DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD

DECISION OF MEDICARE APPEALS COUNCIL

In the case of	**Claim for**
D.C. (Appellant)	Medicare Advantage (MA) (Part C)
**** (Enrollee)	**** (HIC Number)
PacifiCare of Texas/ Secure Horizons (MA Organization (MAO))	**** (ALJ Appeal Number)

The Administrative Law Judge (ALJ) issued a hearing decision dated August 13, 2009. The ALJ determined that the MA plan is not required to provide coverage of, or reimbursement for, air ambulance services furnished to the enrollee from Mexico to the United States, on May 12, 2008. The enrollee has asked the Medicare Appeals Council to review the ALJ's decision.

The regulation codified at 42 C.F.R. § 422.608 states that "[t]he regulations under part 405 of this chapter regarding MAC [Medicare Appeals Council] review apply to matters addressed by this subpart to the extent that they are appropriate." The regulations "under part 405" include the appeal procedures found at 42 C.F.R. part 405, subpart I. With respect to Medicare "fee-for-service" appeals, the subpart I procedures pertain primarily to claims subject to the Medicare, Medicaid and SCHIP Benefits Act of 2000 (BIPA) and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), 70 Fed. Reg. 11420, 11421-11426 (March 8, 2005). The Council has determined, until there is amendment of 42 C.F.R. part 422 or clarification by the Centers for Medicare & Medicaid Services (CMS), that it is "appropriate" to apply, with certain exceptions, the legal provisions and principles codified in 42 C.F.R. part 405, subpart I, to this case.

The Council reviews the ALJ's decision *de novo.* 42 C.F.R. § 405.1108(a). The Council will limit its review of the ALJ's action to the exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. 42 C.F.R. § 405.1112(c).

Having considered the enrollee's timely-filed request for Council review (Form DAB-101) and the copies of two letters of Dr. ***,[1] all of which are admitted into the record as Exh. MAC-1, the Council concludes that there is no basis for changing the ALJ's decision. For the reasons and bases set forth below, the Council adopts the ALJ's decision.

DISCUSSION

The enrollee seeks MA plan coverage of, or reimbursement for, the expenses he incurred for air ambulance transportation services from Mexico to Texas, on May 12, 2008. The record indicates that, on May 11, 2008, the enrollee suffered a fall at his hotel located in or around Cancun, Mexico, where he was vacationing. He was taken, by ground ambulance, to a local hospital in the Riviera Maya, Playa del Carmen, Qintana Roo, Mexico. He was admitted to the hospital. There he was diagnosed with contusion on the left hip and leg. X-rays revealed an irregular nondisplaced oblique fracture of the neck of the left femur. Exh. 1 at 12-13. On May 12, 2008, he was flown by air ambulance from Mexico to *** Hospital in Fort Worth, Texas, where he underwent surgery. He was discharged on May 15, 2008. Exh. 1 at 13.

It is evident that the plan determined that coverage and reimbursement would be appropriate for the cost of care received in Mexico, including the ground ambulance transportation cost incurred in Mexico, and the charges incurred at *** Hospital. Exh. 1 at 12-16. The only matter in dispute is plan coverage of, and reimbursement for, the air ambulance expenses for the trip from Mexico to the United States on May 12, 2008. The enrollee reportedly charged the air ambulance expenses on his credit card. *Id.* at 15.

[1] The enrollee included copies of Dr. ***'s January 5, 2009, and October 7, 2009, letters. The former letter is a copy of Dr. ***'s letter admitted into the record as Exh. 1 at 7. Dr. ***'s October 7, 2009, letter was submitted to supplement his January 5, 2009, letter, and is new evidence not previously admitted into the record. The Council sent to the MAO copies of the enrollee's request for review and the two letters, by correspondence dated October 22, 2009.

The plan denied coverage and reimbursement for the air ambulance expenses on the basis that the plan covers ambulance services for transportation to the nearest institution that can provide the necessary medical care, but explicitly excludes coverage of air ambulance transportation to the United States from a foreign location. *Id.* at 17, 21-22. The Evidence of Coverage provides, in relevant part:

> [The plan] covers Medically Necessary ambulance services for Emergency or Urgently Needed Services, or when authorized by us or our designee, according to Medicare guidelines. Ambulance services will be provided to the nearest facility with the ability to treat your medical condition. Covered services include ambulance services to an institution (like a hospital or [skilled nursing facility]), from an institution to another institution, from an institution to your home . . . [The plan] will **not cover** ambulance services that are . . . Air Ambulance services for return to the United States from another country."

Exh. A at 40-41 (Evidence of Coverage, pages 35-36) (emphasis in original).

Maximus Federal Services affirmed the plan's decision, and noted that the plan had determined that there are several hospitals in or near Cancun, Mexico, that could have provided the enrollee the care he needed. Exh. 1 at 4-6.

On further review, the ALJ considered the enrollee's explanation that he has a heart condition (he had a pacemaker inserted); that he called his primary care physician Dr. *** from Mexico; and was advised that the best course of action would be to return to Fort Worth as soon as possible and not undergo surgery without his cardiologist's (***) supervision. Dec. at 1-2 (findings of fact); Exh. 1 at 9-10 (enrollee's written statement). He also considered Dr. ***'s January 5, 2009, letter (Exh. 1 at 7), wherein the doctor wrote that he received a call from the enrollee's daughter after the accident, during which she expressed concern about her father's "surgical care in [the] small resort community for a fractured hip . . . and [the enrollee's] cardiac condition and pacemaker." Dr. ***'s opinion was that the enrollee should "get back to Fort Worth as soon as possible." *Id.* Dr. *** wrote that he assured the enrollee's

family that he would make arrangements for orthopedic care at *** Hospital. *Id.* The ALJ also considered the MAO's position that there were several medical facilities in Mexico that could have provided the enrollee the care that he needed, including "cardiological oversight." Dec. at 2 (findings of fact).

After considering both parties' positions, the ALJ addressed the applicable law and regulations governing Part C appeals. Dec. at 3-4. Also addressed in the ALJ's decision were relevant program guidance, including the Medicare Benefit Policy Manual (MBPM), CMS Pub. 100-02, Ch. 10, section 10.4, concerning coverage of air ambulance services, and Ch. 16, section 60, concerning exclusion from coverage of items and services furnished outside the United States. Dec. at 5-7. The ALJ further noted the Evidence of Coverage provision excluding coverage of air ambulance services from a foreign country to the United States. Dec. at 7.

The ALJ found, and the Council agrees, the evidence does not indicate that air transportation from Mexico to Fort Worth, Texas, was required in this instance, or that the enrollee could not have received appropriate care at a hospital in Mexico. While the Council is aware that the enrollee and his family wanted care provided by doctors familiar with the enrollee's medical history (Exh. MAC-1 at 1 (Form DAB-101)), as the ALJ noted, correctly, "such preferential care is outside of the coverage of both general Medicare and the Part C plan." Dec. at 7. The Council has considered Dr. ***'s October 7, 2009, letter, a copy of which was appended to Form DAB-101. Therein, Dr. *** again expressed his opinion that the enrollee should not have had surgery in Mexico, "[i]n a foreign country with questionable and unfamiliar medical facilities and [without] physicians sophisticated enough to monitor" the enrollee in light of his "cardiac issues" and other medical problems, including "sick sinus syndrome." Exh. MAC-1 at 2. Having conducted a *de novo* review of this appeal, the Council finds that the contentions and Dr. ***'s letter do not provide a basis for overturning the ALJ's decision.

The Council adopts the ALJ's decision.

MEDICARE APPEALS COUNCIL

/s/ Susan S. Yim
Administrative Appeals Judge

Date: October 27, 2009