

Eli's Hospice Insider

Appeals: Court Highlights Hospice Beneficiary Appeal Process

Patient's wife filed suit over non-covered pain meds.

Hospices may have to cover more drugs and services they don't approve, thanks to a court case clarifying how hospice beneficiaries can appeal hospices' coverage decisions.

In an opinion released last month, the **U.S. Court of Appeals for the Ninth Circuit** informed the plaintiff that Medicare has an official appeals process for hospice beneficiaries who want to dispute drugs or services a hospice doesn't cover.

Background: In 2007, **Howard Back's** wife was prescribed Actiq for uncontrolled pain, but the hospice didn't cover it, according to the opinion in *Back v. Sebelius*. Back paid nearly \$6,000 for the drug out of pocket until his wife died in March 2008. When Back submitted the bill to the hospice, it declined to pay. Then Back received a series of incorrect information from the hospice, the contractor, and the **Centers for Medicare & Medicaid Services** about how to appeal. Back ultimately filed suit and was told in the district court that there really was an appeals process for the issue with CMS and Back had to use it before filing suit. Upon appeal, the circuit court dismissed the suit for the same reason.

"We understand Back's frustration, having been misinformed by CMS and forced to hire an attorney and bring suit to be properly informed of his right to appeal," the opinion says. "However, Back already has the only relief he seeks -- he and other hospice beneficiaries may utilize the [HHS] Secretary's procedures to appeal a hospice provider's refusal to provide a drug or service. We expect that the Secretary will take action to ensure that her agencies are properly informed in the future."

Expect an "increasing emphasis on education surrounding beneficiary appeal rights under Medicare" as a result of this case, says the **National Association for Home Care & Hospice**. The opinion is at www.ca9.uscourts.gov/datastore/opinions/2012/07/05/11-55175.pdf.