

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

**ACTION OF MEDICARE APPEALS COUNCIL
ON REQUEST FOR REVIEW**

Docket Number: M-2009-1329

In the case of

Commissioner, Connecticut
Dept. of Social Services

(Appellant)

(Beneficiary)

National Government Services

(Contractor)

Claim for

Hospital Insurance Benefits
(Part A)

(HIC Number)

(ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a decision dated June 26, 2009, concerning skilled nursing facility services provided by Wintonbury Care Center to the beneficiary from March 30, 2008, through April 30, 2008. The ALJ found that the nursing services provided to the beneficiary were not skilled, but were custodial, and that the beneficiary was liable for the non-covered services. The appellant has asked the Medicare Appeals Council to review this action.

The Council reviews the ALJ's decision *de novo*. 42 C.F.R. § 405.1108(a). The Council will limit its review of the ALJ's action to the exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c).

As set forth below, the Council adopts the ALJ's decision.

DISCUSSION

The appellant filed a timely request for Council review (Form DAB-101), dated August 24, 2009, and received on August 26, 2009. The appellant asked for a 60-day opportunity to file a

brief in support of the request for review, pursuant to 42 C.F.R. § 405.1120. Exh. MAC-1.

By a letter dated October 5, 2009, the Council granted the appellant a 30-day opportunity to file a brief. Exh. MAC-2. The letter informed the appellant that the Council will act on the request for review based on the present record if nothing further is received within 30 days. The appellant did not file a brief within 30 days thereafter. We note that the extended due date provided the appellant more time than the 60 days requested in the request for review to file the brief.

Nearly a month after the expiration of the due date for the brief, on December 1, 2009, the appellant filed, by telefacsimile, a request for an additional extension of time, to January 10, 2010, to brief the case. The appellant's brief was received after January 10, 2010, by telefacsimile.

The Council has provided the appellant a reasonable opportunity to file a brief in support of the request for review. Because the appellant did not file a brief until some two months after the expiration of the due date for the brief, the Council will not consider the late-filed submittal to decide this case.

The Council has considered the record and the contentions as stated in Exh. MAC-1. In Exh. MAC-1, the appellant argues only the following: "The ALJ misstated and misapplied the law. The evidence of record does not support the ALJ's decision." The appellant does not make any specific contentions as to ALJ error. It does not identify the parts of the ALJ action with which appellant disagrees or explains why it disagrees with the ALJ's decision. 42 C.F.R. § 405.1112(b).

The ALJ indicated that neither the appellant, nor Wintonbury, disputed that the beneficiary did not receive skilled care on the dates of service at issue. Thus, the ALJ found that the services at issue should not be covered by Medicare. See Dec. at 8.

The ALJ also addressed the waiver of liability provision of section 1879 of the Social Security Act (Act). The ALJ determined that Wintonbury gave proper notice of Medicare non-coverage to the beneficiary that the SNF services would not be reimbursed by Medicare, effective March 30, 2008. See Dec. at 9-11. Thus, the ALJ found that the beneficiary was liable for the non-covered services furnished by Wintonbury from March 30, 2008, through April 30, 2008.

The appellant does not raise any contentions on whether the care provided to the beneficiary during the dates at issue was skilled in nature, or reasonable and medically necessary. Nor does the appellant make any specific contentions regarding the ALJ's assignment of liability for the non-covered services.

The Council therefore sees no basis to disturb the ALJ's decision. The Council adopts the ALJ's decision.

MEDICARE APPEALS COUNCIL

/s/ Susan S. Yim
Administrative Appeals Judge

Date: February 24, 2010