

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Regency Rehabilitation Center, LLC,
(CCN: 14-5237)

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-12-1095

Decision No. CR2975

Date: October 31, 2013

DECISION

Petitioner, Regency Rehabilitation Center, LLC, was not in substantial compliance with program participation requirements from March 23, 2012 through April 12, 2012 due to violations of 42 C.F.R.¹ §§ 483.10(b)(1), (5)-(10) (Tag F156); 483.10(b)(11) (Tag F157); 483.13(c)(1)(ii)-(iii), (2)-(4) (Tag F225); 483.15(a) (Tag F241); 483.20(d), (k)(1) (Tag F279); 483.25(a)(3) (Tag F312); 483.25(h) (Tag F323); 483.25(m)(1) (Tag F332); 483.35(i) (Tag F371); 483.65 (Tag F441); and 483.75(l)(1) (Tag F514). There is a basis for the imposition of enforcement remedies and a civil money penalty (CMP) of \$200 per day for the period March 23 through April 12, 2012, a total CMP of \$4,200, is a reasonable enforcement remedy.

This summary judgment decision is based only upon the violations admitted by Petitioner. No findings or conclusions are made regarding the single, contested, alleged violation of 42 C.F.R. § 483.25(c) that was alleged to have resulted in actual harm. The

¹ References are to the revision of the Code of Federal Regulations (C.F.R.) in effect at the time of the survey and initial determination, unless otherwise indicated.

contested deficiency has not been adjudicated as it was unnecessary to do so. Therefore, the contested deficiency is not considered a basis for the CMP or in judging the seriousness of the noncompliance for purposes of assessing the reasonableness of the enforcement remedy.

I. Background

Petitioner is a long-term care facility located in Niles, Illinois, and participates in Medicare as a skilled nursing facility (SNF) and the state Medicaid program as a nursing facility (NF). An annual certification and licensure survey and complaint surveys were completed at Petitioner's facility by the Illinois Department of Public Health (state agency) on March 23, 2012. The state agency found that Petitioner was not in substantial compliance with program participation requirements due to the following regulatory violations that allegedly posed a risk for more than minimal harm: 42 C.F.R. §§ 483.10(b)(1), (5)-(10) (Tag F156); 483.10(b)(11) (Tag F157); 483.13(c)(1)(ii)-(iii), (2)-(4) (Tag F225); 483.15(a) (Tag F241); 483.20(d), (k)(1) (Tag F279); 483.25(a)(3) (Tag F312); 483.25(c) (Tag F314); 483.25(h) (Tag F323); 483.25(m)(1) (Tag F332); 483.35(i) (Tag F371); 483.65 (Tag F441); and 483.75(l)(1) (Tag F514). Centers for Medicare & Medicaid Services (CMS) Exhibit (Ex.) 1; Joint Stipulation of Undisputed Fact (Jt. Stip.).

CMS notified Petitioner by letter dated June 15, 2012, that Petitioner returned to compliance on April 13, 2012; that various enforcement remedies threatened by the state agency were rescinded; and that CMS was imposing a CMP of \$200 per day for the period March 23, 2012 through April 12, 2012, a total CMP of \$4,200. CMS Ex. 2.

Petitioner requested a hearing before an administrative law judge (ALJ) by letter dated July 10, 2012. The case was assigned to me for hearing and decision on August 6, 2012, and an Acknowledgement and Prehearing Order was issued at my direction. On January 4, 2013, CMS filed a motion for summary judgment with a supporting memorandum and CMS Exhibits (Exs.) 1, 2, 5, and 12. Petitioner filed a response in opposition to the CMS motion for summary judgment on February 4, 2013. On March 4, 2013, I issued an order staying further proceedings pending my ruling on the CMS motion for summary judgment. Petitioner has not objected to my consideration of CMS Exs. 1, 2, 5, and 12, and they are admitted as evidence.

I conclude that summary judgment is appropriate in this case and no hearing is required.

II. Discussion

A. Issues

Whether there is a basis for the imposition of an enforcement remedy; and,

Whether the remedy imposed is reasonable.

B. Applicable Law

The statutory and regulatory requirements for participation of a SNF in Medicare are found at section 1819 of the Social Security Act (Act) and at 42 C.F.R. pt. 483. Section 1819(h)(2) of the Act authorizes the Secretary of Health and Human Services (Secretary) to impose enforcement remedies against a SNF for failure to comply substantially with the federal participation requirements established by sections 1819(b), (c), and (d) of the Act.² The Act requires that the Secretary terminate the Medicare participation of any SNF that does not return to substantial compliance with participation requirements within six months of being found not to be in substantial compliance. Act § 1819(h)(2)(C). The Act also requires that the Secretary deny payment of Medicare benefits for any beneficiary admitted to a SNF, if the SNF fails to return to substantial compliance with program participation requirements within three months of being found not to be in substantial compliance – commonly referred to as the mandatory or statutory DPNA. Act § 1819(h)(2)(D). The Act grants the Secretary discretionary authority to terminate a noncompliant SNF’s participation in Medicare, even if there has been less than 180 days of noncompliance. The Act also grants the Secretary authority to impose other enforcement remedies, including a discretionary DPNA, CMPs, appointment of temporary management, and other remedies such as a directed plan of correction. Act § 1819(h)(2)(B).

The Secretary has delegated to CMS and the states the authority to impose remedies against a long-term care facility that is not complying substantially with federal participation requirements. “*Substantial compliance* means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.” 42 C.F.R.

² Participation of a NF in Medicaid is governed by section 1919 of the Act. Section 1919(h)(2) of the Act gives enforcement authority to the states to ensure that NFs comply with their participation requirements established by sections 1919(b), (c), and (d) of the Act.

§ 488.301 (emphasis in original). A deficiency is a violation of a participation requirement established by sections 1819(b), (c), and (d) of the Act or the Secretary's regulations at 42 C.F.R. Part 483, subpart B. Noncompliance refers to any deficiency that causes a facility not to be in substantial compliance. 42 C.F.R. § 488.301. State survey agencies survey facilities that participate in Medicare on behalf of CMS to determine whether the facilities are complying with federal participation requirements. 42 C.F.R. §§ 488.10-.28, 488.300-.335. The regulations specify the enforcement remedies that CMS may impose if a facility is not in substantial compliance with Medicare requirements. 42 C.F.R. § 488.406.

The regulations specify that a CMP that is imposed against a facility on a per day basis will fall into one of two ranges of penalties. 42 C.F.R. §§ 488.408, 488.438. The upper range of a CMP, \$3,050 per day to \$10,000 per day, is reserved for deficiencies that pose immediate jeopardy to a facility's residents and, in some circumstances, for repeated deficiencies. 42 C.F.R. § 488.438(a)(1)(i), (d)(2). "*Immediate jeopardy* means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident." 42 C.F.R. § 488.301 (emphasis in original). The lower range of CMPs, \$50 per day to \$3,000 per day, is reserved for deficiencies that do not pose immediate jeopardy, but either cause actual harm to residents, or cause no actual harm but have the potential for causing more than minimal harm. 42 C.F.R. § 488.438(a)(1)(ii).

The Act and regulations make a hearing before an ALJ available to a long-term care facility against which CMS has determined to impose an enforcement remedy. Act §§ 1128A(c)(2), 1866(h); 42 C.F.R. §§ 488.408(g), 498.3(b)(13). A facility has a right to appeal a "certification of noncompliance leading to an enforcement remedy." 42 C.F.R. § 488.408(g)(1); 42 C.F.R. §§ 488.330(e), 498.3. However, the choice of remedies, or the factors CMS considered when choosing remedies, are not subject to review. 42 C.F.R. § 488.408(g)(2). A facility may only challenge the scope and severity level of noncompliance determined by CMS, if a successful challenge would affect the range of the CMP that may be imposed or impact the facility's authority to conduct a nurse aide training and competency evaluation program. 42 C.F.R. § 498.3(b)(14), (d)(10)(i). The CMS determination as to the level of noncompliance, including the finding of immediate jeopardy, "must be upheld unless it is clearly erroneous." 42 C.F.R. § 498.60(c)(2); *Woodstock Care Ctr.*, DAB No. 1726, at 9, 38 (2000), *aff'd*, 363 F.3d 583 (6th Cir. 2003). The Departmental Appeals Board (the Board) has long held that the net effect of the regulations is that a provider has no right to challenge the scope and severity level assigned to a noncompliance finding, except in the situation where that finding was the basis for an immediate jeopardy determination. *See, e.g., Ridge Terrace*, DAB No. 1834 (2002); *Koester Pavilion*, DAB No. 1750 (2000). ALJ review of a CMP is subject to 42 C.F.R. § 488.438(e).

The hearing before an ALJ is a de novo proceeding, i.e., “a fresh look by a neutral decision-maker at the legal and factual basis for the deficiency findings underlying the remedies.” *Life Care Center of Bardstown*, DAB No. 2479 at 33 (2012) (citation omitted). The standard of proof, or quantum of evidence required, is a preponderance of the evidence. CMS has the burden of coming forward with the evidence and making a prima facie showing of a basis for imposition of an enforcement remedy. The Board has stated that CMS must come forward with “evidence related to disputed findings that is sufficient (together with any undisputed findings and relevant legal authority) to establish a prima facie case of noncompliance with a regulatory requirement.” *Evergreene Nursing Care Ctr.*, DAB No. 2069, at 7 (2007); *Batavia Nursing and Convalescent Ctr.*, DAB No. 1904. “Prima facie” means generally that the evidence is “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.” *Black’s Law Dictionary* 1228 (8th ed. 2004). The Board has long held that Petitioner bears the burden of persuasion to show by a preponderance of the evidence that it was in substantial compliance with participation requirements or any affirmative defense. *Batavia Nursing & Convalescent Inn*, DAB No. 1911 (2004); *Batavia Nursing & Convalescent Ctr.*, DAB No. 1904 (2004), *aff’d*, *Batavia Nursing & Convalescent Ctr. v. Thompson*, 129 F. App’x 181 (6th Cir. 2005); *Emerald Oaks*, DAB No. 1800 (2001); *Cross Creek Health Care Ctr.*, DAB No. 1665 (1998); *Hillman Rehab. Ctr.*, DAB No. 1611 (1997), *aff’d*, *Hillman Rehab. Ctr. v. United States*, No. 98-3789 (GEB), 1999 WL 34813783 (D.N.J. May 13, 1999). However, only when CMS makes a prima facie showing of noncompliance, is the facility burdened to show, by a preponderance of the evidence on the record as a whole, that it was in substantial compliance or had an affirmative defense. *Evergreene Nursing Care Ctr.*, DAB No. 2069, at 4. A facility can overcome CMS’s prima facie case either by rebutting the evidence upon which that case rests, or by proving facts that affirmatively show substantial compliance. “An effective rebuttal of CMS’s prima facie case would mean that at the close of the evidence the provider had shown that the facts on which its case depended (that is, for which it had the burden of proof) were supported by a preponderance of the evidence.” *Id.*, at 7-8 (citations omitted).

C. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold text followed by my findings of fact and analysis.

The CMS notice letter dated June 15, 2012, advised Petitioner that CMS was imposing a CMP of \$200 per day for the noncompliance found by the state agency survey that concluded on March 23, 2012, for the period of noncompliance March 23, 2012 through April 12, 2012, for a total CMP of \$4,200. The notice referred to the deficiency cited under Tag F314, a violation of 42 C.F.R. § 483.25(c) that allegedly caused actual harm, as the most serious deficiency, but did not state that the CMP was imposed for this deficiency alone. CMS Ex. 2.

Petitioner was cited for twelve deficiencies by the survey that was completed on March 23, 2012; all alleged to have posed a risk for more than minimal harm except the alleged violation of 42 C.F.R. § 483.25(c) (Tag F314). In its July 10, 2012 request for a hearing, Petitioner stated that it contested the imposition of a CMP, the conclusion that it was not in substantial compliance with program participation requirements, and any other enforcement remedies. Petitioner attached to its request for hearing an extract from the Statement of Deficiencies (SOD) for the survey that contains the alleged findings and conclusions related to Tag F314. Petitioner described in detail its particular objections to the deficiency cited under Tag F314 but no other deficiency citation. On November 5, 2012, the parties filed a stipulation that the only deficiency for which ALJ review was requested is Tag F314. The parties also advised me in their Joint Stipulation executed on February 12, 2013, that the only deficiency at issue is the alleged violation of 42 C.F.R. § 483.25(c) (Tag F314). Jt. Stip. ¶ 6.

CMS argues that it is entitled to summary judgment because Petitioner has not requested a hearing as to eleven of the deficiencies, all of which were alleged to pose a risk for more than minimal harm. CMS argues that the eleven uncontested deficiencies are a sufficient basis to impose the enforcement remedy it proposes, the \$200 per day CMP for the period March 23 through April 12, 2012. CMS also argues that there are no disputed issues of material fact related to the factors that I must consider in my de novo review of the reasonableness of the proposed CMP.

Petitioner argues in its response to the CMS motion for summary judgment that it requested a hearing to contest the deficiency citation under Tag F314. Petitioner specifically disputes both the existence of the noncompliance and the scope and severity determination. P. Br. at 1. Petitioner asserts that CMS imposed the CMP based upon the deficiency cited under Tag F314 and that it contests the imposition of a CMP based on that deficiency. P. Br. at 2. Petitioner argues that even if the CMP is found reasonable based on the eleven uncontested deficiencies, Petitioner requested the hearing to also contest the scope and severity alleged for the deficiency under Tag F314. P. Br. at 2. Petitioner asserts that there are genuine disputes as to material facts related to the citation under Tag F314. P. Br. 3-5. Petitioner does not assert or identify any genuine dispute of material fact related to the factors I must consider in reviewing the reasonableness of the amount or duration of the CMP proposed by CMS.

1. Summary judgment is appropriate.

The Act and regulations make a hearing before an ALJ available to a long-term care facility against which CMS has determined to impose an enforcement remedy. Act §§ 1128A(c)(2), 1866(h); 42 C.F.R. §§ 488.408(g), 498.3(b)(13). A hearing on the record, also known as an oral hearing, is required under the Act. Act §§ 205(b), 1866(h)(1) and (j); *CrestviewParke Care Center v. Thompson*, 373 F.3d 743 at 748-51 (6th Cir. 2004). A party may waive appearance at an oral hearing, but must do so affirmatively in

writing. 42 C.F.R. § 498.66. In this case, Petitioner has not waived the right to oral hearing or otherwise consented to a decision based only upon the documentary evidence or pleadings. Accordingly, disposition on the written record alone is not permissible, unless the CMS motion for summary judgment has merit.

Summary judgment is not automatic upon request, but is limited to certain specific conditions. The procedures established by 42 C.F.R. pt. 498 do not include a summary judgment procedure. However, appellate panels of the Board have long recognized the availability of summary judgment in cases subject to 42 C.F.R. pt. 498, and the Board's interpretative rule has been recognized by the federal courts. *See, e.g., Crestview*, 373 F.3d at 749-50. Furthermore, a summary judgment procedure was adopted as a matter of judicial economy within my authority to regulate the course of proceedings and made available to the parties in the litigation of this case by my Prehearing Order.

Summary judgment is appropriate and no hearing is required where either: there are no disputed issues of material fact and the only questions that must be decided involve application of law to the undisputed facts; or, the moving party must prevail as a matter of law even if all disputed facts are resolved in favor of the party against whom the motion is made. The Board follows the general approach of the federal courts in evaluating whether or not summary judgment in lieu of a hearing is appropriate. The movant bears the initial burden of demonstrating that there are no genuine issues of material fact for trial and that the movant is entitled to judgment as a matter of law. When confronted with a properly supported motion for summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (quoting *First Nat'l Bank of Az. v. Cities Serv. Co.*, 391 U.S. 253, 249 (1968)); *see also* Fed. R. Civ. P. 56(c); *Venetian Gardens*, DAB No. 2286, at 10-11 (2009); *Ill. Knights Templar Home*, DAB No. 2274, at 3-4 (2009); *Garden City Med. Clinic*, DAB No. 1763 (2001), *Everett Rehab. & Med. Ctr.*, DAB No. 1628, at 3 (1997) (in-person hearing required where nonmovant shows there are material facts in dispute that require testimony); *Big Bend Hosp. Corp., d/b/a Big Bend Hosp. Ctr.*, DAB No. 1814, at 13 (2002) (in some cases, any factual issue is resolved on the face of the written record because the proffered testimony, even if accepted as true, would not make a difference).

In opposing a motion for summary judgment, the nonmovant bears the burden of showing that there are material facts that are disputed either affecting the movant's prima facie case or that might establish a defense. It is insufficient for the nonmovant to rely upon mere allegations or denials to defeat the motion and proceed to hearing. The nonmovant must, by affidavits or other evidence that sets forth specific facts, show that there is a genuine issue for trial. If the nonmovant cannot show by some credible evidence that there exists some genuine issue for trial, then summary judgment is appropriate and the movant prevails as a matter of law. *Anderson*, 477 U.S. at 247. A test for whether an

issue is regarded as genuine is if “the evidence [as to that issue] is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. In evaluating whether there is a genuine issue as to a material fact, an ALJ must view the facts and the inferences to be drawn from the facts in the light most favorable to the nonmoving party. *Pollock v. Am. Tel. & Tel. Long Lines*, 794 F.2d 860, 864 (3rd Cir. 1986).

The standard for deciding a case on summary judgment and an ALJ’s decision-making in deciding a summary judgment motion differs from resolving a case after a hearing. On summary judgment, the ALJ does not make credibility determinations, weigh the evidence, or decide which inferences to draw from the evidence, as would be done when finding facts after a hearing on the record. Rather, on summary judgment the ALJ construes the evidence in a light most favorable to the non-movant and avoids deciding which version of the facts is more likely true. *Holy Cross Vill. at Notre Dame, Inc.*, DAB No. 2291, at 5 (2009). The Board also has recognized that on summary judgment it is appropriate for the ALJ to consider whether a rational trier of fact could find that a party’s evidence, i.e., the movant’s evidence, would be sufficient to meet that party’s evidentiary burden. *Dumas Nursing & Rehab., L.P.*, DAB No. 2347, at 5 (2010); *Ill. Knights Templar Home*, DAB No. 2274, at 8.

Summary judgment is appropriate in this case as there is no genuine dispute as to any material issue of fact related to any issues I am authorized to decide and all issues must be resolved against Petitioner as a matter of law.

- 2. Petitioner did not request review or dispute eleven of the twelve deficiencies cited by the survey completed on March 23, 2012.**
- 3. Petitioner does not dispute that each of the eleven undisputed deficiency citations posed a risk for more than minimal harm.**
- 4. CMS has a basis for the imposition of an enforcement remedy based on the eleven undisputed deficiency citations that posed a risk for more than minimal harm and therefore were noncompliance.**
- 5. Petitioner does not dispute that it was noncompliant from March 23 through April 12, 2012.**
- 6. The CMP proposed by CMS is reasonable.**

The rules for issuance of a certification of compliance or noncompliance for a long-term care facility such as Petitioner are established by 42 C.F.R. § 488.330. Certification of compliance or noncompliance is based on survey findings. 42 C.F.R. § 488.330(a)(2). Pursuant to 42 C.F.R. § 488.330(b)(2) a certification of noncompliance requires enforcement action for current providers including, either or both, termination or

alternative enforcement remedies. A CMP is an authorized alternative enforcement remedy. 42 C.F.R. § 488.406(a)(3). A facility has a right to appeal or request ALJ review of a “certification of noncompliance leading to an enforcement remedy.” Act §§ 1128A(c)(2) (CMPs) and 1866 (termination and other remedies); 42 C.F.R. §§ 488.330(e), 488.408(g)(1), 498.3(b)(13). Thus, it is the certification of noncompliance and enforcement remedies based on the certification of noncompliance that triggers a right to a hearing, and not the individual deficiency citations.

SNFs and NFs have a right to a hearing in accordance with the procedures of 42 C.F.R. pt. 498. The right of review is limited. The choice of remedies, or the factors CMS considered when choosing remedies, are not subject to review. 42 C.F.R. § 488.408(g)(2). A facility may only challenge the scope and severity level of noncompliance determined by CMS, if a successful challenge would affect the range of the CMP that may be imposed or impact the facility’s authority to conduct a nurse aide training and competency evaluation program. 42 C.F.R. § 498.3(b)(14) and (16), (d)(10)(i). ALJ review is, therefore, generally limited to two general issues, *i.e.*, whether there is a basis for the imposition of enforcement remedies and whether the remedies CMS proposes are reasonable. As already discussed, ALJ review and decision on both issues is *de novo*.

CMS requests by its motion for summary judgment that I conclude that CMS had a basis for the imposition of enforcement remedies against Petitioner based on the eleven undisputed deficiencies. CMS’s position, as I understand it, is that it is unnecessary for me to determine whether or not the citation of deficiency under Tag F314 based on the alleged violation of 42 C.F.R. § 483.25(c) is supported by the evidence. The CMS position is well-founded.

It is not disputed that the eleven undisputed deficiencies posed a risk for more than minimal harm and, therefore, amounted to noncompliance. Petitioner has a right to request ALJ review of a certification of noncompliance that results in the imposition of an enforcement remedy. Therefore, if it can be determined that some of the deficiencies cited by a survey are an adequate basis for a certificate of noncompliance, it is unnecessary to consider all the alleged deficiencies. In this case, I conclude that the eleven undisputed deficiencies that posed a risk for more than minimal harm are a sufficient basis for certifying that Petitioner was not in substantial compliance with program participation requirements. Accordingly, the issue of whether or not CMS had a basis for the imposition of an enforcement remedy must be resolved against Petitioner as a matter of law.

Petitioner did not dispute that it was noncompliant from March 23 through April 12, 2012. If a facility is not in substantial compliance with program requirements, CMS has the authority to impose one or more of the enforcement remedies listed in 42 C.F.R. § 488.406, including a CMP. CMS is authorized to impose a per day CMP for the

number of days that the facility is not in compliance. 42 C.F.R. § 488.430(a). The choice by CMS to impose a per day CMP is not subject to ALJ review. 42 C.F.R. §§ 488.408(g)(2) 498.3(d)(11) and (14). There was no declaration of immediate jeopardy in this case; Petitioner's eligibility to be approved to conduct a nurse aide training and competency evaluation program is not an issue in this case; and CMS proposes a CMP in the lower range of authorized CMPs. Therefore, the level of noncompliance, i.e. scope and severity, determined by CMS is not subject to either challenge or review. 42 C.F.R. § 483.3(b)(14), (b)(16) and (d)(10)(ii).

The remaining issue is whether the CMP proposed by CMS is a reasonable enforcement remedy. Petitioner has not contested or alleged that there are genuine disputes as to the material facts related to the regulatory factors that I must consider when doing a *de novo* review of the reasonableness of the proposed enforcement remedy. Accordingly, summary judgment is also appropriate on this issue.

My authority to review the reasonableness of the CMP is limited by 42 C.F.R. § 488.438(e). The limitations are: (1) I may not set the CMP at zero or reduce it to zero; (2) I may not review the exercise of discretion by CMS in selecting to impose a CMP; and (3) I may only consider the factors specified by 42 C.F.R. § 488.438(f) when determining the reasonableness of the CMP amount. In determining whether the amount of a CMP is reasonable, the following factors specified at 42 C.F.R. § 488.438(f) must be considered: (1) the facility's history of non-compliance, including repeated deficiencies; (2) the facility's financial condition; (3) the seriousness of the deficiencies as set forth at 42 C.F.R. § 488.404(b), the same factors CMS and/or the state were to consider when setting the CMP amount; and (4) the facility's degree of culpability, including but not limited to the facility's neglect, indifference, or disregard for resident care, comfort, and safety and the absence of culpability is not a mitigating factor. The factors that CMS and the state were required to consider when setting the CMP amount and that I am required to consider when assessing the reasonableness of the amount are set forth in 42 C.F.R. § 488.404(b): (1) whether the deficiencies caused no actual harm but had the potential for minimal harm, no actual harm with the potential for more than minimal harm, but not immediate jeopardy, actual harm that is not immediate jeopardy, or immediate jeopardy to resident health and safety; and (2) whether the deficiencies are isolated, constitute a pattern, or are widespread. My review of the reasonableness of the CMP is *de novo* and based upon the evidence in the record before me. I am not bound to defer to the CMS determination of the reasonable amount of the CMP to impose, but my authority is limited by regulation as already explained. I am to determine whether the amount of any CMP proposed is within reasonable bounds considering the purpose of the Act and regulations. *Emerald Oaks*, DAB No. 1800, at 10 (2001); *CarePlex of Silver Spring*, DAB No. 1683, at 14–16 (1999); *Capitol Hill Community Rehabilitation and Specialty Care Center*, DAB No. 1629 (1997).

