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Pursuing Medicare Appeals Is Not for Impatient

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Even after the Secretary of **HHS** admitted that the current backlog of **Medicare Part B** appeals would take ten years to adjudicate at current staffing and funding levels, that was not enough for a hospital to obtain any relief from a court.

Cumberland County Hospital System, Inc. v. Burwell, No. 15-1393 (4th Cir., Mar. 7, 2016). In that case, a North Carolina hospital had initially been paid for over 900 claims, but those claims were subsequently determined to be ineligible after a post-payment review by a Recovery Audit Contractor (“RAC”), which sought to recover over \$12 million from the hospital. Although the hospital complied with the deadlines for filing administrative appeals, the Medicare Office of Hearings and Appeals had not held hearings or made determinations within the 90-day deadline in the Medicare statute. In order to expedite the process, the hospital sought a writ of mandamus from a federal court to order the Secretary to conduct the hearings. The district court denied the motion, and the U.S. Court of Appeals for the Fourth Circuit agreed with the Secretary that no relief was warranted.

The court noted the Secretary’s admission that there are over 800,000 pending Medicare appeals, and that absent any legislative remedy it would take over ten years to hear and decide the current caseload. Despite these appalling statistics and the court’s own statement that, “HHS’s procedural arteries are seriously clogged,” the court agreed with the Secretary that because the Medicare statute gives claimants the option of escalating their claim to the next level of review if hearing deadlines are not met, the hospital was not entitled to the court order it sought.

The *Cumberland County* decision highlights a critical step for anyone seeking to appeal a Medicare coverage or reimbursement decision: making sure that the record is complete as early as possible in the appeal process. Under the Medicare hearing regulations, it becomes more difficult to introduce additional evidence at each level of review, and new evidence will not be considered by a reviewing court. As a result, anyone appealing an unfavorable Medicare decision should either be prepared to be patient, or should make a complete record as early as possible in the process if an option is escalating an appeal to a higher level to get a timely hearing. Although Congress is considering legislation that may help, the degree of that help or when that help may arrive is still too uncertain to predict.

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