



Client Alert

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District Court Decision Reverses Medicare Appeal Council's Denial of Skilled Nursing Care For Lack of Progress in Rehabilitation

In *Papciak v. Sebelius* (Civil Action No. 09-1354 (W.D. Pa. 2010)), the district court reversed a decision by the Medicare Appeals Council (MAC) that the nursing and therapy services provided to the plaintiff were "custodial," rather than skilled, in nature due to the plaintiff's "slow progress." In reversing the denial of Medicare coverage, the court noted that the agency's decision was not supported by substantial evidence in the record.

In the underlying case, the plaintiff was admitted to a skilled nursing facility after an acute care hospitalization for skilled nursing care, physical therapy (PT) and occupational therapy (OT). Medicare covered the skilled nursing care provided from June 3 through July 9, 2008, but due to her minimal progress in some areas of function and her regression in other areas, Medicare deemed that she had met her maximum rehabilitation potential and no longer required skilled care. The plaintiff subsequently appealed the agency's decision to deny coverage from July 10 through July 19, 2008.

In distinguishing "custodial care" from skilled nursing care, the court noted that Medicare must base its coverage decision upon "a common sense, non-technical consideration of the patient's condition as a whole." The court also noted that the MAC, in assessing the plaintiff's potential for improvement, failed to consider whether the plaintiff's mental impairments (ie, anxiety and situational depression) were limiting her physical functioning. The court emphasized that, after the episode of care at issue, the plaintiff participated in continued skilled therapy and made further functional gains with these additional OT and PT treatments. The court concluded that this evidence was in direct conflict with agency's decision that the plaintiff could not reasonably be expected to achieve a higher level of function and determined that the skilled nursing care provided from July 10 through July 19, 2008, was fully covered by Medicare.

For healthcare providers, facing the lengthy administrative appeals process to contest Medicare's denial of skilled rehabilitation services, this decision provides support that a patient's slow progress in therapy is not determinative of whether he or she can benefit from further skilled therapy services.

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