

HLB Successfully Reverses Adverse PRRB Decision on Medicare DSH-SSI Match Process

News

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On September 1, 2023, the United States Court of Appeals for the District of Columbia Circuit issued a [decision](#) of considerable importance for any hospital that is challenging its Medicare Disproportionate Share Hospital (DSH) payments. The Court unanimously reversed the decision of the Provider Reimbursement Review Board (Board) where the Board found that Pomona Valley Hospital Medical Center had failed to prove that its DSH Medicare-SSI Fraction was too low. *Pomona Valley Hospital v. Becerra*, Case No. 20-5350, (D.C. Cir. Sept. 1, 2023). The Court remanded the case back to the Board for further proceedings.

Like many DSH hospitals, Pomona suspected that its Medicare-SSI Fraction was understated. After a significant fact-gathering process, HLB presented factual and expert testimony before the Board showing that Pomona's Medicare-SSI Fraction was understated. The understatement apparently was because of flaws in the process that CMS used to match Medicare inpatient hospital stays with the months that Medicare beneficiary inpatients were entitled to SSI benefits. As the Court explained:

The MAC presented no countervailing evidence or explanation. Instead, it criticized Pomona for relying on "data from a secondary source, instead of the primary databases maintained by the SSA and CMS."

Nevertheless, the Board found that Pomona "did not submit sufficient quantifiable data in the record to prove that the SSI percentages calculated by CMS ... were flawed."

The Court disagreed, stating:

Given the strength of the hospital's showing, and the absence of any countervailing evidence, the Board's conclusion that Pomona had failed to prove an undercount was unreasonable.

The Court added:

Pomona went about as far as it could, in attempting to reverse-engineer the SSI-eligibility data from publicly available data regarding SSI and SSP eligibility, plus publicly available data regarding the relative size of those two populations. Moreover, as shown above, Pomona's affirmative case was sufficient, if undisputed, to require the PRRB to rule for it.

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Importantly, the Court noted that CMS, acting through the MAC, could not “merely criticize[] Pomona for relying on ‘data from a secondary source,’ when the primary data was available only to [the agency].” The Court thus rejected CMS’s attempt to rely on its “black box” Medicare-SSI matching process to avoid Pomona’s challenge. Based on its findings, the Court remanded the case to the Board for further proceedings to see if CMS can successfully dispute Pomona’s proof.

Although this decision is still subject to possible further review by the D.C. Circuit and/or the United States Supreme Court, this is a significant development for DSH hospitals who have asserted for years that CMS has understated their Medicare-SSI Fractions.

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