See Hospital Corporation of America v Blue Cross Association, Mutual of Omaha, Aetna Life & Casualty, PRRB Dec. No. 80-D2, January 2, 1980, Medicare & Medicaid Guide (CCH) &30, 403, Rev=d in Part, HCFA Adm. Dec. March 6, 1980, Medicare & Medicaid Guide (CCH) &30,473, (AHCA≅).

of the beneficiaries.≅
The Provider argues that it is looking at reasonable cost from a different point of view. The Provider contends that the word reasonable is very subjective and requires a broader interpretation. The Provider interprets reasonable as any cost carefully utilized in doing business not only in terms of dollars but also opportunity, time value, and energy. The Provider contends that it tries to operate a healthcare business in the most effective and efficient way to make a profit and survive in a very competitive environment. The Provider understands the concept of reasonable cost in doing business and being prudent in the investment so the return on the investment may be profitable. The Provider contends that it is not just spending carelessly to create hardships to the operation. With the prudent plan in mind, the Provider also contends that it invested in the airplane in order to run a more successful business to serve the community.

The Provider asserts that the Intermediary has denied the cost of the airplane in it's entirety and has not allowed any travel expense except for the 1993 cost report period and that was based on the Intermediary's calculations.[14] Therefore, the Provider contends that the cost of doing business must be shared by the other payers. The Provider believes that the Intermediary's determination on the airplane means that the Medicare program does not utilize fair cost sharing and therefore shifts the burden to other payers. Also, the Provider contends that the Intermediary did not take into consideration the added costs in using a commercial carrier.

Furthermore, the Provider refers to the Intermediary=s position that it is the Provider's responsibility to prepare a schedule which summarizes the cost of traveling on commercial airlines. The Provider argues that it is not it's responsibility to prepare alternative transportation costs; it is the Intermediary's responsibility to substantiate its position.[15] The Provider notes, however, that it did supply the information that the Intermediary had requested. Id.

The Provider explains that at the hearing, it proposed a new methodology for allowing its airplane costs.[16] The Provider believes its proposed methodology is a fair alternative and compromise to the commercial trip basis proposed by the Intermediary and the cost basis submitted in the original cost reports. Instead of basing the calculations on the number of business and non-business trips (as the Intermediary did in 1993 & 1994), the Provider is proposing that allowable costs be based on a percentage of flying time. The Provider agrees that using the number of trips to determine allowable costs is a reasonable method if the distance of travel is equal. However, the Provider contends that flying time is a more accurate method than the number of trips due to the distance. The Provider also contends that training and maintenance time should be shared between Provider=s business and non-business activities.

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14 PPHB at 10. The Intermediary=s witness indicated at the hearing that it also allowed some airplane costs in 1994. See Tr. at 45-46.

15 PPHB at 10.

16 See PPHB at 11-12.

The Provider believes that training time is necessary for its President to remain current as a pilot, otherwise, it would have to hire a permanent pilot.

The Provider also rejects the manner in which the Intermediary did allow some costs based on the price of commercial flights and the number of trips. The Provider contends that commercial flights (between Palm Springs and Fresno) are limited to one per day.[17] Because of the distance from Fresno to Central Valley, a rental car would be needed, and the amount of productive work time on the first day would be 1-1 1/2 hours. The Provider continues its argument by indicating that lodging, meals, overtime pay and additional airline tickets would all contribute to costs in excess of the Intermediary=s method of allowing a certain number of trips at the commercial airline rate. Id.

The Provider disagrees with the Intermediary's determination to disallow the airplane cost as non-patient care related. The Provider contends that it is patient care related. The Provider contends that the imputed travel cost was only allowed for one cost report year, 1993.[18] As noted in the preceding paragraph, the Provider asserts that the imputed travel cost was also understated. The Provider contends that the Intermediary has not recognized several factors, including the fact that if the Provider had to travel by commercial airline, this would require additional hotel, meal and employee overtime costs. In addition, the Provider contends that it would also have to hire an additional full-time employee in the Visalia office.

The Provider contends that the airplane is necessary and is related to patient care in the operation. Thus, the cost should be allowed. The Provider requests the Board to reverse the adjustments and allow the travel cost based on the business percentages of 68.73% in 1993, 81.01% in 1994, 77.41% in 1995 and 90.47% in 1996.[19] The Provider believes that these percentages should be applied to the overall cost of the airplane for each fiscal year. The Provider feels it is in compliance with regulation 42 C.F.R. ээ 413.9 and 413.157 respectively, and that its costs are reasonable, proper, and related to patient care.

INTERMEDIARY=S CONTENTIONS:

The Intermediary contends that the cost of maintaining an airplane under the facts in this case were not reasonable, necessary and related to patient care under the definition in 42 CFR э 413.9. Specifically, э 413.9(b)(2) states:

> Necessary and proper costs are costs that are appropriate and

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17 PPHB at 13.

18 The Intermediary=s witness indicated at the hearing that it also allowed some airplane costs in 1994. See Tr. at 45-46.

19 PPHB at 10.

> helpful in developing and maintaining the operation of patient care facilities and activities. They are usually costs that are common and accepted occurrences in the field of the provider's activity.

Id.

Based on the above, the Intermediary contends that the airplane costs are not necessary. In connection with the 1993 cost year, the Provider submitted flight logs that indicated the number of business trips taken on the company plane along with the employees on each flight. If each employee had instead taken a commercial airline flight, the Intermediary asserts that the Provider would have had to purchase 54 airline tickets in 1993. As the Provider claimed $140,171 in airplane cost in cost reporting year 1993, each of the 54 flights in effect cost $2,595. At the same time, the Intermediary notes that a ticket on a commercial flight would have cost approximately $367. As a result, the Intermediary argued it is not reasonable to maintain a private airplane at $140,000 per year when commercial airlines are available and significantly cheaper. For 1993, the Intermediary allowed $19,818 based on the number of trips and the commercial airfare.[20] For 1994, the Intermediary allowed $9,343 based on an estimated number of trips taken by the Provider and the commercial airfare rate at that time. Id.

The Intermediary points out that at the hearing, the Provider indicated commercial flights were available, just not convenient.[21] The Intermediary believes the time and resources consumed in traveling to and from airports and waiting for flights is simply a cost of doing business, and is usual and customary in any industry. The Provider also indicated there were occasions when Provider personnel used automobiles to get from Yucca Valley to Visalia.[22] The Intermediary asserts that this fact further supports its contention that the use of a private plane was not the only means of transportation and certainly not the most cost effective.

The Intermediary also argues that the use of a company plane was not a common and accepted occurrence in the field of the Provider's activity. The Intermediary's witness testified that in his thirteen years as a Medicare auditor in California, he had never seen a skilled nursing facility or skilled nursing facility chain that owned an airplane.[23] Further, the auditor indicated that the common and accepted practice of travel from home office to facilities was by automobile. Id.

Finally, the Intermediary argued that the Provider's reliance on PRRB Decision No. 80-D2 (AHCA≅) was misplaced. In that case, the Provider, which was a large hospital chain with 54

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20 Tr. at 45-45, Intermediary=s Post Hearing Brief at 6-7.

21 Tr. at 15.

22 Tr. at 13.

23 Tr. at 49.

facilities located across the United States, maintained a corporate plane. The volume of travel and distances traveled may have made it cost effective to own and operate a plane under the facts of that case. However, the Intermediary contends that the case before the Board is factually different. In the instant case, the Provider is a small chain of skilled nursing facilities located within the state of California. The home office of the chain was within close proximity of the facilities and was fully staffed.[24]

The Intermediary also points out that unlike the 1994 cost year, in 1995 and 1996 no adjustment was proposed to eliminate the cost of the airplane and the accumulated depreciation on the airplane so as to disallow the inclusion of this asset in the computation of a return on equity.[25] However, should the Board affirm its adjustments disallowing the costs of a private aircraft, the Intermediary proposes to eliminate this asset from the computation of a return on equity.

To summarize, it is the Intermediary=s position that the Provider has not supplied sufficient evidence to support its claim that the ownership of a private plane was a reasonable cost, which was appropriate and helpful in developing or maintaining patient care facilities or activities.[26] In addition, the Intermediary asserts that the Provider has not presented any evidence that the use of a company plane was a common and accepted occurrence in the operation of a chain of skilled nursing facilities. The Intermediary contends that while the Provider may have found it more convenient, and perhaps even a better use of resources to transport personnel on a private plane, the reality of business is that there will be down time resulting from commercial airline travel. Considering the disparity in cost between the cost of a commercial airline ticket and the cost of operating a private plane, the Intermediary concludes that the Provider's airplane costs are unreasonable, and therefore unallowable, and believes that the Board should affirm its adjustments.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

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

ээ 405.1835-.1841	-	Board Jurisdiction
э 413.9 et seq.	-	Costs Related to Patient Care
э 413.157 et seq.	-	Return on Equity Capital of Proprietary Providers.

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24 Tr. at 21.

25 Intermediary Position Papers for 1995 and 1996 at 5.

26 Intermediary Post Hearing Brief at 3.

2. Case Law:

Hospital Corporation of America v. Blue Cross Association, Mutual of Omaha, Aetna Life & Casualty , PRRB Dec. No. 80-D2, January 2, 1980, Medicare & Medicaid Guide (CCH) &30, 403, Rev=d in Part, HCFA Adm. Dec. March 6, 1980, Medicare & Medicaid Guide (CCH) &30,473.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties= contentions, evidence presented, testimony elicited at the hearing, and an analysis of the controlling laws and regulations, finds and concludes that the Provider submitted enough evidence at the hearing and in its post hearing brief to convince the Board that the Intermediary=s adjustments should be modified in certain years, specificially FYs 1993 and 1996.

As noted above, the Provider in this case owned an airplane to fly staff back and forth between two locations in California and included the costs of ownership and operation of this airplane in its cost reports. The Intermediary disallowed a majority of the costs associated with operating the airplane in 1993 and 1994 and disallowed all airplane related expenses in the 1995 and 1996 cost reporting periods because of its position that the cost of maintaining an airplane under the facts in this case were not reasonable, necessary and related to patient care. The Provider=s position was that the airplane expenses (e.g. depreciation, insurance, interest, etc.) were actually incurred and related to the operation of the Medicare certified skilled nursiing facilities.

For the 1993 and 1994 years, the Intermediary allowed a portion of the airplane costs claimed by the Provider. The Intermediary imputed the amount it allowed by using a Provider airplane log, that contained the number of Provider employees and business trips taken on the airplane, and the cost of a commercial airline ticket between the two Provider locations. In 1993, the Intermediary used an actual Provider log for specific trips and employees, and in 1994, the Intermediary estimated trips per month to come up with an allowable amount. In 1995 and 1996, the Intermediary did not allow any airplane associated expenses.

The Board finds that travel expenses for providers are allowable if they are documented, reasonable, and related to patient care. The Board also finds that different providers use different modes of transportation in conducting their health care businesses.

The Board notes that the Provider in this case used an airplane in conducting its health care business, and although there were airplane travel logs in evidence (in Provider=s Position Papers), there was not sufficient detail in evidence to convince the Board to allow 100 percent of the airplane costs claimed. The Board points to testimony at the hearing in which the Intermediary agreed that it would normally pay for the costs of rooms and other travel related expenses.[27] The Board further notes that the Provider=s Post Hearing Brief contained a summary of trips and expenses for each of the years in this case, however, the Board was unable to cooroborate the number of trips on the Provider=s schedule for 1994 and 1995.[28] Also, the Board refers to the Provider=s suggestion that an additional employee would be be necessary in Central Valley if it did not fly there on a regular basis. The Board, however, finds no documentation in evidence to support such a claim for an additional employee.

The Board concludes that based on the analysis attached to the Provider=s Post Hearing Brief (PPHB at 14-15), that $38,214 in 1993 and $61,567 in 1996 are allowable expenses to be appropriately allocated by the Intermediary. Regarding FYs 1994 and 1995, the Board notes that there were signficant discrepancies between the number of trips noted in the Provider=s Position Papers for those years, and the number of trips noted in the Provider=s Post Hearing Brief.[29] Accordingly, the Board affirms the Intermediary=s adjustments in 1994 and 1995 in lieu of any other data.

The Board also notes the Intermediary=s position that it proposed to eliminate the airplane=s cost and depreciation expense from the computation of Return on Equity capital in 1995 and 1996 should the Board find for the Intermediary.[30] The Board finds this point moot since Return on Equity Capital was not allowed for SNF services furnished on or after October 1, 1993. C.F.R. э 413.157 (b)(3)ii.

DECISION AND ORDER:

The Intermediary=s adjustments are modified for 1993 and 1996. The Intermediary is ordered to modify its adjustments and appropriately allocate $38,214 and $61,567 for FYs 1993 and 1996

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27 Tr. at 62.

28 PPHB at 14-15.

29 For 1994, the PPHB at 14 indicates 14 busines trips while its 1994 Position Paper at Section VI, Exhibit 1 shows 25 business trips. For 1995, the PPHB at 15 indicates 39 business trips while its 1995 Position Paper at Section VI, Exhibit 1 shows 50 business trips.

30 Intermediary Position Papers for 1995 and 1996 at 5.

respectively. The Intermediary=s adjustments for FYs 1994 and 1995 are affirmed.

Board Members Participating:

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

Date of Decision: November 01, 2000

FOR THE BOARD:

Irvin W. Kues
Chairman