PROVIDER REIMBURSEMENT REVIEW BOARD
DECISION

ON THE RECORD
2003-D20

PROVIDER –
Meriter Hospital
Madison, Wisconsin

Provider No. 52-0089

vs.

INTERMEDIARY – Blue Cross and Blue Shield Association/United Government Services, LLC

DATE OF HEARING -
December 3, 2002

Cost Reporting Periods Ended
December 31, 1996

CASE NO. 99-4064

INDEX

ISSUE:

Was the Intermediary's determination of the TEFRA[1] exception request proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Meriter Hospital ("Provider") is an acute care hospital located in Madison, Wisconsin. It operates a rehabilitation unit that is exempt from the Medicare Prospective Payment System under § 1886 et seq. of the Social Security Act. The Provider is subject to the TEFRA rate of increase limits set forth in §1886 et seq of the Social Security Act, as implemented by the regulations at 42 C.F.R. § 413.40 and Chapter 30 of CMS Publication 15-1. Subsections (a) through (d) of § 413.40 govern the establishment of a base period cost per discharge and the annual rates of increase to the per discharge limits. Subsection (e) governs the procedures for hospital requests regarding the applicability of the TEFRA limits, and subsections (f) through (h) provide for exceptions and adjustments to the limits.

United Government Services ("Intermediary") finalized the fiscal year ended (FYE) 12-31-96 cost report and issued a Notice of Program Reimbursement ("NPR") on June 30, 1999. The Provider requested an adjustment to the FYE 12-31-96 TEFRA limit for the rehabilitation unit in a letter dated January 13, 2000. The Intermediary denied the request for an adjustment, asserting it was not submitted timely, as the deadline for requesting an adjustment to the TEFRA limit had expired on December 27, 1999. The Provider does not dispute that its request was filed after the deadline but it argues it should be granted an exception for good cause.

The Provider submitted a request for a hearing to the Provider Reimbursement Review Board ("Board") on July 10, 2000. The Provider's request meets the jurisdictional requirements in accordance with 42 C.F.R. §§ 405.1835-.1841. The Medicare reimbursement effect of the appeal is approximately $43,083.

The Provider was represented by David H. Snow, Esq., of von Briesen & Roper, S.C. The Intermediary was represented by Bernard M. Talbert, Esq., of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

The Provider contends that it communicated to its legal counsel a desire to file an adjustment request and relied on counsel to do so. Due to an administrative oversight by Provider's legal counsel, the adjustment request was filed 17 days late. The Provider's NPRs have customarily been issued in September, resulting in a March adjustment request deadline. The Provider delivered the necessary documents to counsel prior to the 180 day deadline and gave counsel instructions to file the appeal, thereby evidencing its intent to timely file an adjustment request. The Provider argues that the reason for the late filing was therefore beyond its control.

[1] Tax Equity and Financial Responsibility Act.

The Provider points out that its legal counsel has timely filed adjustment requests for the fiscal years 1987 through 1995, including fully completed requests for 1987 through 1994. These fully completed requests included the approved calculation methods under CMS Pub. 15-1, Chapter 30. On May 6, 1993, CMS issued a decision for the Provider's fiscal year ending 1988 and authorized the Intermediary to approve TEFRA adjustments for subsequent years using the methods contained in CMS Pub. 15-1, Chapter 30.

The Provider contends that it and its legal counsel have provided all necessary information to the Intermediary for the completed requests, including arranging for in-person meetings with the Intermediary representatives in order to expedite the decision making process. The Provider points out that the Intermediary has failed to meet the 180-day response deadline established in C.F.R. § 413.40 et seq. for most adjustment requests filed. The only adjustment request handled within the 180 day time limitation was the 1993 request. Until recently, several adjustment requests dating back as far as 1987 have not even been reviewed by the Intermediary. The Intermediary is currently reviewing old adjustment requests, but to date no decisions have been issued.

The Provider argues that the Intermediary has the authority to grant a good cause exception, and that it is an abuse of the Intermediary's discretion to deny a good cause exception, in light of the Intermediary's own track record with respect to its review of the Provider's TEFRA adjustment requests. It argues that it is unreasonable for the Intermediary to fail to meet its legal requirements for multiple cost reporting periods by a matter of years without any consequence, and at the same time deny the Provider's request for a good cause exception for missing one TEFRA adjustment request deadline by 17 days.

INTERMEDIARY'S CONTENTIONS:

The Intermediary contends that the Provider did not meet the deadline to file the TEFRA limit as required by 42 C.F.R. § 413.40 et seq. which states in part:

> A hospital may request an adjustment to the rate-of-increase ceiling imposed under this section. The hospital's request must be received by the hospital's fiscal intermediary no later than 180 days after the date on the intermediary's initial notice of amount of program reimbursement (NPR) for the cost reporting period for which the hospital requests an adjustment.

The Intermediary contends that the Provider's request was submitted 197 days after the issuance of the NPR and as such should clearly not be allowed an exception.

The Intermediary relies on the CMS Administrator's decision in St. Joseph Hospital v. Mutual of Omaha Insurance Company, HCFA Admr. Dec., May 7, 1999, Medicare and Medicaid Guide (CCH) ¶ 80,214 ("St. Joseph"), in which the Administrator stated:

> It is undisputed that the Intermediary did not receive the Provider's request for an exception within the 180-day period provided in the regulations governing a TEFRA adjustment request. Accordingly, the Board improperly determined that the provider's appeal was timely. The provider did not comply with the procedures set forth in the regulations at 42 C.F.R. § 413.40 et seq. for requesting a TEFRA exception.

The Intermediary maintains that the St. Joseph case was not as clear as the case at hand, as the Provider was arguing there that they had submitted the request timely but the intermediary had not received it within the 180-day time frame.

The Intermediary further contends that the Provider has not submitted evidence that the late filing was beyond the control of the Provider. The Intermediary argues that the Provider and the legal counsel had the responsibility of knowing the deadlines involved and the Provider should have followed up with the legal counsel to determine if proper filing had been performed. Although the legal counsel was to submit the data, the Provider is not relieved of its responsibility to ensure that proper deadlines are met.

The Intermediary contends that the statements made by the Provider regarding the Intermediary's failure to meet its legal requirements for multiple cost reporting periods has no bearing on the case at hand.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board finds that the Intermediary properly denied the Provider's request for an exception to the TEFRA rate. It is undisputed that the request was submitted seventeen days late and the Board concludes that the counsel's oversight is not a sufficient reason to grant a good cause exception.

The Board disagrees with the Provider's argument that it was the fault of counsel and not the Provider that the exception request was late. The evidence reflects that the NPR was issued on June 30, 1999, but the Provider did not submit its request to its legal counsel until December 10, 1999, with a deadline for filing of December 27, 1999. The Board further concludes that the Provider's counsel is the agent of the Provider, and therefore the Provider is responsible for the acts of its agent.

DECISION AND ORDER:

The Provider is not entitled to a good cause exception. The Intermediary's decision is affirmed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Henry C. Wessman, Esquire

Stanley J. Sokolove
Dr. Gary Blodgett

Date of Decision – March 19, 2003

FOR THE BOARD

Suzanne Cochran, Esquire
Chairperson