

## Report on Medicare Compliance Volume 27, Number 27. July 30, 2018 In Second Case, Judge Suspends Recoupment of Overpayment Until ALJ Decides Appeal

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By Nina Youngstrom

For the second time ever, a federal court stopped CMS from recouping a provider's money until it finishes the Medicare appeals process. The case again featured a provider whose overpayment was extrapolated and who anticipates a long wait for a hearing before an administrative law judge (ALJ).

The U.S. District Court for the Southern District of Texas granted Adams EMS, an ambulance company, a temporary restraining order (TRO) on July 11 that prevents Medicare from taking back \$418,035, which is an amount extrapolated from a relatively small overpayment, until an ALJ rules on the merits of the case.

"If the temporary restraining order is not granted, Adams EMS will go out of business and employees will lose jobs," Chief United States District Judge Lee H. Rosenthal said. "The harm to HHS is minimal." He discussed a TRO granted June 4 to Family Rehabilitation Inc. by the U.S. District Court for the Northern District of Texas. The two cases came down a month apart and are conceptually related because they both stem from a decision by the U.S. Court of Appeals for the Fifth Circuit that opened the door to TROs in Medicare recoupments (RMC 4/16/18, p. 1).

"It's exciting that another judge has ruled" in favor of granting a TRO to a provider in these circumstances, says Atlanta attorney Ross Burris, with Polsinelli. Suspending recoupment pending an ALJ decision can be a lifesaver for some providers. "But TROs are not going to be a good option for everyone. People should think carefully before they do it," he says.

In the Adams EMS case, a zone program integrity contractor (ZPIC), Health Integrity LLC, in late 2016 concluded that the ambulance provider received \$14,846 in overpayments on claims submitted to Medicare from July 17, 2012, to Jan. 15, 2016, which was extrapolated to \$418,035 with statistical sampling. Adams EMS appealed and was denied at redetermination, the first level of appeal, and then sought redetermination at the qualified independent contractor (QIC), the second level of appeal. The QIC issued a partially favorable decision, saying the sample size used by the ZPIC "wasn't adequate to justify this demand amount," according to the court decision. Health Integrity "would have to recalculate the demand amount based on a different (more conservative) extrapolation methodology." Adams EMS still lost on every claim in the revised decision from the QIC, and the ZPIC's new decision didn't recalculate the overpayment amount.

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