PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION

ON-THE-RECORD
2002-D4

PROVIDER -
The Christ Hospital
Cincinnati, OH

Provider No. 36-0163

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
AdminaStar Federal

DATE OF HEARING-
September 20, 2001

Cost Reporting Period Ended -
December 31, 1990

CASE NO. 95-0620

INDEX

ISSUE:

Was the Intermediary's adjustment with respect to parking garage revenues proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

The Christ Hospital ("Provider"), operates a non-profit hospital in Cincinnati, Ohio and has been an approved provider in the Medicare program since its inception in 1966. On August 9, 1996 AdminaStar Federal, Inc. ("Intermediary") notified the Provider of its intent to re-open the Provider's cost report for fiscal year 1990 ("FY 90"). The Intermediary took this action, in part, "to reclass the guest garage cost center from the non-reimbursable line to the appropriate cost centers and to offset the revenue received."

During the cost reporting period January 1, 1990 through December 31, 1990, the Provider operated a parking garage utilized both by employees and visitors. The Provider reflected the garage expenses ($412,833) relating to the visitors on line 99.04 of Worksheet A of the cost report. This is a non-reimbursable cost center. The expenses related to the employees were reclassified through Worksheet A-6 from line 99.04 to line 3 of Worksheet A (Employee Health and Welfare). The Provider also made several Worksheet A-6 reclassifications to properly reflect other miscellaneous expenses related to the garage.[1]

The original Notice of Program Reimbursement was dated August 16, 1994 ("Original NPR"). The Provider had requested a reopening of the cost report in July, 1996.[2] A Revised Notice of Program Reimbursement was subsequently issued on October 23, 1996 ("Revised NPR"). The Provider filed its Request for Hearing from the Revised NPR on April 17, 1997. During this reopening of the 1990 cost report, the Intermediary allocated the expenses relating to the visitor parking garage between capital and non-capital costs and reclassified them to capital costs (old capital) and non-capital costs (operation of plant). (See Intermediary Exhibit I-2, See also Intermediary Exhibit I-1, Adjustment Number 3).

The Intermediary then determined that 74.52 per cent of total garage costs were capital costs (See Intermediary Exhibit I-2). After this determination, the Intermediary allocated the garage revenue, which is totally related to visitors, between the capital costs and operating costs and then offset the revenue against the appropriate cost centers ($330,599 capital & $113,052 operating, Intermediary Exhibit I-1, Adjustment Number 4). The Intermediary based this

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1 Intermediary Position Paper at 2.

2 Id.

adjustment upon its understanding of Provider Reimbursement Manual, Part 1, (HCFA Pub. 15-1), § 2107.2.A (Intermediary Exhibit I-3).

The Provider timely appealed this adjustment to the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§405.1835-.1841 and has met the jurisdictional requirements of these regulations. The Medicare reimbursement impact of this adjustment is approximately $74,423.[3] The Provider was represented by James F. Flynn, Esquire, of Bricker and Eckler LLP. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider notes that it incurred expenses and generated revenues related to the operation of its parking garage which is utilized by both employees and guests. The Provider contends that consistent with the letter and intent of the law, it reported the revenue as an offset to operating costs in the appropriate cost center for this facility, "Plant Operations." The Provider asserts that upon re-opening, the Intermediary reclassified this revenue to apportion it between the Plant Operations cost center and the capital-related cost center, "Old Capital-Buildings & Fixtures." The Provider points out that the Intermediary explained its action as follows:

> To accumulate all necessary costs pertaining to the parking garages and then apportion the revenue received from others to the other portion of those costs.

Intermediary Work papers, Provider's Exhibit 1

The Provider notes that the Intermediary determined that the parking garage generated total revenues of $443,651 for FY90 and then apportioned approximately 75 per cent of such revenues as an offset to capital-related costs.[4] The Provider argues that this adjustment was without basis and contrary to the applicable regulations and manual provisions.

The Provider contends that it properly determined the amount of allowable costs for its parking garage and then offset the parking garage operating revenues against these costs in compliance with the instructions for Worksheet A-8 of the cost report. The Provider points out that this offset is made before capital-related costs are allocated to other cost centers. The Provider believes that the Intermediary's action is without basis. The Provider asserts that 42 C.F.R. § 413.130, Provider Exhibit 2, which addresses capital-related costs, does not provide for the offset performed by the Intermediary in this case. The Provider contends that the only capital-related cost for which an income offset is permitted under 42 C.F.R. §413.130 is for investment

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[3] Id.

[4] See Intermediary Exhibit I-2 at pg. 2/3.

income. The Provider argues that there is no mention of the offset of other operating revenue against other capital-related costs. It is the Provider's position that the definition of capital-related costs is specific and absent any direction for offsetting operating revenues.

The Provider points out that in its position paper, the Intermediary has cited and relied upon HCFA Pub. 15-1 §2107.2.A as the authority for its adjustment. This section does not authorize the offset of operating revenues against capital-related costs of the parking garage. The Provider notes that Section 2107.1 provides that "the cost incurred for provider-owned or rented parking facilities, parking lots, and/or garages are allowable costs ..." Id. The Provider contends that this reference is clearly to operating costs of the parking garage. The Provider then notes that section 2107.2 provides for the offset of revenue, if any, against such operating costs. It is quite significant that the section relied upon by the Intermediary fails to specify the offset against capital related costs.

The Provider notes that the Board has previously addressed this same issue in St. Gabriel's Hospital, PRRB Case No. 93-D73, Aug. 9, 1993, Medicare & Medicaid Guide (CCH) ¶41,637, HCFA Adm. Declined Rev., October 6, 1993. (Provider Exhibit 3). In St. Gabriel's, the intermediary attempted to offset various miscellaneous revenue items (e.g., purchasing, cafeteria, medical records, etc.) against capital costs based on the ratio of allocated capital costs to allocated total costs. The Board found as follows:

> The offset is made to a specific cost center (i.e., medical records, dietary, etc.). The revenue offset is made before capital costs are allocated to the Provider's other cost centers. The Intermediary's method is not supported by the Medicare Principles of Reimbursement and are contrary to the HCFA 2552 cost reporting instruction forms for Worksheet A-8. The Board can find no specific reference in either the regulations or the HCFA Pub. 15-1 that would support the adjustments made by the Intermediary in this situation. Consequently, the Board finds the Intermediary's adjustments were not proper.

Id.

For the foregoing reasons, the Provider believes that the Intermediary's reclassification of operating revenues related to the parking garage was improper and should be reversed.

INTERMEDIARY'S CONTENTIONS:

The Intermediary bases its adjustment on HCFA Pub. 15-1, § 2107.2.A (Intermediary Exhibit I-3), which states:

> Where parking revenue is received from other than employees and physicians, the revenue is offset against parking lot costs

attributable to such persons. Id.

The Intermediary has determined that per the Provider's records, there is $527,905 of garage capital costs and $236,196 of garage operating costs (Intermediary Exhibit I-3) and has offset the applicable revenue to the cost centers where the cost is shown on the cost report. The Intermediary believes that it has followed the regulations, has offset the proper amount of revenue, and has made the offset against the proper cost centers.

CITATIONS OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Regulations 42 C.F.R.:

   §§ 405.1835-.1841 - Board Jurisdiction

   § 413.130 - Introduction to capital-related costs

2. Provider Reimbursement Manual, Part 1 (HCFA Pub. 15-1):

   § 2107 et seq - Parking Lot Costs

3. Cases

   St. Gabriel's Hospital vs Blue Cross and Blue Shield Assoc./Blue Cross and Blue Shield of Minnesota, PRRB Dec. No. 93-D73, Aug. 9, 1993 Medicare & Medicaid Guide (CCH) ¶41,637, HCFA Adm. Declined Rev., October 6, 1993.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of the facts, parties' contentions and evidence presented, finds and concludes as follows:

The Board finds that the record has very little guidance regarding authorities to be used in this case. The Board notes that both parties exhibited inconsistencies in their arguments and methodology. The Provider's main argument was that the parking garage revenue should offset costs in the "Plant Operations" cost center; however, the Board found no evidence in the record to support this argument. In this regard the Board distinguishes the instant case from St. Gabriel's.

The Board also notes that the Provider, in a letter to the Intermediary dated July 26, 1996, (Intermediary Exhibit I-4), acknowledged that it had made an error in the manner in which it reported the parking garage costs on its cost report for the subject year and asked the Intermediary to reopen the cost report. The Provider requested that the costs for the parking garage be included in the operation of plant cost center as opposed to a separate non-reimbursable cost center. The Provider further requested that $162,804 of these costs be directly assigned to capital costs. The Board also notes that while the Provider had originally assigned some capital costs to a non-reimbursable cost center, it left the capital costs associated with employee health & welfare in the capital cost center.

In terms of a more accurate methodology, the Board believes that the Intermediary's separation of the parking revenue into capital and operating revenue and then offsetting costs based on this separation is reasonable. Finally, regarding its initial comment, the Board notes that HCFA Pub. 15-1 § 2107 gives very little guidance on the treatment of parking lot revenue.

DECISION AND ORDER:

The Board finds that the Intermediary's method of offsetting parking lot revenue against capital and operating costs was reasonable. The Intermediary's adjustment is affirmed.

Board Members Participating:

Irvin W. Kues
Henry C. Wessman
Stanley J. Sokolove

Date of Decision: January 08, 2002

FOR THE BOARD:

Irvin W. Kues
Chairman