

COMMONWEALTH COURT OF PENNSYLVANIA

Christian Street Pharmacy v. Pennsylvania Department of Aging

946 A.2d 798 (Pa. Commw. Ct. 2008) · No. No. 2077 C.D. 2007 · Decided April 10, 2008

SUMMARY

The Pennsylvania Commonwealth Court affirmed orders concerning the timeliness of the Pennsylvania Department of Aging's exceptions to an administrative law judge's proposed report and the Department's recoupment of PACE reimbursement claims. The court held that substantial evidence supported the finding that the exceptions were timely and that the provider agreement required accurate National Drug Codes on reimbursement claims. It further upheld the Department's authority to seek restitution for noncompliance with the provider agreement.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Judge Friedman; McGinley, Judge; Friedman, Judge; McCloskey, Senior Judge
JURISDICTION	Pennsylvania
DECIDED	April 10, 2008
DOCKET	No. 2077 C.D. 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of the Secretary of the Pennsylvania Department of Aging's orders determining that the Department timely filed exceptions to an administrative law judge's proposed report and sustaining those exceptions on the National Drug Code issue.
STANDARD OF REVIEW	Under Section 704 of the Administrative Agency Law, review is limited to whether constitutional rights were violated, whether the adjudication is in accordance with law, and whether necessary findings of fact are supported by substantial evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Commonwealth Court of Pennsylvania
PARTIES	Christian Street Pharmacy v. Pennsylvania Department of Aging

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QUESTIONS PRESENTED

1. Whether the Department of Aging timely filed exceptions to the administrative law judge's proposed report under 1 Pa. Code § 35.211.
2. Whether a PACE provider's failure to use the correct National Drug Code on reimbursement claims violates 6 Pa. Code § 22.82(9) and the provider agreement.
3. Whether the Department may seek restitution and terminate an enrolled provider's agreement for failure to comply with the provider agreement.

HOLDINGS

1. The Department timely filed its exceptions because the record contained substantial evidence that the Proposed Report was served on June 5, 2006, and the exceptions were filed on July 5, 2006, within thirty days of service.
2. A PACE reimbursement claim's description of the prescription drug dispensed must include the correct National Drug Code; submitting an incorrect National Drug Code makes the drug description, and to that extent the claim, false under 6 Pa. Code § 22.82(9).
3. The Department may terminate an enrolled provider's agreement and seek restitution when it determines that the provider failed to comply with the terms of the provider agreement.

KEY QUOTATIONS

“Thus, on a claim for reimbursement submitted to the Department, the “description” of the prescription drug dispensed must include the correct NDC for that drug.” (802)

“If a claim contains an incorrect NDC, then, to that extent, the drug “description” and the claim are false.” (802)

FACTUAL BACKGROUND

Christian Street Pharmacy participated in Pennsylvania's Pharmaceutical Assistance Contract for the Elderly Program. In an audit covering October 1, 2002, through September 30, 2003, the Department found 230 claims that used an inaccurate National Drug Code for the drug dispensed and recouped the related reimbursements. The Pharmacy's provider agreement required claims to accurately report the National Drug Code, while the administrative law judge concluded that the regulation did not expressly require that information. The Secretary disagreed, sustained the Department's exceptions, and ruled that the Pharmacy violated the regulation and provider agreement.

PROCEDURAL HISTORY

The Department audited Christian Street Pharmacy's PACE reimbursement claims and recouped payments for claims containing incorrect National Drug Codes. An administrative law judge recommended sustaining the Pharmacy's appeal, but the Secretary sustained the Department's exceptions and ruled that the Pharmacy violated the applicable regulation and provider agreement. The Commonwealth Court previously vacated and remanded regarding the timeliness of the exceptions; after supplemental findings, the Secretary again found the exceptions timely, and the Pharmacy sought review. The Commonwealth Court affirmed both Secretary's orders.

DISPOSITION

affirmed

CASES CITED

- *Kalin v. Pennsylvania Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002)

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