



State of New Jersey

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Governor

DAVID J. SOCOLOW
Commissioner

MEMORANDUM

August 29, 2006

To: All Judges and Attorneys

Re: Orders Approving Settlement and Judgments Where Petitioner Is a Medicare Beneficiary and CMS Conditional Payment Review Is Pending

From: Peter J. Calderone, Director and Chief Judge 

As you are aware, the Center for Medicare Services (CMS) has not been able directly or through its outside contractors to currently provide conditional payment information and/or case closure approvals. For this reason, Administrative Supervisory Judge Ricciardelli has been working with representatives of the Bar Association and the New Jersey Advisory Council on Safety and Health to develop procedures that can be implemented for Section 22 Orders Approving Settlement and Judgments to address this issue.

Enclosed please find those procedures with suggested language, Attachment A, to be included in Orders Approving Settlement where the petitioner has sought CMS conditional payment review and CMS has not concluded its process. For Judgments use Attachment B. In this manner, it is intended that the court retain jurisdiction for any future issues relating to an employer's or insurance carrier's responsibility for reimbursing payments made by Medicare. Such suggested language may, of course, be modified or expanded by the parties and the assigned judge in a particular case. The language is, therefore, not intended to be all encompassing for every case or situation.

Also, for Section 22 settlements without conditional payment closure there must be agreement by all parties to this process. However in the case of judgments, judges may include the applicable language without the need for party approval.

This information has been provided to CMS with notice that CMS should advise us of any concerns with this process. We intend to move forward with the procedures since we have not at this time received any objection from CMS on this matter.

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While the suggested language would be part of the Order or Judgment, it is still necessary (as the attached procedures outline) to include on the record and in a decision that Medicare's interest has been considered and the delay in receiving CMS payment information and/or approval.

Of continuing concern is the neglect by counsel and judges to clearly determine whether petitioner is Medicare entitled at an early stage of the workers' compensation proceedings. Where appropriate, this would allow for a closure of cases prior to actual Medicare eligibility or for the immediate commencement of the Medicare conditional payment process. We recently had one case that was on the partial trial list for over two years with various witness testimony that was then settled by a Section 20 amount under the CMS set-aside review threshold. At no point during this process did anyone start the CMS conditional payment process. As a result, the settlement is now subject to further delay due to the CMS situation.

In addition, we have previously outlined procedures for amending claim petitions to delete alleged conditions and for entering judgments dismissing certain conditions in the claim petition allowing for Section 22 Orders Approving Settlement as to the compensable conditions. Such procedures, while recognizing Medicare's interest, can set parameters for CMS involvement. Furthermore, it is often to the advantage of the parties and the court to have a case decided by judgment on the merits since CMS recognizes a determination of workers' compensation disabilities based on judgments.

Cases that have been marked MCARE will be re-listed to allow the parties the opportunity to resolve matters under these procedures.

Attorneys who have a question concerning this memorandum and the attachments in a particular case should discuss the issue with the assigned judge. Judge Ricciardelli or I would be available to confer with judges on these issues.

Procedures for Orders Approving Settlement (Section 22) and Judgments Where Petitioner Is a Medicare Beneficiary and CMS Conditional Payment Review Pending

Since we are advised that the Center for Medicare Services (CMS) and its contractors currently are not fully able to process conditional payment reviews, the following procedures are to be followed:

1. Where conditional payment reviews are pending, Attachment "A" or similar language should be included in an Order Approving Settlement pursuant to N.J.S.A. 34:15-22 while Attachment "B" or similar language should be included in a Judgment Order.
2. On the record, the parties must verify that:
 - a. Petitioner is a Medicare beneficiary and that the parties have considered Medicare's interest.
 - b. Petitioner (or Respondent if applicable) is complying with CMS requirements for conditional payment review and has not received conditional payment information and/or approval from CMS or its contractors; and
 - c. While Petitioner (or Respondent if applicable) has made diligent inquiry to ascertain the amount of conditional payments made by Medicare and/or resolve reimbursement sought by Medicare on behalf of the petitioner for medical treatment related to petitioner's workers' compensation claim(s), the Medicare conditional payment issue remains open.
3. The judge of compensation, after reviewing the information presented, must also concur and find that the parties have adequately considered Medicare's interest.
4. In Section 22 Orders Approving Settlement, the parties must also stipulate and agree that since the Medicare conditional payment issue remains unresolved, the workers' compensation court retains jurisdiction to determine the extent to which the respondent is liable for payment of medical treatment for which CMS seeks reimbursement should the parties not be able to amicably resolve the conditional payment issue with CMS. These procedures cannot be imposed by the court with respect to settlements. Party agreement is not required for Judgments.

The two (2) year statute of limitations to reopen an Order Approving Settlement or Judgment would not be applicable to this situation since the court retains jurisdiction only over the conditional payment issue. A party seeking a determination of respondent liability for medical treatment under this section must file a motion for court review.

Judges shall on the record direct the petitioner's attorney (or respondent's attorney if applicable) to immediately forward the settlement order or judgment order to CMS at the applicable

CMS address with copies to all parties and the court.

Note: CMS set-aside trust review and procedures when required and applicable would not be affected by these Procedures which only address the separate CMS conditional payment issue.

These procedures are not applicable to N.J.S.A. 34:15-20 settlements.

Dated: August 29, 2006

Attachment "A"

Petitioner is a Medicare beneficiary. CMS has been contacted for an itemization of monies paid for the compensable condition(s). As of this date, the CMS conditional payment review is pending.

All parties agree that should they not be able to amicably resolve the responsibility for reimbursement to CMS, this Court retains jurisdiction to determine the extent to which the respondent is liable for payment for medical treatment

All parties recognize that this Court has no jurisdiction to determine the total amount due CMS.

Petitioner understands that he/she may be held personally liable to reimburse CMS for treatment paid for by Medicare but held not to be the responsibility of the Respondent, possibly beyond the settlement amount.

Attachment "B"

Petitioner is a Medicare beneficiary. CMS has been contacted for an itemization of monies paid for the compensable condition(s). As of this date, the CMS conditional payment review is pending.

Should the parties not be able to amicably resolve the responsibility for reimbursement to CMS, this Court retains jurisdiction to determine the extent to which the respondent is liable for reimbursement to Medicare.

This Court has no jurisdiction to determine the total amount due CMS.