

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

LSG Sky Chefs
Docket No. A-12-88
Decision No. ER6
June 22, 2012

DECISION

LSG Sky Chefs (Plan Sponsor) appeals from an adverse reimbursement determination, issued on June 7, 2012, by the Centers for Medicare & Medicaid Services (CMS) under the Early Retiree Reinsurance Program (ERRP). Specifically, CMS issued an overpayment determination in the amount of \$7,859.25 for the 2010 plan year.

For the reasons discussed below, I uphold CMS's adverse reimbursement determination.

Background and Analysis

On June 7, 2012, CMS issued an overpayment determination notification in the amount of \$7,859.25. The overpayment notification indicated that the sum of the reimbursable costs that the Plan Sponsor submitted with its reimbursement requests for the 2010 plan year was less than the sum of such costs submitted with previous reimbursement requests for the same plan year. On June 12, 2012, the Plan Sponsor filed a timely appeal.

In its request for appeal, the Plan Sponsor does not dispute the overpayment determination made by CMS for the 2010 plan year. Instead, the Plan Sponsor states that “[o]n [June 7, 2012] we submitted an[] additional reimbursement request and later received approval in the amount of \$92,695.64.” Request for Appeal at 1. The Plan Sponsor goes on to state that it did not receive the reimbursement amount and that is “3,184 in line for reimbursement.” *Id.* Accordingly, the Plan Sponsor requests, “that the \$7,859.25 be taken from the \$92,695.64 that is currently owed to us by ERRP.” *Id.*

It is unclear from the Plan Sponsor's request for appeal whether the alleged reimbursement amount owed to it is for 2010 plan year or for the following plan year. In either instance, the Board has no authority to reverse an overpayment determination on this basis. The overpayment determination made by CMS for the 2010 plan year is an issue separate from the Plan Sponsor's allegation that it is due reimbursement. Simply put, the regulations governing the ERRP do not provide for the type of remedy the Plan Sponsor seeks. *See* 45 C.F.R. § 149.500(c) (“A sponsor may not appeal an adverse

reimbursement determination if the denial is based on the unavailability of funds.”). Because the Plan Sponsor does not dispute the basis or amount of CMS’s overpayment determination associated with the 2010 plan year, there is no basis to reverse CMS’s adverse reimbursement determination.

Conclusion

Based on the foregoing, I uphold CMS’s adverse reimbursement determination.

_____/s/_____
Constance B. Tobias
Chair, Departmental Appeals Board