

Score Another "Win" for Providers!

The U.S. District Court for the Southern District of Texas ruled in *Adams EMS, Inc. v. Azar*, No. H-18-1443 (S.D. Tex. July 11, 2018) that the Centers for Medicare and Medicaid Services (CMS) could not recoup monies until after Administrative Law Judge (ALJ) hearings have been held. The Court issued a temporary restraining order (TRO) prohibiting CMS from recouping an overpayment.

In this case, Health Integrity, LLC; a zone program integrity contractor (ZPIC); determined that Adams EMS had received \$148,035 in overpayments on claims submitted from July 17, 2012, to January 15, 2016. The actual amount of the overpayment is \$14,846 and was extrapolated through statistical sampling to \$418,035. Adams' requests for redetermination and reconsideration were denied. Adams requested hearings before the ALJ that probably will not be held for at least another three to five years, due to an enormous backlog.

On October 23, 2018, the Judge in this case granted Adams EMS a preliminary injunction that prohibits CMS from recouping until a final order has been entered in the case. The Court relied heavily on the case of *Family Rehab, Inc. v. Azar* on June 28, 2018, in its decision to grant a preliminary injunction to Adams EMS.

The Court said that the ambulance company met all applicable requirements to obtain a preliminary injunction. First, the provider showed a substantial likelihood of success on the merits because it had a property interest in receiving and retaining continued Medicare reimbursements.

The Court also said that the provider was at risk for erroneous deprivation of its property interest because ALJs have not issued decisions within ninety days as required. According to the Court, escalating appeals to the Medicare Appeals Council would not solve the issue of lack of due process.

The ambulance company also successfully demonstrated that it may suffer irreparable injury because it will go out of business if recoupments continue. The Court was sympathetic to the provider and concluded that the injury to the company greatly outweighed the potential harm to the government of delays in recoupment. In fact, according to the Court, the

harm to the government is minimal because it may recoup overpayments if ALJs rule against the provider.

Finally, said the Court, the government suggested that the alleged overpayments to Adams were the result of fraud. The Court rejected this claim, however, because the government did not offer any facts or legal arguments to support its claim.

There are now multiple decisions regarding the issue of preventing recoupments until after ALJ hearings in various jurisdictions that reach different conclusions. The "name of the game" remains: appeal, appeal, appeal!