

DIVISION OF MEDICAL ASSISTANCE,
Petitioner,
v.
LAUREL PHARMACY,
Respondent.

Decided January 4, 1980

Initial Decision

SYNOPSIS

The Division of Medical Assistance sought to recover certain prescription payments made to Laurel Pharmacy in its role as a provider under the Medicaid program. Under *N.J.A.C. 10:50-1.9*, pharmacies are entitled to additional payments in the form of special "impact increments" if their long-term facility Medicaid and Pharmaceutical Assistance to the Aged program prescriptions exceed certain levels of annual prescription volume. While not disputing that a miscalculation of total prescription volume had resulted in the payment of an incorrect impact increment, Laurel Pharmacy maintained that its prescription volume still qualified it for an impact increment which should be set off against the Division's recoupment claim.

The administrative law judge found that since both claims arose out of the same miscalculation of prescription volume and since the Division offered no reason to the contrary, these claims should be considered together in the same proceeding. Accordingly, the judge ordered the calculation of the correct increment due Laurel Pharmacy and that this amount be set off against the original impact increment.

METZGER, ALJ:

The Division of Medical Assistance is here seeking to recover certain prescription overpayments made to Laurel Pharmacy as a Medicaid provider. The matter was transmitted to the Office of Administrative Law as a contested case, pursuant to *N.J.S.A. 52:14F-1 et seq.*, and the hearing was held on November 29, 1979, at the Burlington County Courthouse.

The facts are not in dispute. *N.J.A.C. 10:51-1.9* provides that a pharmacy may receive nine cents per prescription over and above that which is otherwise reimbursable as a special "impact increment" where its non-long-term care facility Medicaid and PAA (Pharmaceutical Assistance to the Aged) prescription volume exceeds 50 percent of its total annual prescription volume. Based on miscalculations of total volume and on the

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inclusion of some 5,836 ineligible nursing home prescriptions within the 50 percent calculation, petitioner received a nine cent per prescription "impact increment." The sum of that overpayment plus interest is \$1,559.73. Mr. Wasserman, president, of Laurel Pharmacy readily admitted his error and that the amount demanded was legitimately due and owing. He contended, however, that his miscalculation with respect to total prescription volume for 1978, or 51,080 prescriptions, placed him in the six percent discount category, *N.J.A.C.* 10:51-1.9(a)(8), when in fact he should have been in the five percent discount category as his total prescription volume was only 44,396 (*N.J.A.C.* 10:51-1.9(a)(7)). The regulations assume that higher volume operations can more efficiently process prescriptions and, thus impose a higher discount rate on repayment. Here, too, there was no dispute that petitioner should have been in the five percent discount category. The only question arose as to whether Mr. Wasserman's set-off claim could be considered in the same proceeding as the Division's recoupment claim. I see no merit in the Division's argument here.

I **FIND** the facts as follows:

1. Petitioner initially miscalculated both his total prescription volume and his volume for purposes of the Division's 50 percent rule. As a result, he received an overpayment, and the Division is entitled to recapture \$1,559.73.

2. As a result of his total volume miscalculation, petitioner was placed in the six percent rather than the five percent discount category and, as such, was paid less than his entitlement.

No explanation was offered by the agency as to why these matters should not be considered together, and I am somewhat at a loss to discern any reason for it on my own. As the nine cent per prescription overpayment arises out of the same set of mistaken assumptions as the misplacement of Laurel Pharmacy in the six percent discount category, I can see no reason why these should not be considered together. The exact amount of the underpayment to petitioner had not, at the time of the hearing, been calculated; however, it is **ORDERED** that, upon calculation, that figure be subtracted from the \$1,559.73 owed the Division and that the remainder be paid within ten days of the time that this order is made final.

After reviewing this Initial Decision, the Division of
Medical Assistance and Health Services on February 21,
1980 issued the following Final Decision:

The Director adopts and incorporates the findings of the administrative law judge that the petitioner's total prescription volume did not meet the 50

percent criteria set forth in *N.J.A.C.* 10:51-1.9(d), therefore, petitioner was not entitled to an additional \$0.09 impact increment. Petitioner must refund the \$1,559.73 demanded by the Division if he has not already done so.

The Director rejects the findings of the administrative law judge that the petitioner be placed in the six percent rather than the five percent discount category. The Division's audit which prompted the hearing, dealt only with petitioner's entitlement to the impact increment. The Division was not prepared to present evidence concerning the discount category since this issue should have been referred to the Division for possible administrative solution prior to hearing.

The Director refers this matter to the Bureau of Pharmaceutical Services. If petitioner is not satisfied with the Division's determination, he may request a hearing pursuant to Division regulations.