

## Southern Division

2. Defendants' recoupment of the amounts at issue without providing Native Angels the opportunity to be heard by an ALJ, as required by applicable law and the United States Constitution violates Plaintiff's due process rights.

3. Health care providers, including home health agencies such as Native Angels, furnish services to Medicare beneficiaries, following which they submit claims to HHS, which processes them through the Centers for Medicare and Medicaid Services ("CMS") and its contractors. The Medicare Modernization Act of 2003 ("MMA") authorized CMS to conduct post-payment reviews of those claims through the use of contractors.

4. Under the MMA, providers such as Native Angels have the right to contest the post-payment denials through an appeals process within HHS, with the last level consisting of judicial review.

5. As a result of increasing audit activity by HHS contractors, providers have experienced extraordinary delays in the appeals process, particularly at the ALJ level, which has effectively barred providers from challenging payment denials in a timely and efficient manner.

6. Not only has the extraordinary delay stymied timely appeals, it also violates the statute, which requires the ALJ to hold a hearing within 90 days of an appeal being filed. Instead, providers such as Native Angels often wait up to 5 years to have their claims heard by an ALJ. In many instances, the ALJ will deny the provider a hearing based on a technicality or uphold the prior ruling without a hearing, which further deprives the provider of its due process rights.

7. Native Angels should be afforded a substantive hearing on its claims, whether it be directly by this Court or, alternatively, by the ALJ upon direct order of this Court.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this civil action pursuant to 42 U.S.C. § 405, 42 U.S.C. § 1395ff(b)(1)(A). Native Angels is also entitled to judicial relief pursuant to the Administrative Procedures Act (“APA”), 5 U.S.C. § 705.

9. Plaintiff seeks a judicial review of the actions of adverse decisions by the Medicare Appeals Counsel (“MAC”), and a decision or, in the alternative, a remand to the MAC for a review of its claims on the merits, an award of attorneys’ fees, and any other legal relief this Court deems just.

10. This Court has jurisdiction over the Defendant.

11. At all times relevant to this Complaint, Plaintiff has provided covered medical services to patients in Pembroke, North Carolina.

12. Venue is proper in the Eastern District of North Carolina, Southern Division pursuant to 42 C.F.R. § 405.1136(b).

### **THE PARTIES**

#### **A. Plaintiff**

13. Plaintiff, Five Points Healthcare of NC, LLC d/b/a Native Angels Homecare Agency, Inc. is a Medicare-certified home health agency located in Pembroke, North Carolina that provides skilled nursing care, restorative therapy, and medical social services to patients located in the State of North Carolina with its principal place of business in Pembroke, North Carolina, which is located in Robeson County.

#### **B. Defendants**

14. Secretary Becerra is the Secretary of the Department of Health and Human Services and the proper defendant pursuant to 42 C.F.R. § 405.1136(d).

15. Administrator Brooks La-Sure is the Administrator of the Centers for Medicare and Medicaid Services and the proper defendant pursuant to 42 C.F.R. § 405.1136(d).

16. The amount in controversy is more than \$1,760.00, not counting interests and costs of courts because Plaintiff is seeking Medicare reimbursement for services rendered.

### **BACKGROUND FACTS**

17. This action is an appeal of two decisions by the Medicare Appeal Council:

Docket Number: M-20-2956  
ALJ Appeal Number: 3-34-18043294  
Dated: March 21, 2022

Docket Number: M-21-230  
ALJ Appeal Number: 3-3416842011  
Dated: March 17, 2022

### **MAC Docket Number M-20-2956/ALJ Appeal Number 3-3418043294**

18. The Medicare recipient at issue in this appeal received medically necessary, home health care services from Native Angels from August 26, 2014, to October 24, 2014, in the amount of \$1,085.01.

19. On November 12, 2014, Plaintiff received the initial additional documents request (“ADR”) from ZPIC.

20. On November 14, 2014, Plaintiff mailed to ZPIC AdvanceMed (“ZPIC”) the requested records.

21. The ADR was due by December 5, 2014, and Plaintiff submitted the documents to the ZPIC well in advance of the deadline.

22. ZPIC delayed in sending the information and supporting records to Palmetto GBA, LLC (“Palmetto”) due to no fault of Plaintiff.

23. Shelly Williamson, employee of the ZPIC, stated on three occasions that he acknowledged the timely receipt of the requested supporting records and stated that the records had been sent to Palmetto.

24. On January 13, 2015, Plaintiff received a denial of the claim from Palmetto.

25. On May 22, 2015, Palmetto, CMS's Part B Medicare Administrative Contractor for North Carolina, denied Plaintiff's appeal by Redetermination Notice of Dismissal based on the records being submitted late, which was due to the ZPIC, not Plaintiff.

26. On July 2, 2015, Plaintiff received Palmetto's denial of the request to vacate the dismissal.

27. On July 28, 2015, Plaintiff submitted its request for reconsideration for good faith reconsideration of this claim. Plaintiff's request for reconsideration was based on the fact that ZPIC did not timely submit information and medical records to Palmetto, thereby causing the initial denial of Plaintiff's claim on May 22, 2015.

28. On July 31, 2015, Palmetto received Plaintiff's request for reconsideration.

29. On September 16, 2015, Palmetto denied Plaintiff's request for reconsideration of its notice of dismissal on the basis that it was received more than 60 days after the Plaintiff's receipt of Palmetto's notice of dismissal.

30. On January 4, 2016, Plaintiff filed a valid request for ALJ review of the dismissal.

31. On May 14, 2020, the ALJ, after a more than 4-year delay, issued a dismissal order of Plaintiff's request for reconsideration without conducting a substantive hearing on the merits of the action.

32. On May 29, 2020, Plaintiff submitted to the Medicare Appeals Council, a Request for Review of Administrative Law Judge (ALJ) Medicare Decision/Dismissal.

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