



## Legal Bulletin

June 21, 2011

### **Louisiana Court of Appeals Case – CMS Approval of MSA a Condition Precedent to the Requirement of Disbursement of MSA Funds**

A finalized settlement, which includes a Medicare Set-Aside (MSA) where the parties have not yet obtained approval from the Centers for Medicare & Medicaid Services (CMS), can cause misunderstandings and complications. This is particularly true on the part of claimants who are anxious to receive their settlement funds and may not understand the wait time associated with receiving CMS' approval of the MSA. This was specifically the issue in Harrelson v. Arcadia, NO.2010 CA 1647, Court of Appeals of Louisiana, First Circuit.

In Harrelson, the claimant appealed an amended judgment in which the Workers' Compensation Judge denied his motion for penalties and attorneys' fees arising out of his alleged employer's failure to timely fund the MSA portion of the settlement agreement. The claimant and his employer had previously come to a full and final settlement agreement in which the employer would pay the claimant \$125,000.00. Of this amount, \$42,010.00 was to be placed in an MSA account to cover future medical expenses, and the remaining \$82,990.00 was to be paid in one lump sum. The parties' petition for settlement included terms regarding the MSA portion of the settlement as follows:

[Claimant] and insurer agree that, if CMS *requires that additional money be placed into the [MSA] in this case*, [Claimant/employer/insurer] *will, at its option, pay all such additional amounts and comply with all Medicare requirements regarding such, or will withdraw the proposal for a [MSA]*, and the claim for future medical care will remain open. (Emphasis added).

The employer immediately submitted a check in the amount of \$82,990.00 to the claimant, with assurances that the balance of \$42,010.00 would be "forwarded shortly." CMS provided a timely response approving the submitted MSA exactly a month from the date of the CMS submission. A few days after the employer received CMS' approval of the MSA, a check was issued to the claimant for the balance of the funds due.





The claimant was still not satisfied and filed a motion alleging that he was owed attorneys' fees and statutory penalties, pursuant to Louisiana law, due to the fact that the employer failed to pay the full amount of the settlement within thirty days of the final, non-appealable judgment.

The court found in favor of the employer and specifically noted that approval by CMS was an uncertain event that, once it occurred, made the Workers' Compensation Judge's order approving the final settlement agreement final and enforceable. Ultimately, the right to enforce the employer's conditional obligation to fund the MSA account contained in the settlement agreement did not arise until the fulfillment of the suspensive condition when CMS approved the MSA funding. Because CMS approval was a suspensive condition, the employer was not required to pay the claimant his MSA funds until CMS approval was obtained.

This case again teaches us that clarity in settlement documents that incorporate MSAs is incredibly important. Although the employer won the appeal in the end, this motion could have possibly been avoided. The employer could have either waited for CMS approval before finalizing the settlement, or in the alternative, if the parties wanted to settle more quickly, there could have been a clearer declaration within the settlement documents that the claimant would not receive his MSA funds until CMS approval was obtained. If such a declaration was made plainly within the settlement documents, the claimant and his attorney likely would not have brought the motion in the first place.

For more information, please contact Heather Schwartz, Corporate Counsel, PMSI at [Heather.Schwartz@pmsisettlement.com](mailto:Heather.Schwartz@pmsisettlement.com) or 813.612.5504.

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