

CENTERS FOR MEDICARE AND MEDICAID SERVICES

Order of the Administrator

In the case of:

THE QUEENS MEDICAL CENTER,

Provider,

vs.

**BLUE CROSS BLUE SHEILD
ASSOCIATION/ FIRST COAST
SEVICE OPTIONS, INC.- CA**

Intermediary

Claim for:

Cost reporting period ending:

June 27, 1998

PRRB Case No. 2010-D24

Date: April 2, 2010

This case is before the Administrator, Centers for Medicare and Medicaid Services (CMS), for review on own motion, of the decision of the Provider Review Reimbursement Board (Board). The review is during the 60-day period in § 1878(f)(1) of the Social Security Act (Act), as amended (42 USC 1395oo(f)). Accordingly, the parties were notified of the Administrator's intention to review the Board's decision. Comments were received from the Providers. Accordingly, this case is now before the Administrator for final agency review.

The issue is whether First Coast Service Options, Inc. (Intermediary) improperly excluded patient days associated with patients who were dually eligible for both the Medicare and Medicaid programs but for such days there was no Medicare Part A payment or coverage available (dual eligible days) from the numerators of both the Medicaid and Supplemental Security Income (SSI) percentages of the Medicare disproportionate share hospital (DSH) computation for purposes of the Queen's Medical Center's (Provider) fiscal year ended June 27, 1998 (FYE 6/27/98) Medicare cost report.

The Board found that the exclusion of Part A exhausted benefit days, intermediate care facility waitlist days and Medicare secondary payer days from the Medicaid fraction of the DSH calculation was improper.

During the period allowed for Administrator review, the CMS ruling, CMS-1498-R, was issued, providing notice that Medicare administrative tribunals lack jurisdiction over three specific types of provider appeals regarding the calculation of the Medicare disproportionate share hospital (DSH) adjustment. The Ruling also requires “the pertinent administrative appeals tribunal (that is the PRRB, the Administrator of CMS, the Medicare fiscal intermediary, hearing officers or the CMS reviewing official) to remand each qualifying appeal to the appropriate Medicare contractor.”

In particular, CMS Ruling CMS-1498-R prohibits CMS administrative tribunals from review of provider appeals of the exclusion from the disproportionate patient percentage (DPP) of non-covered inpatient hospital days for patients entitled to Medicare Part A, and days for which the patient’s Part A inpatient hospital benefits were exhausted.

Similarly, the Provider Reimbursement Review Board (PRRB) decision in this case involved the treatment, for purposes of the DSH calculation, of patient days associated with dual eligible patients for the days there were no Medicare Part A payment or coverage available.

Accordingly, the Administrator orders:

THAT the Board decision in this case is hereby vacated in accordance with the CMS Ruling; and

THAT the case is remanded to the appropriate Medicare contractor for resolution consistent with CMS-1498-R.

Date: 5/24/2010

/s/
Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services