IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

COMMUNITY HOSPITAL,	)	
	)	
Plaintiff,	)	**Case No.** 2:22-cv-28
	)	
v.	)	**Appeal from:**
	)	**Medicare Appeals Council**
	)	**No. M-13-1584**
XAVIER BECERRA, Secretary,	)	
UNITED STATES DEPARTMENT	)	**ALJ Nos. 1-932875452**
OF HEALTH AND HUMAN SERVICES,	)	**1-932911968**
	)	**1-932882096**
	)	**1-932866201**
Defendant.	)	

COMPLAINT FOR JUDICIAL REVIEW

Plaintiff, Community Hospital, hereby petitions for judicial review from the final Order of the Medicare Appeals Council dismissing its request for review of four administrative law judge ("ALJ") decisions, and in support hereof states as follows.

INTRODUCTION

1. This matter arises from Community Hospital seeking Medicare payment for four patients, B.D., R.K., H.P., and B.G., who each received a cardiac procedure that was followed by a one-day inpatient hospital stay.

2. Pursuant to Section 1886(d) of the Social Security Act (the "Act"), Community Hospital billed the procedure and in-patient stay for each patient to Medicare Part A (hospital care), under the diagnosis-related group ("DRG") appropriate for the cardiac procedure, which determines the allowable Medicare

reimbursement for the procedure and hospitalization. Medicare initially paid the claim for each patient.

3. Subsequently, the Recovery Audit Contractor reopened the claim and requested medical records for review. For each patient, the Recovery Audit Contractor, CGI Federal, advised Community Hospital that the hospital stay was not necessary and reasonable under section 1862(a)(1)(A) of the Act, and that Community Hospital therefore had received an overpayment.

4. The Recovery Audit Contractor did not question the medical necessity of the cardiac procedure itself for any patient. Nevertheless, it advised the Medicare Administrative Contractor at the time, National Government Services, to demand that Community Hospital repay the entire amount that Medicare had paid for the cardiac procedure and one-day hospital stay under Part A, DRG.

5. National Government Services demanded full repayment, without offsetting the applicable Medicare Part B (outpatient care), ambulatory patient classification ("APC") amount for the cardiac procedure followed by outpatient observation. Because the cardiac procedure was medically necessary and at a minimum required outpatient observation after the procedure, Community Hospital should only have been required to repay the difference between the amounts initially paid under Part A, DRG, and the allowable amounts under Part B, APC.

THE PARTIES

6. Community Hospital is a nonprofit organized in Indiana with its principal place of business in Munster, Indiana.

7. Xavier Becerra is the Secretary of the United States Department of Health and Human Services (the "Agency"). The Secretary adopts and issues final decisions of the Medicare Appeals Council and is the Defendant in appeals for judicial review under 42 C.F.R. § 405.1136(d).

JURISDICTION AND VENUE

8. The Court has jurisdiction over this Complaint and appeal for judicial review under 42 C.F.R. § 405.1130. Community Hospital hereby appeals a decision of the Medicare Appeals Council dated December 15, 2021. A true and accurate copy of the Medicare Appeals Council's decision is attached as Exhibit A hereto. Community Hospital is required to file its Complaint within sixty days of receipt of the decision. 42 C.F.R. § 405.1130. Receipt is presumed within five days after the date the decision was mailed. 42 C.F.R. § 405.1136(c)(2). Community Hospital's appeal accordingly is timely.

9. Community Hospital's principal place of business is in Munster, Indiana. Venue is therefore proper in this Court. 42 C.F.R. § 405.113(b).

10. The amount in controversy for each patient exceeds the current minimal threshold of $1,760.00. 42 U.S.C. § 1395ff(b); 82 Fed. Reg. 60795.

BACKGROUND AND PROCEDURAL HISTORY

11. B.D. received services from October 30, 2008 to October 31, 2008. R.K. received cardiac and one-day inpatient services August 25, 2008 to August 26, 2008. H.P. received cardiac and one-day inpatient services June 30, 2008 through July 1,

2008. B.G. received cardiac and one-day inpatient services May 30, 2008 to May 31, 2008.

12. In the instance following the Recovery Audit Contractor's determination that Medicare had made an overpayment as to each patient's inpatient services, Community Hospital filed a redetermination request with National Government Services. National Government Services responded collectively as to all four (and additional) patients on September 8, 2011, providing that Community Hospital should bill Part B for the ancillary supplies involved in the procedure and to appeal denial of the inpatient admission under Part A.

13. Although Community Hospital responded as to each patient on September 29, 2011 with an amended redetermination request providing that it had disputed the inpatient denial in its initial request, National Government Services responded as to each patient on November 10, 2011 that it would not conduct a redetermination because it determined that Community Hospital was not disputing the denial of the inpatient stay.

14. On November 30, 2011, Community Hospital requested that the Qualified Independent Contractor issue a reconsideration determination regarding the inpatient stay and services for each patient. The Qualified Independent Contractor subsequently dismissed Community Hospital's request for reconsideration under 42 C.F.R. § 405.972(b)(6) on the grounds that National Government Services had not conducted a redetermination.

15. Community Hospital made timely requests for Administrative Law Judge ("ALJ") hearings before the Office of Medicare Hearings and Appeals, asking the ALJ to reverse the dismissal by the Qualified Independent Contractor and remand the matter to National Government Services with instructions to perform the redetermination. The ALJ conducted a hearing as to each patient on August 14, 2012.

16. By decisions dated October 31, 2012, the Administrative Law Judge upheld the Qualified Independent Contractor's dismissal of Community Hospital's request for reconsideration on the grounds that National Government Services had not previously conducted a redetermination. A true and accurate copy of the ALJ decisions are attached as Exhibit B hereto.

17. In a decision dated December 15, 2021, the Medicare Appeals Council dismissed Petitioner's requests for review on the grounds that the Council could not review an affirmation of the Qualified Independent Contractor's dismissal of a request for reconsideration. *See* Exhibit A.

JUDICIAL REVIEW

18. The Order of the Medicare Appeals Council is final and binding on all parties. 42 C.F.R. § 405.1130. It accordingly is subject to judicial review as requested by Community Hospital.

19. Community Hospital has exhausted its administrative remedies by filing requests for redetermination, reconsideration, an ALJ hearing, and review by

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