

Blog Post

Courts May Now Stop Medicare from Recouping Payments

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In recent years, many Medicare providers who have received significant overpayment determinations from Medicare contractors have gone out of business while waiting to be heard before an Administrative Law Judge (ALJ) for a hearing. That is the result of 2 factors. The first is that there is currently a 3-5 year backlog of appeals waiting for an ALJ hearing. The second is that Medicare is entitled to start recouping all of a provider's payments after the 2nd level of appeal and apply them to the overpayment. For large overpayments and providers that are heavily dependent on Medicare, this is a lethal combination. However, a recent appeals court decision offers hope for providers in this position.

The Fifth Circuit Court of Appeals, in *Family Rehabilitation v. Azar*, 2018 WL 1478052, just issued a decision holding that courts do have jurisdiction to enter an injunction prohibiting Medicare from recouping a provider's payments while the provider is waiting for an ALJ hearing. While in the instant case the appeals court did not actually issue an injunction, it did remand the case back to the trial court with strong arguments for doing so. Historically, courts have often dismissed cases on jurisdictional grounds, deciding that most disputes regarding overpayments and claims denials must be decided in the Medicare administrative appeals system. But in this case, the appellate court noted that the plaintiff home health agency was not asking

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the court to decide whether or not the claims in the overpayment should be paid. Instead, the plaintiff was simply asking the court to order Medicare not to take their money while they wait for an ALJ hearing. The court was quick to seize on the fact that ALJ hearings are required by law to take place in 90 days of a request, and it is not the appealing provider's fault that Medicare cannot comply with its own regulations. Companies that are in this position, or believe they may soon find themselves in this situation, should discuss this development with their healthcare legal counsel.

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