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In Case Based Partly On Ambiguity of Medicare Guidance, ALJ Upholds 15-Year Exclusion

By Nina Youngstrom

An administrative law judge (ALJ) on Aug. 17 upheld the 15-year exclusion of BestCare Laboratory Services LLC and its CEO, Karim Maghareh, Ph.D., over travel reimbursement in a case of a provider trying to hang its hat on the ambiguity of Medicare guidance. The ALJ shot down the argument and raised the possibility that a recorded conversation with a Medicare administrative contractor (MAC) was not what it seemed.

It was “reckless” to consult one source of guidance, ALJ Bill Thomas wrote.

The ALJ decision came six weeks after the U.S. District Court for the Southern District of Texas ordered BestCare and Maghareh to pay the government \$30.57 million for violating the False Claims Act, the Department of Justice (DOJ) said. The court determined that BestCare billed Medicare \$10.1 million for miles that specimens traveled with no lab technician, and the overpayments were trebled. Medicare requires lab technicians to accompany specimens when they travel from a patient’s home or a nursing home to a lab, according to DOJ and the ALJ. The judge ordered the payment based on DOJ’s motion for summary judgment; there was no trial or settlement agreement.

But Houston attorney John Zavitsanos, who represents Maghareh, called the exclusion and court order “Orwellian” and said Maghareh and BestCare are appealing the false claims judgment. The government “can’t point to a specific regulation he has violated,” Zavitsanos tells RMC. “The most rational reading of the *Medicare Claims Processing Manual* permits billing for specimen travel without a technician.” BestCare also got a clean bill of health from a MAC and other auditors, and a MAC representative confirmed on tape that lab specimens can fly without a technician, he contends. But Maghareh was still excluded and hit with astronomical penalties, Zavitsanos says. Even if Maghareh wins the appeal, “How will he put Humpty Dumpty back together again?”

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