

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

In the Case of:	)	
CASHA Resource Home Health	)	Date: May 6, 1997
& Hospice, Inc.,	)	
Petitioner,	)	
- v. -	)	Docket No. C-96-389
Health Care Financing	)	Decision No. CR472
Administration.	)	

DECISION

CASHA Resource Home Health & Hospice, Inc., of Walnut, California (Petitioner or Walnut), a provider of home health agency (HHA) services owned by CASHA Resource Home Health & Hospice, Inc. (CASHA), requested a hearing to challenge the determination of the Health Care Financing Administration (HCFA) to terminate its Medicare participation agreement. HCFA determined that Petitioner submitted claims for payment for services that it did not provide. HCFA alleges that the services in question were rendered by staff from other facilities that CASHA owns, in San Diego, California (Clairemont Mesa) and Vista, California (Vista), after HCFA terminated their Medicare participation agreement.

On September 19 and 20, 1996, and again on October 3, 1996, I held a hearing in San Diego, California. During the hearing, I admitted into evidence Petitioner's exhibits (P. Ex.) 1-8, 10, 12-13, 15-18, 22-25, 27-32 and HCFA's exhibits (HCFA Ex.) 2-19.

I have considered the evidence, the applicable law, and the parties' arguments. I conclude that HCFA's determination to terminate Walnut's Medicare participation agreement is supported by the facts in evidence and the applicable law.<sup>1</sup>

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<sup>1</sup> On April 26, 1997, I offered the parties the opportunity to brief the issue of burden of proof, after the (continued...)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW (FFCL)**

1. Title XVIII of the Social Security Act (Act) establishes a federally subsidized health insurance program for the aged and disabled (Medicare) which is administered by the Secretary of Health and Human Services (Secretary).
2. Part A of Title XVIII provides reimbursement for specified health care services, including home health services provided by home health agencies. Act, sections 1812(a)(3), 1861(m), (o), 1891.
3. The Act defines a home health agency as a public agency or private organization, or a subdivision of such an agency or organization which, inter alia, "is primarily engaged in providing skilled nursing services and other therapeutic services." Act, section 1861(o).
4. A home health agency may participate in Medicare by entering into a "provider agreement" with the Secretary. Act, section 1861(u), 1866; 42 C.F.R. Part 489.
5. A home health agency must meet the conditions of participation specified in section 1891(a) of the Act and any other conditions of participation the Secretary may find necessary in the interest of the health and safety of individuals furnished services by the home health agency. Act, section 1861(o)(6).
6. A home health agency must be licensed pursuant to applicable state or local law, and must be approved by the state or local agency responsible for licensing home health agencies. Act, section 1861(o)(4)
7. Regulations implementing the requirements of sections 1861(o) and 1891 are set out in 42 C.F.R. Part 484. The regulations set forth additional requirements that are considered necessary to ensure the health and safety of patients. 42 C.F.R. § 484.1.
8. The regulations define a "parent home health agency" as "the agency that develops and maintains administrative control of subunits and/or branch offices." 42 C.F.R. § 484.2.

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<sup>1</sup>(...continued)

decision of the appellate panel in Hillman Rehabilitation Center, DAB No. 1611 (1997). The parties did not avail themselves of this opportunity.

9. The regulations define a "subunit" as a "semi-autonomous organization that - (1) Serves patients in a geographic area different from that of the parent agency; and (2) Must independently meet the conditions of participation for HHAs because it is too far from the parent agency to share administration, supervision, and services on a daily basis." 42 C.F.R. § 484.2.

10. The regulations define a "branch office" as "a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation of a home health agency." 42 C.F.R. § 484.2.

11. The Act provides that "payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866..." Act, section 1814(a).

12. The Secretary "shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid...the amounts so determined." Act, section 1815(a).

13. The regulations provide that "Medicare pays the provider for services furnished by a provider." 42 C.F.R. § 424.51(a).

14. The regulations define "provider" as a facility, including a home health agency, "that has in effect an agreement to participate in Medicare." 42 C.F.R. § 400.202.

15. The Secretary has the authority to terminate a provider's agreement to participate in the Medicare program where the Secretary has determined that the provider fails to "comply substantially with the provisions of the agreement, with the provisions of this title, and regulations thereunder..." Act, section 1866(b)(2).

16. The regulations provide that HCFA may terminate a provider's agreement to participate in the Medicare program where HCFA finds that a provider "is not complying with the provisions of title XVIII and the applicable regulations of the chapter or with the provisions of the agreement." 42 C.F.R. § 489.53(a)(1).

17. Under the regulations, "certification" is a recommendation made by the state survey agency on the compliance of providers with the conditions of participation. 42 C.F.R. § 488.1.

18. Section 1726 of the California Health and Safety Code requires a home health agency to obtain a home health agency license prior to providing, or arranging for the provision of, home health care services.

19. CASHA, a corporation located in Irving, Texas, owns and operates HHAs in California, as well as in other states. HCFA Ex. 15.

20. CASHA owns an HHA located in San Diego, California (Clairemont Mesa), which was licensed by the State of California as a "parent" agency. Petitioner's Closing Argument Brief (P. Br.) 3; HCFA's Response to Petitioner's Closing Argument Brief (HCFA R. Br.) 15.

21. Clairemont Mesa was certified as a "parent" by HCFA on or about February 1994. P. Br. 3; HCFA R. Br. 15.

22. Clairemont Mesa subsequently added a "branch" office in Vista, San Diego County (Vista), which was licensed by the State and approved by HCFA. P. Br. 3; HCFA R. Br. 15.

23. As a certified parent, Clairemont Mesa had a provider agreement with the Secretary which allowed it to seek reimbursement for operational costs and to bill for patient care provided by itself and any approved branch offices. P. Br. 3; HCFA R. Br. 15.

24. At all times relevant to this case, CASHA owned and operated a home health agency located in Walnut, California (Petitioner or Walnut), which was licensed by the State of California as a "parent" agency. P. Br. 3; HCFA R. Br. 15.

25. Petitioner was certified by HCFA as a "parent" pursuant to a provider agreement with the Secretary. P. Br. 3; HCFA R. Br. 15.

26. Walnut added "branch" offices in Tustin, North Hollywood and Carson, California, which were licensed by the State and approved by HCFA. Transcript of Hearing (Tr.) 761-762; P. Br. 3-4.

27. Clairemont Mesa was surveyed by State licensing officials, in a survey completed on March 1, 1996. P. Br. 4; HCFA R. Br. 15; HCFA Ex. 3 at 3.

28. The results of the survey indicated that Clairemont Mesa was out of compliance with five conditions of participation required by HCFA for certification of a provider. P. Br. 4; HCFA R. Br. 15; HCFA Ex. 3 at 3.

29. In a letter dated March 21, 1996, HCFA notified Clairemont Mesa that its Medicare provider agreement would terminate on April 13, 1996. HCFA Ex. 3 at 3.

30. Clairemont Mesa did not challenge the results of this survey. P. Br. 4; HCFA R. Br. 15; Tr. 440, 532.

31. Clairemont Mesa's provider agreement was terminated effective April 13, 1996, decertifying both Clairemont Mesa and Vista. FFCL 28-30.

32. Although Clairemont Mesa and Vista were decertified by HCFA, they both remained licensed by the State and were capable of servicing patients. P. Br. 4; HCFA R. Br. 15.

33. By letter of April 25, 1996, DW,<sup>2</sup> the director of patient care services (DPCS) and administrator of Clairemont Mesa, notified Clairemont Mesa's and Vista's patients that:

As our company experiences continued growth and development we at CASHA have found it necessary to re-structure some of the offices in our region.

What this means to the Vista/San Diego patients is that there will need to be a change in the paperwork that is submitted to Medicare for payment of your services. All billing will now go through our offices in Walnut, California. In order to be in compliance with state and federal regulations, all of the patients in Vista and San Diego will be discharged and immediately re-admitted under the new Walnut provider number. This will all be handled by our office and your doctor.

Your nurses and other providers will remain the same. There will be no break in your services, and nothing will change regarding your care. You will continue to receive the same high quality, competent care by the same staff.

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<sup>2</sup> I identify witnesses by their initials to protect their privacy.

If you have any questions regarding this information, please do not hesitate to call the CASHA office number at 654-3970. Ask to speak to a Nursing Supervisor or the Director of Patient Care Services. Any of those people will be able to answer any questions you may have.

Thank you for your time and attention. We apologize for any inconvenience this may have caused you, but please be assured that your needs will continue to be met through CASHA Resource Home Health Services.

P. Ex. 4.

34. By letter of April 25, 1996, DW notified physicians treating Clairemont Mesa's and Vista's patients that:

As our company experiences continued growth and development, we at CASHA Resources Home Health, Inc. have found it necessary to re-structure some of our offices.

What this means to the San Diego/Vista offices is that our "parent" office will be located at Walnut, California. In order to be in compliance with State and Federal regulations, we are required to discharge all patients under our former provider number and re-admit them under our current number.

Enclosed, please find the Discharge Summary and Admission Orders with a current Plan of Treatment for your patient. Please sign and date as indicated and return in the enclosed stamped, self-addressed envelope.

We apologize for the extra paperwork involved, but will continue to strive for a level of excellence in providing care for your patients. If you have any questions concerning this matter, please do not hesitate to call me. We appreciate your help and support.

P. Ex. 5.

35. Clairemont Mesa sought new certification in late April or early May 1996. P. Br. 4; HCFA R. Br. 15.

36. For purposes of a certification survey, a home health agency is required to have a fully staffed, operational unit, actively providing home health services to a certain number of patients. It is required also to provide services to a certain number of patients newly acquired from the time of its previous survey. P. Br. 4-5; HCFA R. Br. 15.

37. On July 15, 1996, surveyors from the California Department of Health Services (DHS), acting as agents for HCFA, arrived at Clairemont Mesa and Vista to conduct a survey. P. Br. 5; HCFA R. Br. 15; Tr. 76.
38. One State surveyor asked to see records of new patients and was given the charts of two patients by Clairemont Mesa. P. Br. 5; HCFA R. Br. 15; Tr. 77.
39. The State surveyor recognized the name of one of the two patients as a patient from the previous survey of Clairemont Mesa, completed March 1, 1996, that had resulted in the termination of Clairemont Mesa's provider agreement. She was informed that the patient had been previously discharged. Tr. 77.
40. When the surveyor asked when that patient had been discharged she was informed that this information was not available, because the records were not available in that facility. Tr. 77.
41. The State surveyor was informed that records were taken on a weekly basis from the Clairemont Mesa office to the CASHA office in Tustin. Tr. 78-79.
42. The State surveyor was subsequently shown a list of approximately 45 other patients being served out of the Clairemont Mesa office. She recognized several patient names from the survey completed March 1, 1996 which resulted in the termination of Clairemont Mesa's provider agreement. Tr. 81, 89-90; HCFA Ex. 17; P. Ex. 7.
43. The State surveyor was informed that the patients had been discharged from the Clairemont Mesa office and readmitted, or transferred, to CASHA's Walnut office, and that bills for services provided to these patients were submitted by the Walnut office. Tr. 91.
44. The State surveyor requested a list of staff working out of the Clairemont Mesa office; from this list, she recognized several names from the survey of Clairemont Mesa completed March 1, 1996. Tr. 93-94; HCFA Ex. 7.
45. The State surveyor did not complete the survey of Clairemont Mesa, stating that 10 charts as opposed to two were required for the survey. P. Br. 5; HCFA R. Br. 15; Tr. 98, 118.
46. Based on the findings of the survey visits to Clairemont Mesa, the State surveyor determined that, at the time of the survey completed March 1, 1996, Clairemont Mesa was still providing home health services to patients. Tr. 76-81.

47. The State surveyor also visited the Vista office on July 15, and determined that patients had been discharged from Vista during the period April 21 through the beginning of May 1996, and were readmitted or transferred to Walnut. Tr. 99-106; HCFA Ex. 3, 8, 9, 17.

48. Upon termination of Clairemont Mesa's provider agreement, patients served out of the Clairemont Mesa and Vista offices, for whom Medicare reimbursement had been claimed under Clairemont Mesa's provider number, were discharged from those facilities and readmitted to Walnut. HCFA Ex. 3, 8, 9, 17, 18; Tr. 101-03, 212-17, 440-42, 700-15.

49. The transfer of the patients to Walnut was unrelated to the demands of their medical care. Tr. 443-46, 450-51; P. Ex. 4, 5.

50. The Clairemont Mesa administrator and DPCS transported patient charts to the Tustin branch of Walnut every week to 10 days and spoke several times a week to CASHA's regional administrator for southern California and the acting administrator and DPCS for Walnut. Tr. 458-60, 480-81.

51. Responsibilities of the nursing supervisors at the San Diego facilities remained unchanged following the transfer of patients to Walnut. Tr. 501-02.

52. Patients continued to be served by staff operating under the auspices of Clairemont Mesa. Tr. 451-52, 459, 483-85, 502-04, 515-18.

53. The language in the April 13, 1996 letter to Clairemont Mesa and Vista patients is consistent with evidence demonstrating that there was no change in the care and services received by the Clairemont Mesa patients. FFCL 42-52; P. Ex. 4, 5.

54. After decertification, Clairemont Mesa and Vista admitted two patients each for treatment, so that when the State came back to do a certification survey there would be a sample of patients who had not been billed to Medicare. Tr. 460.

55. The services provided to these patients did not differ substantively from the services provided to the patients who had been transferred to Walnut. Tr. 465-66; FFCL 46-54.

56. The services that patients received after their transfer to Walnut changed very little and continued to be provided out of, and supervised by, the decertified offices. FFCL 42-53.



57. CASHA continued to provide home health services to those patients through its Clairemont Mesa and Vista offices after termination of the Clairemont Mesa provider agreement, but claimed Medicare reimbursement for those services using the provider number of the Walnut facility. Tr. 700-15.

58. Petitioner did not receive permission from HCFA or from State licensing authorities to expand its service area to include San Diego, and its claim that it received permission is not credible. Tr. 554-58, 656-57, 684-88, 693, 737-39, 783-90, 794-98; P. Ex. 16.

59. In seeking permission to expand its service area, Petitioner did not disclose to licensing authorities in the Los Angeles County Department of Human Services that Clairemont Mesa and Vista had been decertified by HCFA. Tr. 656-57.

60. The issue of whether Petitioner could have expanded the Walnut service area to include San Diego is irrelevant, because the Medicare services in question were provided by Clairemont Mesa and Vista, and not by Petitioner. FFCL 42-57.

61. The process HCFA employed in deciding to terminate Petitioner is not relevant to my decision in this case.

62. Petitioner claimed Medicare reimbursement for services that it did not provide, in violation of sections 1814(a) of the Act, and 42 C.F.R. § 424.51. FFCL 1-61.

### Analysis

#### 1. Background

Petitioner is an HHA located in Walnut, California, and owned by CASHA, a corporation with headquarters in Irving, Texas. CASHA operates a number of HHAs in California and in several other states. At all times relevant to this proceeding, Petitioner was licensed by California and certified by HCFA as a parent HHA for Medicare purposes, with branch offices in Tustin, North Hollywood, and Carson, California.

One of the other HHAs that CASHA owns is located on Clairemont Mesa Boulevard in San Diego, California (Clairemont Mesa). Clairemont Mesa was certified as a parent HHA and maintained a branch in Vista, California (Vista). A survey of Clairemont Mesa by State licensing officials, completed March 1, 1996, indicated that Clairemont Mesa was out of compliance with conditions of participation required by HCFA for certification of a provider, and, as a result, HCFA terminated Clairemont Mesa's Medicare provider agreement

effective April 13, 1996. CASHA did not appeal the termination of Clairemont Mesa's provider agreement. The termination of the Clairemont Mesa provider agreement meant that CASHA could not bill Medicare for HHA services rendered by its Clairemont Mesa and Vista offices.

Clairemont Mesa applied for new Medicare certification, and a surveyor from DHS visited Clairemont Mesa and Vista in July 1996. For the purposes of qualifying for Medicare certification, HHAs are required have been servicing 10 patients (who are not billed to Medicare prior to certification), and to have their medical records available for review. Tr. 98.

The State surveyor did not complete the certification survey during the July visits because only two incomplete medical records were made available for review. However, the surveyor recognized one of the patients as one who had previously been treated by Clairemont Mesa and billed to Medicare at the time of the survey completed March 1, 1996, which survey had resulted in the decertification of Clairemont Mesa. HCFA subsequently determined that CASHA had discharged patients from Clairemont Mesa and Vista and admitted them to its Walnut parent office, and that it continued to bill Medicare for services rendered to these patients, using Walnut's provider number. HCFA then terminated Petitioner's Medicare provider agreement on the grounds that Petitioner, Walnut, was billing Medicare for services that it did not provide.

Petitioner acknowledged that CASHA discharged the patients from the San Diego offices after they were decertified and admitted them to Walnut, and that it continued to bill Medicare for the services provided to those patients. P. Br. 9, 13. Petitioner asserted, however, that it could properly bill Medicare for those services because they had been provided by Walnut, and not by the decertified San Diego offices. Petitioner argued that, after the decertification, Walnut expanded its service territory to include the areas that had been served by Clairemont Mesa and Vista. Petitioner argued that the Medicare regulations neither prohibit nor require HCFA approval for expansion of service territory, and that, in any event, Petitioner informed HCFA of the expansion and obtained the approval of HCFA's agents in the California DHS. Petitioner also argued that there was confusion between HCFA and its State licensing agents about how large an HHA's service area can be.

As explained below, I conclude that Petitioner improperly billed HCFA for HHA services that were actually provided by CASHA's decertified Clairemont Mesa and Vista facilities. I conclude that Petitioner did not obtain permission from HCFA

to "expand" its service area to encompass San Diego. The issue of expansion is not relevant here because, as I explain below, the services in question were provided by the decertified Clairemont Mesa and Vista offices, and not by Petitioner's Walnut facility.

2. Petitioner could not claim Medicare reimbursement for HHA services provided by Clairemont Mesa and Vista.

The Medicare regulations provide for three categories of HHA facilities: parent, subunit, and branch. A branch serves the same geographic area as its parent, and must be located close enough to the parent to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency. Where an HHA facility is too far from a parent to share administration, supervision, and services on a daily basis, it cannot be a branch, and must instead independently meet the Medicare conditions of participation and be certified as a subunit. 42 C.F.R. § 484.2; Homelife Nursing, Inc., DAB CR417, at 9 (1996).

Here, Clairemont Mesa had been certified as a parent HHA, whose territory included San Diego County, and Vista had been certified as a branch of Clairemont Mesa. These facilities' status as parent and branch HHAs for Medicare purposes ceased when Clairemont Mesa's provider agreement with HCFA was terminated, effective April 13, 1996. Despite the termination, CASHA continued to claim Medicare reimbursement for services provided through Clairemont Mesa and Vista, using the provider number of its Walnut facility, a parent HHA located in Los Angeles County, with branches located in Tustin, which is in Orange County, as well as in North Hollywood and Carson, California.

The Act provides that payment for services may be made only to providers of services which meet the conditions specified for a provider to enter into a provider agreement with HCFA. Act, section 1814(a). Similarly, the Medicare regulations provide that "Medicare pays the provider for services furnished by a provider." 42 C.F.R. § 424.51(a). The regulations define "provider" as a facility, including a home health agency, "that has in effect an agreement to participate in Medicare." 42 C.F.R. § 400.202. Walnut, despite being owned by the same parent corporation as Clairemont Mesa and Vista, CASHA, had a different provider number and agreement than Clairemont Mesa and was considered a different HHA for Medicare purposes. Clairemont Mesa did not have in effect a provider agreement with HCFA after April 13, 1996, and could not claim Medicare reimbursement. Additionally, Clairemont Mesa and Vista were never certified

by HCFA as branches or subunits of Walnut, the only subcategories of HHA recognized by the Medicare regulations. They were also not licensed by California as branches of Walnut, which would have been required prior to being certified by HCFA. Act, section 1861(o)(4). By claiming reimbursement for services that were provided by the Clairemont Mesa and Vista offices, Petitioner Walnut violated the requirement that Medicare pays only for HHA services furnished by a provider. 42 C.F.R. § 424.51(a).

Petitioner argued that the services in question were actually provided by Walnut through an "expansion" of its service area to encompass San Diego, and that Clairemont Mesa and Vista participated in providing these services as part of the "Walnut operation." Petitioner's Responsive Brief 4. Petitioner argued that Clairemont Mesa and Vista were not branches of Walnut requiring certification, and noted that it did not claim reimbursement for Clairemont Mesa's and Vista's overhead expenses, as it could have if they had been certified as branches. Under this theory, Clairemont Mesa and Vista were acting as uncertified, undefined satellite offices of Walnut, a category of facility not recognized by the Medicare regulations. Thus, Petitioner argued that Clairemont Mesa and Vista could have functioned as "charting stations" for Walnut, that is, locations where nurses make entries on patients' charts, which would then be stored at a different location, such as the Tustin branch of Walnut. Tr. 499-501. Charting stations would be used because it would not be practical for the nurses to drive to the actual branch or parent office three times a week to do their charting.<sup>3</sup> Tr. 519. Similarly, one of Petitioner's witnesses, DW, testified that she and other CASHA San Diego staff referred to Clairemont Mesa and Vista as "children of Walnut" because they did not know the status of those facilities, as they were no longer parent and branch.<sup>4</sup> Tr. 522-23. Petitioner

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<sup>3</sup> Petitioner disputed the testimony of the State surveyor that DW, the Clairemont Mesa administrator and DPCS, had referred to the San Diego facility as a charting station during a survey visit. Tr. 79. However, DW testified that she was familiar with the term, and Petitioner argued that there is no regulatory prohibition against Clairemont Mesa acting as a charting station. Tr. 499. Accordingly, whether or not DW actually referred to Clairemont Mesa as a charting station during the State surveyor's visit has no bearing on this proceeding.

<sup>4</sup> Petitioner misused this characterization when arguing that Walnut supervised the Clairemont Mesa and Vista offices by having the on-site supervisor of those facilities  
(continued...)

noted that other HHAs operate facilities which are "less than a full blown branch office" for which overhead expenses are not claimed, and asserted that this is a pervasive practice in the home health industry which HCFA has failed to address. Petitioner's Reply Brief (P. R. Br.) 4-5.

Petitioner's argument is disingenuous, as it ignores the fact that the San Diego offices, rather than being charting stations, satellite offices, or proposed branches of Walnut, were a decertified parent and branch which had served a different geographic area than that served by Walnut and its branches. The San Diego offices had been surveyed by the California DHS, found deficient in the provision of HHA services, and terminated from the Medicare program -- a determination which CASHA did not contest. CASHA then attempted to circumvent the termination, by deeming Clairemont Mesa and Vista to be part of the Walnut operation and continuing to claim Medicare reimbursement for the services they provided.

Additionally, the Medicare regulations, which permit reimbursement only for services rendered by a provider, do not recognize categories of HHA providers other than parent, branch, and subunit. State law also does not recognize categories such as satellite offices or charting stations or anything "less than a full blown branch office." Any office which conducts home health business must be licensed by the State as an HHA, under the State scheme that recognizes only parents and branches. Tr. 738-39, 745. Thus, Clairemont Mesa and Vista could not have been licensed and certified as non-branch offices or expansions of Walnut and Tustin.

I reject Petitioner's argument that it was permissible for Clairemont Mesa and Vista to provide services on behalf of Walnut without certification because CASHA did not seek Medicare reimbursement for their overhead expenses. The difference between a certified HHA facility and an uncertified charting station or other office "less than a

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<sup>4</sup>(...continued)

report to Walnut through the CASHA management structure. Petitioner argued that Walnut branch offices, such as Carson and North Hollywood, similarly have supervisors who remain on site at the branch offices, "even though they are 'children of Walnut'." P. Br. 14. However, CASHA staff referred to Clairemont Mesa and Vista as "children of Walnut" because they were unsure of the status of those facilities, which were not branches. By contrast, Carson and North Hollywood were licensed by the State and certified by HCFA as branches of the Walnut parent.

full blown branch office" is not merely the ability to bill Medicare for overhead expenses. The Medicare regulations at 42 C.F.R. Part 484 implement the requirements of the Act and "also sets forth the additional requirements considered necessary to ensure the health and safety of patients." 42 C.F.R. § 484.1. Thus, the regulations contemplate that the purpose of requiring certification of HHA facilities is to ensure the health and safety of patients served by those facilities. See Homelife, DAB CR417, at 9. The certification process would be rendered meaningless if an owner of multiple HHAs could continue receiving reimbursement for services provided through a decertified HHA, by deeming it an extension or satellite office of a different HHA serving a different area. I note that the effect of the decertification of Clairemont Mesa and Vista was not just to bar CASHA from claiming reimbursement for overhead expenses for their operation. As the administrator and DPCS of Clairemont Mesa testified, the termination meant that CASHA could not bill Medicare for HHA services provided by those offices. Tr. 438-39. This prohibition applies to services rendered to Medicare patients, as well as overhead operating expenses. Accordingly, Petitioner violated the provisions of the Act and regulations by claiming reimbursement for Medicare services provided by Clairemont Mesa and Vista after they had been decertified.

Petitioner argued that the Medicare services were actually provided by, and under the supervision of, its Walnut parent office. As explained below, however, the evidence clearly demonstrates that the services were provided by the decertified Clairemont Mesa and Vista offices. The services that CASHA provided to Medicare patients through Clairemont Mesa and Vista after decertification were essentially the same services that they provided prior to decertification, and were the same services that they provided to non-Medicare patients as part of their effort to qualify for new certification.<sup>5</sup>

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<sup>5</sup> Even assuming arguendo that such services were provided by the Walnut parent office, the outcome would be the same with regard to ineligibility for Medicare payment for such services. Such services would be ineligible for Medicare payment because they were provided to patients outside the service area approved by the State and by HCFA for the Walnut parent office. See infra pp. 24-25.

3. CASHA's Clairemont Mesa and Vista offices provided services to Medicare patients after they were terminated.

Petitioner argued that the Walnut parent office and its Tustin branch served the patients who had been discharged from Clairemont Mesa and Vista after those offices were decertified in April 1996. Petitioner asserted that after the decertification, a multitude of staffing, supervisory, and logistical changes took place, which legitimately brought the San Diego patients under the purview of the Walnut operation. Petitioner argued that the patients were transferred to Walnut pursuant to physicians' orders and that new plans of treatment were developed for them. Petitioner argued that patient care in San Diego was rendered under the direction of Walnut and overseen by DW, who, Petitioner asserted, also became a supervisor of Walnut. Petitioner stated that DW reported directly to the interim DPCS of Walnut, TN, which DW would not have done if the San Diego offices were not being supervised by Walnut.

However, the evidence as a whole demonstrates that the services in question were rendered by Clairemont Mesa and Vista, whose operations continued substantially unchanged after the termination of Clairemont Mesa's provider agreement. The record establishes that once the patients were transferred to Walnut, the only changes in their treatment were that their charts were transported every week to 10 days to the Tustin branch of Walnut, where an additional level of quality assurance review was performed. Other changes made at Clairemont Mesa and Vista were geared towards enabling those offices to qualify for new Medicare certification and were not related to having services to patients provided under the supervision of the Walnut office. Further, the evidence shows that at the same time that Clairemont Mesa and Vista were serving patients allegedly under the supervision of Walnut, they were also serving a sample of non-Medicare patients, admittedly not under the supervision of Walnut, in order to again qualify for Medicare certification. Other than the differences in record-keeping noted above, these patients received the same treatment as those supposedly being served by Walnut.

Much of the evidence demonstrating that Clairemont Mesa and Vista continued serving Medicare patients after decertification was provided by DW, the Clairemont Mesa administrator and DPCS.<sup>6</sup> DW testified that it was her

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<sup>6</sup> DW testified that each facility has an administrator and DPCS, who answers to the CASHA regional (continued...)

understanding that care provided to patients did not have to change as a result of being billed through Walnut instead of San Diego. Tr. 498. Her title remained the same throughout the decertification for Clairemont Mesa, the "expansion" of the Walnut service area, and the decision to seek new certification for Clairemont Mesa. Tr. 449-50. Her duties also remained essentially the same after the decertification. She still worked out of the Clairemont Mesa office, where she reported daily, and still visited the Vista office once a week, where there was a supervisor who reported to her. The only apparent change in her responsibilities was that she would take the charts of the Medicare patients served through Clairemont Mesa and Vista to the Tustin branch of Walnut every week to 10 days, and that she spoke several times a week to TN, CASHA's regional administrator for southern California and the acting administrator and DPCS for Walnut, with whom she reported previously having limited contact.<sup>7</sup> Tr. 458-60, 480-81. However, given that TN was DW's direct supervisor, and that TN was responsible for CASHA's operations in southern California, it is not surprising that they would have more frequent contact immediately after the decertification of the offices which DW administered.

DW's testimony demonstrates that patients continued to be served by staff operating under the auspices of Clairemont Mesa. DW testified that, although some of the nurses employed by the San Diego facilities were placed on probation or terminated after the decertification, the San Diego patients continued to be seen by the same nurses as before termination, at least to the extent that DW could arrange it. Tr. 451-52, 515. After the termination, the nurses continued to come to the Clairemont Mesa and Vista offices three times a week to get assignments and make the appropriate entries on the patients' charts, which DW transported to Tustin every

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<sup>6</sup>(...continued)

director or administrator. DW was DPCS over both Clairemont Mesa and Vista. Below the DPCS are nursing supervisors; the number of nursing supervisors per facility is determined based on how many visits are made. Clairemont Mesa had two nursing supervisors, Vista one. Facilities also have quality assurance nurses who answer to the regional quality assurance nurse, who answers to the corporate quality assurance nurse. Tr. 485-87.

<sup>7</sup> While DW reported having daily phone contact with TN during the period that patients were being discharged from San Diego and admitted to Walnut, to inform TN of "where we were" in the process, there is no indication that this frequency of contact continued once the transfer process was complete. Tr. 451; P. Br. 15.



week to 10 days. Tr. 459, 483-84. Additionally, DW reported that case conferences and staff meetings continued to be held in the San Diego offices, and that training for new staff hired to serve the San Diego patients was held in the Clairemont Mesa and Vista offices.<sup>8</sup> Tr. 502-04. DW also testified that after the San Diego decertification, TN began visiting Clairemont Mesa more often than her previous visits for monthly quality assurance meetings, for a maximum of three times a month. However, DW also noted that she could recall only one month during which TN visited the San Diego office more than once. Tr. 488-90. Once the charts had been transferred to Tustin, she could not recall other staff from Tustin ever visiting San Diego. Tr. 521. Thus, little changed in the way CASHA provided services to patients through Clairemont Mesa and Vista. DW accordingly agreed that, aside from her transporting records from San Diego to Tustin and her more frequent contact with TN, most everything stayed the same in terms of the day-to-day functioning of Clairemont Mesa and Vista after their patients were transferred to Walnut. Tr. 517-18.

DW further described how the responsibilities of the nursing supervisors at the San Diego facilities remained unchanged. Nursing supervisors oversee the field staff, conduct in-home supervisory visits, and perform a variety of other duties including reviewing patient notes and doctors' orders, answering questions from physicians and other providers, tracking infections, and maintaining logs of services. DW testified that, following transfer of the Medicare patients to Walnut, the nursing supervisors continued to perform these functions out of the Clairemont Mesa and Vista offices. She also testified that no nursing supervisor from Walnut made supervisory in-home visits to San Diego patients. The only instances of Walnut staff ever visiting San Diego patients that she could recall were "a couple" of home visits made by TN. Tr. 501-02. Furthermore, GS, the State surveyor for the California DHS, testified that during a visit to Clairemont Mesa on July 15, 1996, she was provided a list of staff and recognized the names of several nurses who had been servicing patients out of Clairemont Mesa at the time of the previous

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<sup>8</sup> Petitioner asserted that some of the nurses being trained would be sent to Walnut for training. However, with regard to training of staff at other sites, DW testified only that staff would be trained in an existing office with the existing personnel, and gave the example that a quality assurance nurse may go spend a week in Walnut and work with that quality assurance nurse or the corporate or the regional quality assurance nurse. Tr. 503. Specific instances of training for San Diego staff being conducted at Walnut were not provided.

survey, completed March 1, 1996 (when Clairemont Mesa was still operating under a valid provider agreement). Tr. 93-94; HCFA Ex. 7. She also reported that, to her knowledge, none of the nurses on that list had worked out of the Walnut office. Tr. 97-98.

A letter from DW, dated April 13, 1996, which was sent to patients informing them of their transfer to Walnut, is further evidence that patients continued to be served by the terminated San Diego offices. The letter states that all of the Clairemont Mesa and Vista patients would be discharged and immediately readmitted under the new Walnut provider number. The patients were informed that the transfer was effected to comply with State and federal regulations, and were assured that their nurses and other providers would remain the same, and that nothing would change regarding their care. P. Ex. 4. Petitioner argued that the letter was intended to reassure patients, who can become easily confused and distraught when they receive correspondence regarding their health care. While the letter alone may not be dispositive on the issue of which HHA was providing services to Medicare patients, its language is, nonetheless, fully consistent with the other evidence in this record, which demonstrates that, as stated in the letter, there was no change regarding the care and services received by the Clairemont Mesa patients.

DW also testified that, after decertification, Clairemont Mesa and Vista admitted two patients each for treatment, so that when the State came back to do a certification survey there would be a sample of patients who had not been billed to Medicare. Tr. 460. Petitioner argued that, with respect to these patients, the San Diego offices were operating for the limited purpose of seeking certification and did not share supervision with Walnut, which was responsible for overseeing service to the patients in the San Diego territory. P. R. Br. 2. Petitioner did not show how the services provided to these patients differed from services provided to the Medicare patients that were transferred to Walnut such that they could be said to have been provided by two different HHAs. The treatment given to Medicare patients, who were supposedly being served under the aegis of the Walnut facility, was no different than the treatment provided to the patients being served admittedly as Clairemont Mesa patients, for the purpose of enabling that facility to qualify for Medicare certification. It appears that the only difference in the treatment these four patients received was that their records were maintained in San Diego, whereas records of the Medicare patients were periodically transported to the Tustin facility, where the nursing supervisor conducted an additional, limited level of quality assurance review. Tr. 465-66. That the services Clairemont

Mesa and Vista were providing to patients in order to qualify for Medicare certification did not differ substantially from the services provided to the patients transferred to Walnut is further evidence that the services for which reimbursement was claimed were not provided by Walnut.

The evidence also shows that the transfer of the patients to Walnut was a paper transfer unrelated to the demands of their medical care. Another letter from DW, dated April 25, 1996, to physicians treating Clairemont Mesa and Vista patients, states that the Walnut office would become the parent of the Clairemont Mesa and Vista offices as part of an office restructuring necessitated by CASHA's continued growth and development, and that CASHA was thus required to discharge and re-admit all patients under the Walnut provider number. As with the letter to patients, this letter failed to state the real reason for the discharge/admission process: the decertification of the San Diego facilities. Other evidence shows that the transfer of the patients to Walnut was unrelated to the particular care the patients may have required. As described by DW, the transfer process was conducted for all of the patients, and was initiated by CASHA management and not by their physicians. The process began when DW was informed by TN that the patients were all to be discharged and readmitted under the Walnut provider number. It applied to all of the San Diego Medicare patients. Tr. 443-44. The patients were discharged as part of their regularly scheduled visits, and no visits were made specifically for the purpose of admitting the patients to Walnut. The plans of treatment that Petitioner referred to were prepared by the nursing staff based on the visits and then sent to the physician for signature. Tr. 445-46, 450-51. While CASHA may have obtained the physicians' signatures for the patients' discharges, the discharges were unrelated to the care they were receiving, and were not initiated by the physicians as part of the patients' medical care, as implied by Petitioner's claim that the transfers took place "per physician's orders." P. Br. 13. The services it provided to those patients after their transfer to Walnut changed very little, and continued to be provided out of, and supervised by, the decertified offices.

Petitioner made much of HCFA's assertion, based on the report of the State surveyor, that the nursing staff at the San Diego offices remained "the same" after decertification. HCFA Opening Post-Hearing Memorandum 3; HCFA Ex. 2. Petitioner attacked HCFA's termination action on the grounds that the staff had, in fact, changed at those facilities. Petitioner noted that some nurses were terminated, and that new quality assurance nurses were hired, after the survey of Clairemont Mesa that was completed March 1, 1996.

Petitioner makes too much of HCFA's characterization. The staff changes Petitioner cited do not demonstrate that Medicare services were provided by Walnut. Rather, these changes were fully consistent with both normal turnover and with an attempt to reestablish Medicare certification for Clairemont Mesa and Vista. DW testified that after the survey which led to the termination, she conducted a general review of "where they were as an agency," which included reviewing the survey and the deficiencies cited, looking at all the personnel files and compliance reports for nursing, and making a plan of action noting what needed to be accomplished. She placed several nurses on probation, and terminated others. Tr. 451-52, 481-82. The San Diego offices also discontinued contracts with some service providers and created new contracts with others (such as intravenous, pharmacy, and rehabilitation services). Tr. 505-06. DW testified that the purpose of staffing changes at Clairemont Mesa and Vista was so that those facilities could again qualify for certification. Tr. 482-83.

Petitioner argued that the evidence concerning the nursing staff did not demonstrate that Walnut was not the provider of services to Medicare patients, as the "provider" of services is not defined by the nursing staff. However, the staffing changes do not support Petitioner's claim that the San Diego patients were brought under the purview of the Walnut operation. Rather, they are consistent with and support my finding that, based on the evidence as a whole, Clairemont Mesa and Vista provided Medicare services after decertification.

4. Petitioner did not expand its Walnut service area to include San Diego and the Clairemont Mesa and Vista facilities.

Petitioner argued that it provided the Medicare services at issue here because it had expanded the Walnut office's service territory to include San Diego. Petitioner argued that it received approval from HCFA's licensing agent in the Los Angeles County DHS to expand the Walnut service area. Tr. 13, 25. Conversely, Petitioner argued that it did not need approval to expand its service area, as such expansion is not prohibited by the Medicare regulations, and noted that HCFA has not cited it for unauthorized expansion of the Walnut service area. ■

Petitioner's claim that it was granted permission to expand the Walnut service area to encompass San Diego was based on the testimony of CW, the chief executive officer of CASHA. She stated that, after Clairemont Mesa and San Diego were decertified, a decision was made within CASHA to extend

Walnut's service area through its Tustin branch.<sup>9</sup> Tr. 539-40, 548-49. In April 1996, she called AB, a health facility evaluator with the Los Angeles County DHS, which is the entity responsible for licensing HHAs on behalf of the State in the Los Angeles area, and which makes certification recommendations to HCFA. Tr. 548, 554, 725-26, 733, 746, 754-55. AB acts as an agent of HCFA in its contact with providers, and CW stated that CASHA has always contacted AB for licensing and certification matters in Los Angeles County. Tr. 243-44, 548-49. CW testified that she spoke with AB's secretary, whom she identified as Ann, and told her that she wished to speak to AB about expanding the service area of the Tustin branch into the San Diego area. She stated that she attempted to call AB three more times, and that, during the third call, the secretary informed her that CASHA could serve patients within a four-hour driving-time radius, and that she should put the request for expansion in writing. She subsequently sent a letter to AB, dated June 18, 1996, which stated that the Tustin office was requesting extension of service areas to San Diego County, and that CASHA would assume approval if no answer was received within 10 working days. Tr. 554-58; P. Ex. 16. She received no response from AB to the letter. Tr. 558. She stated that, until receiving the notice of termination of Walnut, CASHA

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<sup>9</sup> The testimony of CW reflects a concerted effort by corporate officials of CASHA to develop a process which would allow it to continue to bill Medicare for services provided to patients of CASHA's Clairemont Mesa and Vista offices after their provider agreement had been terminated by HCFA. The decision to expand the service area of Petitioner into San Diego was in direct response to the termination of the provider agreement of the Clairemont Mesa office. Looking for a means to continue billing Medicare, the corporate office of CASHA, after reviewing the regulatory provisions covering HHAs, chose to rely on the theory of "expansion of service area." Tr. 539-40, 548-49, 635. Reliance on "expansion of service area," and the other elaborate steps taken to create a legal facade to continue to bill Medicare, despite having its provider agreement terminated, demonstrates to me that the corporate officials of CASHA were fully culpable for the actions of Petitioner. Unfortunately, HCFA made no effort to investigate the circumstances of the continued billing, other than checking its computer billing records against the existing provider numbers for the various CASHA facilities and concluding to terminate Petitioner. No action was taken against the corporate entity or corporate officials who developed a specious legal theory as a means to evade an unappealed termination of the Clairemont Mesa and Vista facilities.

received nothing from AB objecting to the proposed expansion of the Tustin service area into San Diego. Tr. 592.

However, AB and her secretary, Ann W., both testified that they did not grant permission to CW for CASHA to expand the service area of the Tustin branch of Walnut to include San Diego. Ann W., a senior typist clerk who, among her responsibilities, processes certification packages and answers phones for AB, and who was working during April 1996, remembered speaking by phone to CASHA representatives, but did not recall speaking to CW. Tr. 684-86. She stated that her duties have not included relaying messages to providers from AB, and said that she would never routinely, as part of her job duties, tell an HHA that they could expand into another area, or that they could open a branch or a subunit. Tr. 688, 693.

AB recalled calling CW on April 9, in response to a telephone message from CW regarding whether CASHA could close the San Diego office and make it a branch of the Tustin office. She stated that CW was not in, so she gave TN a message for CW that she could not expand into the San Diego area, and that San Diego was too far from Walnut to be licensed as a branch office. Tr. 737-39, 783-84; HCFA Ex. 30. She also recalled a conversation with CW prior to April 9, on the subject of whether the San Diego office, if it closed, could become a branch of Los Angeles (Walnut) or of Tustin, and had told her that it could not, because San Diego was too far away, and also because Tustin was a branch, and, thus, could not serve as a parent of San Diego. Tr. 789-90. She later spoke to CW by telephone on April 19, and repeated the message she had left with TN on April 9, that CASHA could not expand Tustin to include San Diego or make San Diego a part of Tustin. Tr. 739, 794-98, HCFA Ex. 30. She did not recall seeing CW's June 18, 1996 letter until being sent a copy "after the fact" by a HCFA health insurance specialist in HCFA's San Francisco office. Tr. 811.

Petitioner criticized AB's testimony because she was uncertain regarding the sequence of phone calls and messages exchanged with CASHA during April 1996, and could not, for example, recall whether she had spoken to TN or left a message on her voice mail. Tr. 783-84. However, given that AB has responsibility for approximately 450 HHA facilities in Los Angeles County, it is not surprising, and does not diminish her credibility, that she was not able to recall the precise sequence of events surrounding her communications with CASHA over this matter. Tr. 726-27.

Accordingly, based on the above testimony, I find that CW's claim that CASHA received permission to expand the Walnut service area to include San Diego is not credible. It is not

credible, if she believed that she had received permission for expansion by telephone in April, that CW would have felt it necessary in June to send a letter to AB requesting permission for the expansion and stating that she would assume approval had been granted if there was no response in 10 days. P. Ex. 16. Even if I were to accept CW's testimony as stated, it is clear that in her contact with the Los Angeles DHS she misrepresented the position of CASHA, as she testified that she did not mention in her phone conversation with AB's secretary that HCFA had decertified Clairemont Mesa and Vista. She was also unable, when asked, to provide any reason why she had withheld such critical information from the Los Angeles licensing office. Tr. 656-57. Accordingly, I conclude that Petitioner did not have permission to expand its service area to encompass the terminated San Diego facilities.

Petitioner also argued that it did not need permission to expand the Walnut service territory, as there are no regulations governing expansion or limiting the size of the area that may be served by an HHA. Petitioner argued that, in other states, parent HHAs serve territories that are larger than the territory that would have been served through the expansion of Walnut's territory to include San Diego. Petitioner also asserted that there was considerable confusion concerning the driving-time "benchmarks" that are used to determine how far a branch office may be from its parent, or how large an area an HHA facility may serve. Petitioner noted that one of HCFA's witnesses, a HCFA health insurance specialist in Region IX, referred to a policy of allowing a maximum of one hour driving distance between parent and branch offices, which was not communicated to providers. Tr. 275-76, 282. He also referred to a State policy of allowing HHAs to serve patients within a two-hour radius from an HHA. Tr. 289-90

Another HCFA witness, DL, a district administrator for San Diego with the California DHS, testified that the State used a two-hour "rule of thumb" for licensing, and that HCFA had communicated its one-hour benchmark sometime in early 1996. Tr. 352-53, 391, 396. While she reported that under HCFA policy a branch has to be within a one hour driving time of a parent, she did not know whether an HHA would be permitted to serve patients located more than one hour driving time away. Tr. 398-403. AB testified to telling CW that the State had a two-hour parent-to-branch driving time rule, that a proposed four-hour rule had not been approved, and that the federal policy was one hour. Tr. 797-801. AB also stated that her office no longer issues State licenses for branches located in different counties than a parent. Tr. 749-50, 798.

That HCFA's policy relating to the geographical areas of parents and branches may have been confusing and in a state of flux has no bearing on my decision. HCFA will grant certification only to facilities that are licensed under state law. Applicants for licenses in the State of California are required to list the geographic area they propose to serve, and also to file a request to change the geographic area for which the license was granted. Tr. 733-35. The evidence establishes that Petitioner did not obtain permission for an expansion of the area served by the Walnut parent and Tustin branch. AB testified that such permission would not have been granted in any event, because the San Diego offices were too distant from Walnut. Tr. 737-39, 783-84, 789-90. Further, Petitioner here was not seeking to extend services to previously unserved areas; rather, Petitioner's alleged expansion was into an area served by CASHA-owned facilities that had been terminated from Medicare and prohibited from claiming Medicare reimbursement for HHA services. Since CASHA had been barred from providing Medicare services through its facilities in San Diego, information which it withheld from State licensing authorities in Los Angeles, I find that Petitioner could not reasonably assume that it could use the terminated facilities to expand its Walnut service area, through the Tustin branch, into the same area that had been served by the terminated facilities. Thus, confusion over federal policy regarding service area limitations was irrelevant.

As discussed in the section above, I find that CASHA did not provide the Medicare services in question through Walnut and Tustin, but, instead, through its terminated Clairemont Mesa and Vista offices, which continued their operations essentially unchanged. Since the services billed to Medicare were not provided by Walnut and Tustin, it is irrelevant whether or not those offices could expand their service area to encompass San Diego.

Petitioner's argument that it could expand the Walnut service area because there is no regulation limiting the size of an HHA's service area is not persuasive. The Medicare regulations defining the types of HHA facilities clearly indicate that an HHA must, within its service area, be able to provide administration, supervision, and services on a daily basis. This is apparent from the regulations which provide for only three classes of HHA facility: parent, subunit, and branch. A branch provides services within a portion of the total geographic area served by the parent agency, and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as an HHA. A subunit, conversely, serves patients in a geographic area different



from that of the parent agency. It must independently meet the conditions of participation for HHAs, because it is too far from the parent agency to share administration, supervision, and services on a daily basis. If an HHA facility is too far from a parent HHA to share administration, supervision and services on a daily basis, it must be licensed as a subunit, which serves parents in a geographic area different from that served by the parent.

Thus, the concept of geographic service area is clearly related to daily supervision. As discussed above, the actions taken by Walnut and Tustin here with respect to San Diego consisted of receiving patient records every week to 10 days, and performing additional quality assurance reviews. TN also visited Clairemont Mesa at least once a month, and spoke to DW more frequently (actions which, given her title of CASHA's regional administrator for Southern California, were more likely related to Clairemont Mesa's and Vista's efforts to qualify for Medicare certification). These actions do not rise to the level of daily supervision of either the San Diego facilities or their patients sufficient to bring San Diego, or its patients, under the purview of the Walnut parent. I therefore conclude that uncertainties in federal policy regarding HHA service areas did not provide a basis for Petitioner to reasonably conclude that it could serve the San Diego patients through its Walnut parent office.

5. Petitioner's arguments attacking HCFA's decisionmaking process are unavailing.

Petitioner also argued that HCFA lacked legal authority to terminate its provider agreement because of the way it conducted its review. Petitioner asserted that HCFA's health insurance specialist recommended termination based on inaccurate information provided by the State surveyor, took little action to verify the surveyor's findings, and did not contact CASHA to discuss those findings. Petitioner also asserted that HCFA did not give notice to CASHA that it had rejected its expansion of territory into San Diego or give CASHA an opportunity to cease billings to which HCFA objected. Petitioner also accused HCFA of bad faith for investigating other CASHA office configurations after CASHA filed this hearing request.

These arguments are without merit. As I stated in Homelife, the hearing challenging the termination is, by law, de novo. Act, section 205(b). In deciding Petitioner's appeal of HCFA's action terminating its provider agreement, I must make an independent evaluation of whether the applicable regulatory provisions and the record before me support HCFA's determination that Petitioner was billing Medicare for

services it did not provide. Since the parties have had the opportunity to fully argue and present all relevant evidence supporting their positions, the prior processes that led to HCFA's action are not relevant and are not at issue before me. Those processes have nothing to do with whether Petitioner was, in fact, claiming Medicare reimbursement for services actually rendered by the decertified San Diego offices. I must decide this case on its merits, not in terms of the procedures HCFA followed in making its determination. Accordingly, Petitioner's arguments do not provide a basis for reversing the termination of the Walnut provider agreement.

Petitioner argued that the Homelife holding was not applicable because the regulatory standards I applied there - - the definition of branch office -- were clear, whereas here there are no clear regulatory definitions to guide me. I do not concur with Petitioner's attempt to distinguish Homelife. As in Homelife, I am here required to render a de novo decision on whether the record supports HCFA's decision. The process HCFA went through to reach that decision is not relevant. As I noted above, the lack of regulatory guidance Petitioner alleges with respect to service areas does not support its position, because the evidence here demonstrates that the Medicare services for which Petitioner claimed reimbursement were, in fact, provided by Clairemont Mesa and Vista. In any event, I also find, based on my de novo review of the record, that Petitioner did not and could not have received permission to "expand" the Walnut area to include Clairemont Mesa and Vista. Accordingly, Petitioner's criticisms of HCFA's decisionmaking process, as well as its claim that it has been subject to HCFA scrutiny since filing this hearing request, have no bearing on my decision.

### Conclusion

I conclude that Petitioner claimed Medicare reimbursement for services that it did not provide, in violation of sections 1814(a) of the Act, and 42 C.F.R. § 424.51(a). Therefore, I sustain HCFA's decision to terminate Petitioner's Medicare provider participation agreement.

/s/

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Edward D. Steinman  
Administrative Law Judge