High Court Asked To Hear Medicare Secondary Payor Dispute

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Law360, New York (August 09, 2012, 1:53 PM ET) -- A Medicare patient injured in an automobile accident urged the Supreme Court on Tuesday to determine whether Medicare can recover its entire payment when a beneficiary settles a tort or other claim for a reduced amount, claiming it could change how Medicare patients pursue personal injury lawsuits.

Petitioner Vernon Hadden, whose contention that Medicare was only entitled to a proportionate amount of the settlement he reached in his lawsuit stemming from the accident was rejected by the Sixth Circuit in November, said the appeals court's interpretation of the Medicare Secondary Payor Act conflicts with an earlier interpretation by the Eleventh Circuit.

Hadden rejected the government's July 26 assertion that was no conflict between the circuit courts, and cited amici briefs filed by organizations representing retailers, insurers, defense attorneys and workers' compensation authorities urging the high court to decide the issue.

"Given this assemblage of amici who interact with the MSPA across the spectrum and will be harmed by the court of appeals' interpretation of the MSPA, and the nearly 11 million Medicare beneficiaries currently subject to opposing constructions of the MSPA, this court's review is warranted," Hadden's reply brief stated. "There should not be two classes of litigants — the under-65 who can settle claims, and Medicare beneficiaries who cannot."

Hadden, a Medicare beneficiary from Kentucky, was injured in 2004 when he was hit by a truck owned by Pennyrile Rural Electric Cooperative, which had swerved to avoid being hit by another vehicle that had run into a traffic circle. The driver of that vehicle was never identified.

Medicare paid $82,000 of Hadden's medical bills. Hadden then sued Pennyrile for $1.2 million, settling for $125,000 after it was determined that Pennyrile was only 10 percent liable for the crash.

Following the settlement, CMS sought reimbursement for payment of Hadden's medical expenses. The agency determined that Hadden owed it $62,000 after factoring in his attorneys' fees in his suit.

Hadden asserted that since Pennyrile was only 10 percent liable for his damages, including his medical expenses, Medicare should only receive 10 percent of its expenses. CMS rejected that contention, as did an administrative law judge and the Medicare Appeals Council.

Hadden then sued CMS in district court, which denied his claim for relief. He then appealed that decision to Sixth Circuit, arguing that because he had settled for a percentage of his total claim, the government was limited to recovering its similarly proportionate share of Medicare’s

expenditure.

A three-judge panel ruled 2-1 that the MSPA required Hadden to reimburse the government 100 percent of its outlay, holding that the law's term "responsibility" denotes full responsibility of a beneficiary to pay, regardless whether he received a full-value settlement.

In petitioning for writ of certiorari in March, Hadden argued that the Sixth Circuit's ruling conflicted with a 2010 ruling by the Eleventh Circuit in Bradley v. Sebelius, in which it ruled that the MSPA's term "responsibility" was ambiguous and that the Health and Human Services secretary's interpretation requiring full reimbursement — contained in the Medicare Secondary Payor Manual — could be challenged.

Hadden also argued that the Sixth Circuit rewrote the MSPA to avoid the impact of the Supreme Court's decision in the 2006 case Arkansas Department of Health and Human Services v. Ahlborn, in which it interpreted the Medicaid statute and held that Arkansas was limited to a proportionate recovery in the event of a discounted settlement.

If the Sixth Circuit's ruling is allowed to stand, it "will wreak havoc on the tens of thousands of Medicare beneficiaries like Mr. Hadden, and the growing population entering the Medicare system every year, who have claims large or small involving third parties," his petition stated. "The court's holding will also have a pernicious effect on the Medicare system itself by discouraging settlements, requiring beneficiaries to litigate these cases to their conclusion, harming judicial economy, and delaying, if not eliminating, potential MSPA recoveries by the Medicare Trust Fund."

The government urged the high court to reject Hadden's petition July 26, saying there was no conflict with Bradley because that case dealt with a different type of settlement, in which the representative of a Medicare beneficiary's estate settled, in a single agreement, both the Medicare beneficiary's claims and separate claims brought by the beneficiary's survivors that didn't include medical expenses.

The Bradley decision also didn't discuss the statutory language of the MSPA concerning "responsibility," much less rule that it was silent on the issue of what that term meant, the government argued.

"Bradley is a recent decision and no court has applied its reasoning to a single-party settlement of a claim that includes medical expenses," the government said. "Indeed, although petitioner relied on Bradley in the court of appeals, even the dissent did not cite it. There accordingly is no circuit conflict warranting this court's review."

Hadden is represented by David J. Farber, Kevin P. McCart and Cordell A. Hull of Patton Boggs LLP.

The case is Hadden v. U.S., case number 11-1197, in the U.S. Supreme Court.

--Editing by Katherine Rautenberg.