

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

American Federation of State, County, and Municipal Employees
Docket No. A-12-84
Decision No. ER4
June 15, 2012

DECISION

American Federation of State, County, and Municipal Employees (Plan Sponsor) appeals from an adverse reimbursement determination, issued on June 5, 2012, by the Centers for Medicare & Medicaid Services (CMS) under the Early Retiree Reinsurance Program (ERRP). Specifically, CMS issued an overpayment determination in the amount of \$6,601.09 for the 2010 plan year.

For the reasons discussed below, I uphold CMS's adverse reimbursement determination.

Background and Analysis

On June 5, 2012, CMS issued an overpayment determination notification in the amount of \$6,601.09. The overpayment notification indicated that the sum of the reimbursable costs that the Plan Sponsor submitted with its reimbursement requests for the 2010 plan year was less than the sum of such costs submitted with previous reimbursement requests for the same plan year. On June 8, 2012, the Plan Sponsor filed a timely appeal.

In its request for appeal, the Plan Sponsor does not dispute the overpayment determination made by CMS for the 2010 plan year. Instead, the Plan Sponsor alleges that CMS determined that \$21,898.78 of the amount for which the Plan Sponsor requested reimbursement for the 2011 plan year was for eligible claims and that CMS never reimbursed it for those claims due to lack of ERRP funds. Request for Appeal at 1; *see also* Email from Early Retiree Reinsurance Program to Plan Sponsor dated March 29, 2012. The Plan Sponsor requests that the "\$6,601.09 overpayment made in the 2010 plan year be offset by the \$21,898.78 reimbursement that was due, but not paid, to Plan Sponsor for the 2011 plan year." Request for Appeal at 1.

The Plan Sponsor does not dispute the basis for, or amount of, CMS's determination that it had a \$6,601.09 overpayment for the 2010 plan year. Instead, the Plan Sponsor contends that it should not be required to repay the \$6,601.09 because it was not reimbursed for the eligible costs in excess of that amount for the subsequent plan year for which no ERRP funding was available.

The Board has no authority to reverse an overpayment determination on this basis. The overpayment determination made by CMS for the 2010 plan year is an issue separate from the Plan Sponsor's allegation that it is due reimbursement for the 2011 plan year. Simply put, the regulations governing the ERRP do not provide for the type of remedy the Plan Sponsor seeks. *See* 45 C.F.R. § 149.500(c) ("A sponsor may not appeal an adverse reimbursement determination if the denial is based on the unavailability of funds."). Because the Plan Sponsor does not dispute the basis or amount of CMS's overpayment determination associated with the 2010 plan year, there is no basis to reverse CMS's adverse reimbursement determination.

Conclusion

Based on the foregoing, I uphold CMS's adverse reimbursement determination.

_____/s/
Constance B. Tobias
Chair, Departmental Appeals Board