

May 2009

## U.S. v. Harris Memorandum Opinion and Order

The United States of America (Government) initiated this case by filing a complaint against Attorney Paul J. Harris (Counsel), seeking to assert its recovery rights under the Medicare as a Secondary Payer statute (MSP), 42 U.S.C. § 1395(b)(2)(B)(ii). Counsel represented his client, who was a Medicare beneficiary in a case involving injuries suffered when the beneficiary fell off a ladder purchased from a local retailer. Since Counsel's client was a Medicare beneficiary, the Centers for Medicare and Medicaid Services ("CMS") paid approximately \$22,549.67 in Medicare claims submitted on the beneficiary's behalf. The case ultimately settled for \$25,000.00, and Medicare agreed to reduce its conditional payments to \$10,253.59 based upon attorney fees, costs, and the amount of the settlement. On December 13, 2005, CMS sent a letter to Counsel informing him of this decision and also advising that if his client disagreed with the amount of overpayment that an appeal had to be filed within 120 days of receipt of CMS's letter. However, Counsel never filed any such appeal and also failed to pay CMS within the statutorily-required 60-day time period. This prompted the Government to bring a complaint against Counsel alleging it was entitled to its calculated share of the settlement plus interest and that it would not pay its full share of attorney fees and costs. Accordingly, the Government sought total payment of \$11,367.78 plus interest from Counsel. Counsel filed a Motion for Summary Judgment which the Court granted.

In so doing, the trial court noted that the MSP statute provided that the Government "may recover under this

clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity." 42 U.S.C. § 1395(b)(2)(B)(ii) (emphasis added). The Court also relied on the federal regulations, which further explain that "CMS has a right of action to recover its payments from any entity, including a beneficiary provider, supplier, physician, attorney, state agency, or private insurer that has received primary payment." 42 C.F.R. § 411.24(g) (emphasis added). More specifically, the Court held that Counsel was individually liable for reimbursing Medicare in this case because 42 C.F.R. § 411.24(g) allows the Government to recover "from any entity." Additionally, the Court also found that Counsel's failure to pursue available administrative appeal remedies precluded him from challenging CMS's reimbursement determination.

This decision once again affirms CMS's broad recovery rights under the MSP statute. Protecting Medicare's interests is a must for anyone involved in a claim involving a Medicare beneficiary. To ensure that you and/or your company is Medicare compliant, please contact Charles G. Brown, Esquire, at (412) 392-5204 or via e-mail at [cbrown@dmclaw.com](mailto:cbrown@dmclaw.com); Bridget Langer Smith, Esquire, at (412) 392-5624 or via e-mail at [bsmith@dmclaw.com](mailto:bsmith@dmclaw.com); Linda Varrenti Hernandez, Esquire, at (412) 392-5565 or via e-mail at [lhernandez@dmclaw.com](mailto:lhernandez@dmclaw.com); or Jamie Mulholland, Medicare Compliance Coordinator, at (412) 392-5351 or via e-mail at [jmulholland@dmclaw.com](mailto:jmulholland@dmclaw.com).

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