

Florida District Court Adopts Magistrate Judge's Recommendation Reversing and Remanding ALJ's/MAC's Medicare Overpayment Determination

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By order dated August 16, the U.S. District Court for the Middle District of Florida adopted and confirmed a Report and Recommendation (Recommendation) of a Magistrate Judge dated August 1, and reversed and remanded the final decision of the Secretary of the U.S. Department of Health and Human Services (Secretary) that had upheld a Medicare overpayment of \$1,614,691 assessed against Teamcare Infusion Orlando Inc. (Teamcare) following an audit.¹ The court concluded that the Secretary's final decision (a decision of the Medicare Appeals Council (MAC) that upheld the decision of an Administrative Law Judge (ALJ)) was not supported by substantial evidence supporting the amount of the overpayment.

Teamcare is a pharmacy supplier of durable medical equipment and supplies, which was audited by TrustSolutions LLC, the Medicare Program Safeguard Contractor (PSC), for claims for items including blood glucose monitors and supplies, continuous positive airway pressure devices, nebulizers and related drugs and accessories, oxygen equipment and supplies, and parenteral nutrition. Teamcare appeared pro se in the administrative process through its president and owner.

As noted by the Magistrate Judge, the record on appeal did not contain the audit performed by the PSC, any information on the "random sample" used to determine the overpayment, the total number of claims submitted by the supplier during the audit period against which the overpayment was extrapolated, the formula used by the PSC to perform the extrapolation, or even the initial determination issued by the PSC. It was further noted that the number of claims supposedly at issue in the sample, and in some cases the reason for denial of particular claims, varied amongst the initial determination, the redetermination, the reconsideration, the ALJ decision, and the MAC's decision. Although a representative of the Qualified Independent Contractor (QIC), who appeared at the ALJ hearing as a non-party participant, responded to the ALJ that no extrapolation had been performed, the Secretary later inconsistently asserted that the results of the audit had been extrapolated to project the overpayment of \$1,614,691. Moreover, due to the level of redaction in the record prepared by the Secretary, the Magistrate Judge found that it could not be determined whether substantial evidence supported the findings with respect to specific beneficiaries and claims at issue.

The Recommendation rejected the Secretary's argument that Teamcare had waived the right to raise issues about the random sample and method used to calculate the overpayment because they had not been raised during the administrative review process. Rather, the Magistrate Judge concluded that Teamcare had broadly raised its disputes with the overpayment in its request for hearing, that the ALJ had inquired about the issue of extrapolation at the hearing, that the QIC representative responded that no extrapolation or statistical sample had been performed, and that the ALJ had found Teamcare liable for recovery of the overpayment, and that Teamcare had requested review by the MAC of each of the ALJ's findings.

Other arguments raised by Teamcare were considered but not accepted in the Recommendation. Most significantly, Teamcare's argument that the denied claims were inconsistent with prior decisions of the Secretary and constituted disparate treatment was rejected because of a lack of a particularized showing of the similarities between the prior claims and the claims at issue in this case.

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