

**DEPARTMENTAL APPEALS BOARD**  
**Appellate Division**

Grace Living Center – Northwest OKC  
Docket No. A-15-7  
Decision No. 2633  
April 17, 2015

**REMAND OF ADMINISTRATIVE LAW JUDGE DECISION**

Grace Living Center – Northwest OKC (Grace Living or Petitioner), a skilled nursing facility located in Oklahoma, requests review of the August 27, 2014 decision by an Administrative Law Judge (ALJ). *Grace Living Center – Northwest OKC*, DAB CR3347 (2014) (ALJ Decision). The ALJ granted summary judgment in favor of the Centers for Medicare & Medicaid Services (CMS) and concluded that no genuine issue of material fact exists about whether the facility had returned to substantial compliance on November 12, 2013 (the only question before the ALJ).

Grace Living argued that it returned to substantial compliance on November 12, 2013, and, therefore, the per-day civil money penalties (CMPs) CMS imposed should end on that date, and the denial of payment for all new admissions (DPNA) running from December 4, 2013 through January 6, 2014 should be rescinded. The ALJ rejected this argument and found that there was no genuine dispute of material fact about whether the facility returned to substantial compliance on November 12. The ALJ reasoned that Grace Living could not have completed daily audits for 30 days beginning on October 31, 2013, as required by its Plan of Correction (PoC), in only 12 days and then also report the findings to the facility's Quality Assurance Committee (QAC).

While the ALJ's conclusion may be based upon a reasonable interpretation of the facility's PoC, a reasonable trier of fact could also have concluded that the evidence proffered by Grace Living, when viewed in the light most favorable to the facility, showed that there is a genuine dispute of material fact about whether it returned to substantial compliance on November 12, 2013. Thus, we remand this case to the ALJ to further develop the record to reach a judgment on the merits to determine whether Grace Living returned to substantial compliance on November 12, 2013 and to determine the duration of the administrative remedies that CMS imposed.

We affirm the ALJ's conclusion sustaining CMS's imposition of a CMP of \$4,550 based on a finding of immediate jeopardy on October 31, 2013; and a CMP of \$50 for each day of noncompliance running from November 1, 2013 through November 11, 2013 and from November 25, 2013 through January 6, 2014. We also affirm the ALJ's conclusion sustaining the imposition of a DPNA from December 4, 2013 through January 6, 2014.

## **Applicable Law**

The Social Security Act (Act)<sup>1</sup> sets forth requirements for nursing facility participation in the Medicare program and authorizes the Secretary of Health and Human Services to promulgate regulations implementing those statutory provisions. Act § 1819. The Secretary's regulations are found at 42 C.F.R. Part 483. To participate in the Medicare program, a nursing facility must maintain substantial compliance with program requirements set out in the Part 483 regulations.

The Secretary contracts with state survey agencies to conduct periodic surveys to determine whether skilled nursing facilities are in substantial compliance. Act § 1864(a); 42 C.F.R. § 488.20. The regulations require that each facility be surveyed once every twelve months, and more often if necessary, to ensure that identified deficiencies are corrected. Act § 1819(g)(2)(A); 42 C.F.R. §§ 488.20(a), 488.308. Survey findings are reported in a Statement of Deficiencies (SOD). A "deficiency" is defined as a "failure to meet a participation requirement specified in the Act or [42 C.F.R. Part 483]." 42 C.F.R. § 488.301. Section 488.301 defines "substantial compliance" as "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." *Id.* Any "deficiency that causes a facility to not be in substantial compliance" constitutes "noncompliance." *Id.* (defining "noncompliance").

CMS may impose various remedies on a facility that is found not to comply substantially with the participation requirements, including per-day CMPs for the number of days that the facility is not in substantial compliance and a DPNA during the period of noncompliance. 42 C.F.R. §§ 488.406, 488.417, 488.430(a). A per-day CMP may accrue from the date the facility was first out of substantial compliance until the date it is determined to have achieved substantial compliance. *Id.* § 488.440(a)(1), (b). For noncompliance determined to pose immediate jeopardy, CMS may impose per-day CMPs in amounts ranging from \$3,050-\$10,000 per day. *Id.* § 488.408(e)(2)(ii). For noncompliance at less than the immediate jeopardy level, CMS may impose per-day CMPs in amounts ranging from \$50-\$3,000 per day. *Id.* § 488.408(d)(1)(iii).

In general, when a facility has been found not to be in substantial compliance with the participation requirements, the facility must submit a plan of correction (PoC) that is acceptable to CMS or the state survey agency. 42 C.F.R. §§ 488.402(d), 488.408(f). If CMS accepts a noncompliant facility's PoC, the expectation is that the facility must timely implement all of the steps that it has itself identified in the PoC as necessary to correct the cited problems. *Cal Turner Extended Care Pavilion*, DAB No. 2030, at 18-19

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<sup>1</sup> The current version of the Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact-toc.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact-toc.htm). Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp. Table.

(2006); *see also Meridian Nursing Ctr.*, DAB No. 2265, at 21 (2009), *aff'd*, *Fal-Meridian, Inc. v. U.S. Dep't of Health & Human Servs.*, 604 F.3d 445 (7<sup>th</sup> Cir. 2010) (2009); *Lake Mary Health Care*, DAB No. 2081, at 29 (2007). A noncompliant facility “is not considered to be [back] in substantial compliance until a determination has been made, through a revisit survey or based on ‘credible written evidence’ that ‘CMS or the State can verify without an on-site visit,’ that the facility returned to substantial compliance.” *Omni Manor Nursing Home*, DAB No. 2431, at 6 (2011) (*citing or quoting* 42 C.F.R. § 488.454(a)(1)), *aff'd*, *Omni Manor Nursing Home v. U.S. Dep't of Health & Human Servs.*, No. 12-3223, 2013 WL 323001 (6<sup>th</sup> Cir. Jan. 28, 2013); *see also Oceanside Nursing & Rehab. Ctr.*, DAB No. 2382, at 20 (2011)).

The Board has previously held that the noncompliance found during a survey is “presumed to continue until the facility demonstrates that it has achieved substantial compliance.” *Taos Living Ctr.*, DAB No. 2293, at 20 (2009). The regulations and prior Board decisions also make clear that a facility’s “noncompliance is deemed to be corrected or removed only when the incidents of noncompliance have ceased and the facility has implemented appropriate measures to ensure that similar incidents will not recur.” *Florence Park Care Ctr.*, DAB No. 1931, at 30 (2004) (emphasis in original); *see also Oceanside* at 20. Moreover, the facility “bears the burden of showing that it returned to substantial compliance on a date earlier than that determined by CMS,” and the Board “has rejected the idea that CMS must establish a lack of substantial compliance during each day in which a remedy remains in effect.” *Owensboro Place & Rehab. Ctr.*, DAB No. 2397, at 12 (2011).

### **Case Background**

On October 31, 2013 and November 1, 2013, the Oklahoma State Department of Health (OSDH), a state survey agency, conducted a complaint survey of Grace Living (November 1 survey). CMS Ex. 1. The surveyors found that Grace Living was not in substantial compliance with the Medicare participation requirement at 42 C.F.R. § 483.25(h) due to its failure to provide supervision to prevent potentially hazardous chemicals from being ingested by the residents. *Id.* at 1-2. On October 31, the survey team initially determined that the noncompliance was at the immediate jeopardy level, though OSDH subsequently determined that the noncompliance continued at a lower level after the facility took steps to address that finding. *Id.* at 1-2, 5. The immediate jeopardy level noncompliance that was identified at the November 1 survey relates to an incident in which a resident of the facility drank cleaning fluid. *Id.* at 5-6. The surveyors found that Grace Living’s staff left dangerous chemicals, such as cleaning fluid and hand sanitizer, unattended in unlocked carts to which residents of the facility had access. *Id.* at 5, 7; CMS Ex. 7, at 2.

In a letter dated November 19, 2013, OSDH reiterated its November 1 survey finding that a single deficiency at the immediate jeopardy scope and severity level existed, but the immediate jeopardy had been abated. P. Ex. 7. OSDH also notified the facility that it must submit a PoC for the remaining deficiency within 10 calendar days of receiving the SOD. *Id.* at 2-3. The letter also stated that OSDH would recommend to CMS that a DPNA be imposed starting December 4, 2013, that a per-day CMP of \$50 be imposed beginning on November 1, 2013, continuing until the facility returned to substantial compliance, and that the facility's provider agreement be terminated "if the facility is not in substantial compliance within six months after" the November 1 survey. *Id.* at 3-4.

On November 22, 2013, Grace Living submitted a PoC to OSDH that identified November 12, 2013 as the date on which the PoC was completed. CMS Ex. 3, at 3. It is undisputed that OSDH accepted the facility's PoC.

On November 25, 2013, surveyors from OSDH completed a second complaint survey of Grace Living (November 25 survey). CMS Ex. 2. The surveyors found that Grace Living was not in substantial compliance with the Medicare participation requirement at section 483.25(d) because it provided inadequate care for one resident who was totally incontinent of bowel and bladder function. *Id.* OSDH determined that this deficiency increased the resident's risk of developing a urinary tract infection. *Id.*; CMS Ex. 7, at 2.

In a letter dated December 12, 2013, CMS notified the facility that based on the deficiencies identified during both the November 1 and November 25 surveys, the facility's provider agreement would be terminated if the facility did not return to substantial compliance within six months, a per-day CMP of \$50 would be imposed beginning on November 1, 2013 "and continuing until further notice from CMS," and a DPNA would be imposed beginning on December 4, 2013 and "continue until the day before your facility achieves substantial compliance or your provider agreement is terminated." CMS Ex. 4, at 1-3.

OSDH subsequently conducted a revisit survey that was completed on January 31, 2014. P. Ex. 1. OSDH determined that Grace Living returned to substantial compliance from the deficiency cited in the November 1 survey on November 12, 2013. *Id.* OSDH also determined that Grace Living had returned to substantial compliance from the deficiency cited in the November 25 survey on January 7, 2014. P. Ex. 2.

In a letter dated February 18, 2014, CMS notified Grace Living of the final remedies that it decided to impose for the deficiencies cited in both the November 1 and November 25 surveys. CMS Ex. 5, at 1. Specifically, the letter informed Grace Living that the amount of the CMP imposed (discussed above) would be \$50 per day for the period from

November 1, 2013 through January 6, 2014 during which CMS considered that the facility was not in substantial compliance with Medicare participation requirements. The letter also informed Grace Living that a DPNA would be imposed, effective from December 4, 2013 through January 6, 2014. *Id.*

### **ALJ Decision**

Before the ALJ, Grace Living did not challenge the findings of noncompliance or dispute the level of its noncompliance relating to either the November 1 or November 25 surveys. Furthermore, the facility did not challenge its noncompliance with Medicare participation requirements between November 1, 2013 through November 11, 2013 and again from November 25, 2013 through January 6, 2014. Finally, Grace Living did not appeal the reasonableness of the amount of the per-day CMP imposed by CMS for this period. The ALJ thus concluded that “[t]he sole issue that I must decide is whether [Grace Living] was substantially noncompliant with Medicare participation requirements between November 12, 2013 and November 25, 2013.” ALJ Decision at 2.

The PoC that Grace Living submitted to OSDH on November 22 to address the deficiency identified during the November 1 survey identified November 12, 2013 as the completion date. CMS Ex. 3, at 3. The PoC also identified several steps that the facility proposed to undertake, including the following provision:

Random daily audits will be conducted by the [Director of Nursing], administrator and/or designee for 30 days and findings will be reported to the Quality Assurance Committee. The Quality Assurance Committee will then determine further interventions if needed to ensure compliance.

*Id.* The ALJ concluded that the “quoted part of the plan contained two critical elements for attaining compliance.” ALJ Decision at 3. He first pointed out that the PoC required daily audits to be conducted for a period of 30 days to assure that corrections were being implemented. *Id.* Secondly, he observed that the PoC required Grace Living’s QAC to review those audits “for purposes of obtaining evidence of compliance and the committee would evaluate the findings made at the audits in order to assure that corrections were being implemented.” *Id.* Based on its review of the audits, the QAC would then determine if additional interventions were needed to ensure compliance. *Id.*

The ALJ found that Grace Living had “not offered any explanation of how it could have completed or did complete its plan in 12, rather than 30 days.” ALJ Decision at 3. The ALJ then discussed in detail eight exhibits that Grace Living submitted in opposition to CMS’s motion for summary judgment. The ALJ found there is “nothing in [Grace Living’s] exhibits that addresses CMS’s central contention that [the facility] could not

have completed the necessary audits and [QAC] assessments by November 12 after representing explicitly that it would take 30 days to do that.” *Id.* at 4. The ALJ thus concluded that no genuine dispute of material fact exists in regard to the facility’s claim that it returned to substantial compliance on November 12, 2013. *Id.* at 3.

The ALJ further concluded that no genuine dispute of material fact exists about Grace Living’s noncompliance on the dates in question and, therefore, CNS’s imposition of \$50 per-day CMPs from November 1, 2013 through January 6, 2014 was lawful. *Id.* at 6. Finally, the ALJ concluded that CMS was authorized to impose a DPNA for each day of the December 4, 2013 through January 6, 2014 period that the facility was not in substantial compliance. *Id.* Thus, he concluded that CMS’s imposition of a DPNA for each day during this period was lawful. *Id.*

### **Standard of Review**

The Board has adopted the following standard of review of summary judgment:

Whether summary judgment is appropriate is a legal issue that we address de novo. Summary judgment is appropriate if there are no genuine disputes of fact material to the result. In reviewing whether there is a genuine dispute of material fact, we view proffered evidence in the light most favorable to the non-moving party. The standard of review on a disputed conclusion of law is whether the ALJ decision is erroneous.

*Elant at Fishkill*, DAB No. 2468, at 5-6 (2012) (internal citations omitted).

### **Analysis**

- A. *A reasonable trier of fact could conclude that the facts and evidence proffered by the parties raise a genuine dispute of material fact about the date that Grace Living returned to substantial compliance.*

In *Illinois Knights Templar Home*, DAB No. 2274, at 4 (2009), the Board stated that the standard for deciding a case on summary judgment review as follows:

[I]f CMS in its summary judgment motion has asserted facts that would establish a prima facie case that the facility was not in substantial compliance, the first question is whether the facility has in effect conceded those facts. If not, the next question is whether CMS has come forward with evidence to support its case on any disputed fact. If so, the facility must aver facts and proffer evidence sufficient to show that there is a

genuine dispute of material fact. **Ultimately, if the proffered evidence as a whole, viewed in the light most favorable to the facility, might permit a rational trier of fact to reach an outcome in favor of the facility, summary judgment on the issue of substantial compliance is not appropriate.**

*Id.* (quoting *Kingsville Nursing & Rehab. Ctr.*, DAB No. 2234, at 3-4 (2009) (emphasis added)). The regulation that governs the evaluation of when substantial compliance has been regained provides that:

If the facility can supply documentation acceptable to CMS or the State survey agency that it was in substantial compliance and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that CMS or the State can verify as the date that substantial compliance was achieved and the facility demonstrated that it could maintain substantial compliance, if necessary.

42 C.F.R. § 488.454(e). The question at this point is thus whether any reasonable trier of fact, viewing the evidence in the light most favorable to Grace Living and drawing all reasonable favorable inferences therefrom, could conclude that Grace Living achieved substantial compliance as of November 12, 2013.

Grace Living argues before us that “[t]he ALJ Decision is erroneous because the ALJ failed to view the evidence in the light most favorable to [Grace Living].” Petitioner’s Request for Review (RR) at 7. Grace Living contends that “the ALJ relied solely on the language contained in the facility’s [PoC] stating that the facility would implement compliance rounds for 30 days.” *Id.* at 11. Grace Living further argues that “[t]he ALJ discounts or completely ignores the evidence proffered by [Grace Living] in support of its position, **including, the state agency’s own determination that the facility did in fact achieve substantial compliance on November 12, 2013.**” *Id.* at 7 (emphasis in original), citing P. Ex. 1. In addition, Grace Living states that “the ALJ ignores the [facility’s] evidence which shows that the facility’s [PoC] reflects a completion date for correcting the deficient practice and achieving substantial compliance was November 12, 2013; that the facility’s [PoC] was accepted by the State Agency; that the facility implemented its [PoC]; and that no further incidence of deficient practice occurred with respect to the deficiency at issue.” *Id.* at 11-12, citing P. Ex. 7. Grace Living concludes its argument by stating that “[t]he ALJ erred by giving greater value and weight to the evidence submitted by CMS than that submitted by the [facility].” *Id.* at 12. We agree.

No one disputes that 30 days of audits cannot be completed in only 12 days, but the question raised by the facility’s argument is whether the audit and QAC review were intended as necessary measures, or preconditions, for correcting the deficiencies and

achieving substantial compliance. The ALJ evidently thought that these measures were, in fact, intended as preconditions for achieving substantial compliance. The record suggests another potentially reasonable possibility, however.

The PoC states (located immediately next to the 30-day audit plan) that the “completion date” of correcting the deficiency was November 12<sup>th</sup>. See CMS Ex. 3, at 3. The facility submitted the PoC on November 22, 2014, which obviously is **after** the listed completion date but **before** all of the planned audits were completed. In fact, the evidence shows that the facility conducted daily audits from October 31, 2013 through January 31, 2014, well after even CMS found substantial compliance. P. Ex. 6. It is also undisputed that OSDH accepted the PoC with the November 12 completion date, even though the audit completion date shown on the face of the PoC had already arrived.

Given these circumstances, a trier of fact could reasonably conclude that the facility’s PoC constituted an allegation that compliance had already been achieved on November 12 based on the measures taken by that date (such as in-service training, some audits, and a meeting of the QAC) and that ongoing monitoring through further audits and another QAC meeting were planned to ensure the correction would remain effective in the longer term, not to achieve substantial compliance in the first instance. In other words, a reasonable inference from the facility’s evidence is that the PoC claim of correction was intended to be retrospective, rather than prospective, in nature. OSDH’s actions in accepting the PoC with the preexisting completion date and then in confirming that date after the revisit may be viewed as also confirming that OSDH agreed with the facility’s view that the audits were not necessary to regaining substantial compliance. The inference that the PoC was retrospective is further supported by the fact that OSDH conducted a revisit survey in January 2014 and confirmed the facility had returned to substantial compliance as of November 12<sup>th</sup>. P. Ex. 1 (OSDH’s Post-Certification Revisit Report). Finally, Grace Living submitted an affidavit by its Director of Clinical Services (DCS) who avers that “[o]n November 12, 2013, the [QAC] was presented with the information regarding the [immediate jeopardy] deficiency, the inservice documentation associated with the deficient practice and the corrective measures implemented to achieve compliance.” P. Ex. 8, at 2. The DCS further averred that “it is my professional opinion that the facility achieved substantial compliance with respect to [the deficiency finding from the November 1 survey] on November 12, 2013.” *Id.* at 3.

As the Board stated in *Illinois Knights Templar Home*:

The Board has explained in prior decisions how an ALJ’s role in deciding a summary judgment motion differs from the role of an ALJ resolving a case after a hearing (whether an in-person hearing or on the written record). For example, in *Madison Health Care, Inc.*, DAB No. 1927, at 6 (2004), the Board stated that the ALJ deciding a summary judgment motion does not make credibility determinations, weigh the evidence, or decide which

inferences to draw from the facts, as would be proper when sitting as a fact-finder after a hearing, but instead should construe the record in the light most favorable to the nonmovant and avoid the temptation to decide which party's version of the facts is more likely true. In that process, the ALJ should not be assessing credibility or evaluating the weight to be given conflicting evidence.

DAB No. 2274, at 8 (internal quotations omitted), citing *Payne v. Pauley*, 337 F.3d 767, 770 (7<sup>th</sup> Cir. 2003).

Although the ALJ identified the correct standards for summary judgment, he did not correctly apply those standards here. Given that a reasonable alternative explanation exists indicating that the PoC was intended (and accepted by the state survey agency) as an allegation that substantial compliance had been achieved as of November 12 without requiring completion of all the audits, the ALJ did not view the facility's evidence in the light most favorable to it. Instead, it appears that the ALJ discounted the facility's evidence, drew inferences from that evidence based on his interpretation of the PoC, weighed the probative value of that evidence, and assigned weight to conflicting evidence. We do not imply that the ALJ would be precluded from drawing the same inferences and giving the same weight to conflicting evidence as he did here, but we conclude that he may not properly do so on summary judgment. Indeed, we do not disagree that evidence exists in the record that, if not viewed in the light most favorable to Grace, could support a finding that substantial compliance was not achieved on November 12. In that context, we note that OSDH's finding that the facility had returned to substantial compliance on this date is not binding on CMS. While OSDH is not required to provide its reason for finding substantial compliance, the absence of an explanation means that the state determination may reasonably have less persuasive weight to the ALJ. Such an evaluation of conflicting evidence is simply not permissible on summary judgment, however.

Viewing all of the evidence in the light most favorable to Grace Living, we conclude that a genuine dispute of material fact exists about whether it returned to substantial compliance on November 12, 2013. Thus, we remand this case to the ALJ to further develop the record to reach a judgment on the merits to determine whether Grace Living returned to substantial compliance on November 12, 2013 and to determine the duration of the administrative remedies that CMS imposed.

- B. *The ALJ did not err in concluding that, as a matter of law, CMS had authority to impose a CMP from November 1, 2013 through November 11, 2013 and from November 25, 2013 through January 6, 2014, and a DPNA from December 4, 2013 through January 6, 2014.*

Grace Living argues that “[i]f the proper determination had been made regarding substantial compliance, no remedy for [the DPNA] would have been imposed and [the] imposition of [CMPs] would end effective November 12, 2013.” RR at 3; *id.* at 12. Grace Living further says that “[i]f [the facility] achieved substantial compliance on November 12, 2013, the remedies imposed by CMS after that date must be rescinded.”<sup>2</sup> *Id.* at 4. In addition, Grace Living contends that “[t]he DPNA remedy was tied to the November 1, 2013 deficiency, not the November 25, 2013 deficiency.” *Id.* at 12. Grace Living states that “[s]tanding alone, the November 25, 2013 . . . deficiency does not provide a basis for imposing a DPNA beginning December 4, 2013.” *Id.* Thus, Grace Living says the ALJ erred in finding that the date it returned to substantial compliance was irrelevant in determining whether CMS had authority to impose the DPNA in this case. *See* ALJ Decision at 6. We disagree.

The applicable regulation provides that CMS is authorized to impose a DPNA for each day that a facility is noncompliant. 42 C.F.R. § 488.417(a). Here, Grace Living did not challenge CMS’s finding of noncompliance for the period from November 25, 2013 through January 6, 2014. The facility admittedly was not in substantial compliance with Medicare participation requirements during the period beginning November 25, 2013 through January 6, 2014. Thus, we conclude the ALJ correctly determined that CMS had the discretionary authority to impose a DPNA for the period of noncompliance from December 4, 2013 through January 6, 2014.

Also, contrary to Grace Living’s contention, the DPNA was not “tied” to the noncompliance finding from the November 1 survey. In letters dated December 12, 2013 and February 19, 2014, CMS notified Grace Living that the DPNA was being imposed for the noncompliance findings from both surveys. CMS Exs. 4 at 1; CMS Ex. 5, at 1.

Thus, the ALJ did not err in concluding that, as a matter of law, CMS had authority to impose a per-day CMP from November 1, 2013 through November 11, 2013 and from November 25, 2013 through January 6, 2014, as well as a DPNA from December 4, 2013 through January 6, 2014.

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<sup>2</sup> Grace Living also challenges the duration of the per-day CMP on the ground that, if the facility had returned to substantial compliance on November 12, then the per-day CMP should end on that date rather than on January 6, 2014. RR at 3, 4. Should the ALJ determine on remand that the facility had not returned to substantial compliance on November 12, 2013, then CMS clearly has the legal authority to impose a per-day CMP for each day during this period. Should the ALJ determine that substantial compliance was achieved on that date, he should revisit the imposition of the CMP for the period November 12 through 24, 2013.

**Conclusion**

For all of the foregoing reasons, we remand this case to the ALJ to further develop the record to reach a judgment on the merits to determine whether Grace Living returned to substantial compliance on November 12, 2013 and to determine the duration of the administrative remedies that CMS imposed.

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Leslie A. Sussan

\_\_\_\_\_/s/  
Susan S. Yim

\_\_\_\_\_/s/  
Stephen M. Godek  
Presiding Board Member