

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of

Claim for

Continuum Hospice Care

(Appellant)

Hospital Insurance Benefits
(Part A)

(Beneficiary)

(HIC Number)

National Government Services

(Contractor)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated April 17, 2009, concerning inpatient hospice services provided by the appellant to the beneficiary from May 22, 2007, through May 29, 2007. The ALJ determined that the provider did not meet the Medicare certification requirements and therefore was not entitled to coverage for the services. The provider-appellant has asked the Medicare Appeals Council (Council) to review this action.

The Council reviews the ALJ's decision *de novo*. 42 C.F.R. § 405.1108(a). The Council will limit its review of the ALJ's action to the exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c). The Council admits the appellant's request for review as Exhibit (Exh.) MAC-1.

As set forth below, the Council adopts the ALJ's decision, finding that the certification requirements were not met as required by section §1814(a)(7) of the Social Security Act (Act) and therefore the provider is not entitled to Medicare coverage for the hospice services at issue.

BACKGROUND

The beneficiary was diagnosed with a malignant neoplasm of the breast and in 2001 underwent a mastectomy. In April 2006, the beneficiary had a recurrence. A concurrent work-up demonstrated that the malignant neoplasm of the breast metastasized in the beneficiary's pulmonary nodules, mediastinal nodes, and bones. The beneficiary received treatment until January 2007. Exh. 4, at 11. Subsequently on May 13, 2007, the beneficiary was admitted to an acute care hospital following a sudden decline in her mental status and poor oral intake. A CT-scan of her head revealed metastatic brain lesions. *Id.* On May 18, 2007, the beneficiary, through her daughter, elected hospice care to begin on May 22, 2007. *Id.* at 1-2. The appellant provided the beneficiary hospice services at the acute care hospital from May 22, 2007, until her death on May 29, 2007. Exh. 4.

On July 10, 2007, the appellant submitted a claim to the Medicare contractor for reimbursement of the hospice services provided. Exh. 1 at 129. The contractor denied the claim initially and upon redetermination, stating that the documentation did not support a need for frequent assessments and treatments. Exh. 1, at 1-2. The Qualified Independent Contractor (QIC) denied payment on a different basis, finding that the attending physician had not signed the certification during the required period. Exh. 2 at 1-3.

The appellant requested a hearing before an ALJ. On March 4, 2009, the ALJ conducted a telephone hearing in which the appellant was present and represented by counsel. On April 7, 2009, the ALJ issued an unfavorable determination. The ALJ found the hospice services were not covered by Medicare because there was not a valid certification. Specifically, the ALJ found that there was no evidence of a timely oral certification provided by the attending physician, but only a written certification dated June 15, 2007, well after the two days following the start of hospice care as required by regulations. Dec. at 6, *citing* 42 C.F.R. § 418.22.

LEGAL AUTHORITY

Section 1814(a)(7) of the Act requires hospices to obtain written certifications that the beneficiary is terminally ill from both the hospice medical director and the beneficiary's attending physician if he/she has one.

The regulations governing hospice certification provide:

(a) *Timing of certification*-(1) *General rule*. The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21(a) even if a single election continues in effect for an unlimited number of periods, as provided in § 418.24(c).

(2) *Basic requirement*. Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification before it submits a claim for payment.

(3) *Exception*. If the hospice cannot obtain the written certifications within 2 calendar days, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

42 C.F.R. § 418.22.

The Medicare Benefit Policy Manual (CMS Pub. 100-02) (MBPM) similarly provides:

For the first 90-day period of hospice coverage, the hospice must obtain, no later than 2 calendar days after hospice care is initiated, (that is, by the end of the third day), oral or written certification of the terminal illness by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician.

* * *

Written certification must be on file in the hospice patient's record prior to submission of a claim to the fiscal intermediary.

Certifications may be completed up to 2 weeks before hospice care is elected. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day of certification, i.e., the date verbal certification (or

written certification if that is done first) is obtained. If the physician forgets to date the certification a notarized statement or some other acceptable documentation can be obtained to verify when the certification was obtained.

MBPM, Ch. 9, § 20.1 (emphasis added).

ANALYSIS

The ALJ found that the appellant had not produced sufficient evidence that the beneficiary's attending physician had provided an oral certification during the time period allowable by Medicare regulations. The ALJ stated: "Although [the appellant] argued that [the attending physician] provided oral certification on May 16, 2007, the undersigned has thoroughly reviewed the entire claim file, and has found no documentation to support [the appellant's] argument." Dec. at 5. The Council agrees, finding insufficient evidence of a valid verbal order.

In the request for review, the appellant contends, as it did before the ALJ, that the beneficiary's medical record contains a valid physician certification of the beneficiary's terminal illness. As previously noted, the hospice care at issue began on May 22, 2007. On the same day, the hospice's medical director provided a valid written certification; this is not in dispute. Exh. 4 at 14, 17; see Dec. at 5. The appellant argues that the beneficiary's attending physician, Dr. Simon, provided a verbal certification six days prior to hospice admission, on May 16, 2007. Exh. MAC-1.

In support of the verbal certification, the appellant proffers two forms titled "Hospice Certification" that possess language certifying the beneficiary's terminal illness and eligibility for hospice benefits. Exh. MAC-1 at 18-21; Exh. 4 at 14-17. These documents contain the typed name of the beneficiary's attending physician, followed by the date of May 16, 2007, the hospice medical director's signature dated May 22, 2007, and the beneficiary's attending physician's signature dated June 15, 2007. These typewritten forms indicate that the verbal physician certification was purportedly received by Marisol Jimenez, CS, and confirmed by the beneficiary's attending physician, Dr. Nancy Simon, on May 16, 2007.

As noted by the appellant, the verbal certification may be obtained up to two weeks before hospice care is elected, and up

to two days after care is initiated. See, MBPM, Ch. 9, § 20.1. However, the "Hospice Certification" provided by the appellant is not signed, by hand or electronically, by Ms. Jimenez, who purportedly took the verbal certification, or by any other individual on that date. Exh. MAC-1 at 18-21; Exh. 4 at 14-17. The document's section for staff signature is incomplete. *Id.* Further, there is no evidence in the medical records or elsewhere in the claim file substantiating that a May 16, 2007, verbal certification was obtained as indicated on the typed form. Likewise, the record contains no evidence that the beneficiary's attending physician provided a verbal certification on another date, yet within the allowable period. Without an authorized signature or independent evidence to authenticate or support the validity of the proposed verbal certification, the Council concurs with the ALJ, finding there is not a valid verbal certification in the record.

The appellant further argues that the May 16, 2007, verbal certification allowed the appellant to obtain the written certification anytime up until the claim was submitted to Medicare. However, although the beneficiary's attending physician eventually signed the document on June 15, 2007, the claim file does not contain sufficient evidence of a verbal certification provided during the required time period (from two weeks before hospice care is elected up to two days after care is initiated) that would toll the written certification requirement, allowing the appellant to receive the written portion of the certification up until the time the claim is submitted. See, MBPM, Ch. 9, § 20.1. However, as previously discussed, the verbal certification presented was not valid. Thus, the written certification obtained on June 15, 2007, 24 days after hospice services were initiated, was not provided within the required period.

The Council therefore adopts the ALJ's conclusion that the hospice services provided from May 22, 2007, through May 29, 2007, are not covered by Medicare in accordance with section 1814(a)(7) of the Act.

MEDICARE APPEALS COUNCIL

/s/ Gilde Morrisson
Administrative Appeals Judge

Date: October 28, 2009