PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2005-D19

PROVIDER –
Family Home Care, Inc.

Provider No.: 19-7558

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
Palmetto Government Benefits
Administrators

DATE OF HEARING -
April 20, 2004

Cost Reporting Period Ended -
June 30, 1998

CASE NO.: 01-0261

INDEX

ISSUE:

Was the Intermediary's adjustment to disallow accrued salaries proper?

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement to a provider of medical services.

The Medicare program was established to provide health insurance to the aged and disabled. 42 U.S.C. §§1395-1395cc. The Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration (HCFA)) is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted out to insurance companies known as fiscal intermediaries. Fiscal intermediaries determine payment amounts due the providers under Medicare law and under interpretive guidelines published by CMS. See, 42 U.S.C. §1395(h), 42 C.F.R. §§413.20(b) and 413.24(b).

At the close of its fiscal year, a provider must submit a cost report to the fiscal intermediary showing the costs it incurred during the fiscal year and the proportion of those costs to be allocated to Medicare. 42 C.F.R. §413.20. The fiscal intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. §405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the issuance of the NPR. 42 U.S.C. §1395oo(a); 42 C.F.R. §405.1835.

BACKGROUND OF THE PROVIDER:

Family Home Care, Inc. (Provider) is a home health agency located in Metaire, Louisiana, which was certified by the Medicare Program on June 2, 1993. Palmetto Government Benefits Administrator (Intermediary) issued an NPR for fiscal year ended June 30, 1998, on September 30, 2000. The Provider appealed the Intermediary's determination to the Board and has met the jurisdictional requirements of 42 C.F.R. §405.1835 –1841.

The Provider was represented by John W. Jansak, Esquire, of Harriman, Jansak & Wylie. The Intermediary's representative was James R. Grimes, Esquire, of Blue Cross Blue Shield Association.

BACKGROUND OF THE DISPUTE:

For its cost reporting period ended on June 30, 1998, the Provider claimed costs for accrued salaries that were actually paid to two owner/employees in the subsequent fiscal year. The Intermediary, based on its conclusion that the Provider failed to properly liquidate the salary accruals within a 75-day period, disallowed these costs.

PARTIES CONTENTIONS:

Although the Provider claims that it has submitted proof of liquidation in a timely manner (75 days) to the Intermediary (in the form of canceled checks and check registers), the Intermediary contends that the Provider has not properly liquidated the accrued salaries. After reviewing the Provider's check registers,[1] the Intermediary determined that the amounts identified by the Provider for the two employees in question actually represented payment for time worked in the subsequent year.

It is the Intermediary's belief that in order to liquidate accrued salaries, payment should be above and beyond the regular payroll. The Provider admitted into evidence Exhibit 5, which it believed represented a schedule of owners' compensation and liquidation to illustrate its point of proper and timely liquidation. However, the Intermediary rejected it, as the Provider's schedule did not include any additional payments other than regular payroll.

There is no dispute that the Provider accrued salaries of $14,318 for two of its owners/employees in the fiscal year ended June 30, 1998. However, the issue for the Board is whether regular payroll checks can be used to liquidate accrued salaries.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

The Board, after consideration of Medicare law and Program instructions, parties' contentions and evidence presented, finds and concludes that the Provider properly liquidated owners' accrued compensation within the 75-day time limit set forth in CMS Pub. 15-1 §906.4.

The Intermediary claims that the Provider did not properly liquidate the owners' compensation within a 75-day time limit, in accordance with CMS Pub. 15-1 §906.4, which states:

> [t]hat the actual payment must be made (whether by cash, negotiable instrument, or in kind) within 75 days after the close of the cost reporting period. If payment is not made within the cost reporting period, or within

[1] See Intermediary's position paper at Exhibit I-1.

> 75 days thereafter, the unpaid compensation is not includable in allowable costs either in the period earned or in the period actually paid.

However, the Board finds that the Provider has met the requirements set forth in CMS Pub. 15-1 §906.4. The Provider's Exhibits clearly indicate that the accrued salaries in question were properly liquidated using regular payroll checks at the beginning of the subsequent year ended June 30, 1999.[2] Although the Intermediary contends that regular payroll checks cannot be used to liquidate owners' accrued compensation, the Board cannot find any Medicare rule, regulation or manual reference that supports the Intermediary's position.

Given the fact that the Provider has properly documented the liquidation of the accrued salaries in question within the necessary time frame, the Board finds no reason to support the Intermediary. The Board finds that there is nothing prohibiting the Provider from accruing compensation to its owners as long as the liability is liquidated within a 75-day time limit, which in this case it was. Therefore, the Board finds for the Provider for the reasons stated above.

DECISION AND ORDER:

The Board finds that the owners' accrued compensation in question was properly liquidated within the 75-day limit in accordance with CMS Pub. 15-1 §906.4. The Intermediary's adjustment disallowing the accrued owners' salaries is reversed.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Dr. Gary B. Blodgett
Martin W. Hoover, Jr., Esquire
Elaine Crews Powell, CPA
Anjali Mulchandani-West

FOR THE BOARD

DATE: January 7, 2005

Suzanne Cochran, Esquire
Chairman

[2] See Provider's position paper Exhibit 5.