IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

INLAND FAMILY PRACTICE CENTER, LLC **PLAINTIFF**

v. **CIVIL ACTION NO. 2:18-CV-140-KS-MTP**

ALEX M. AZAR, II,
Secretary of the United States Department
of Health and Human Services **DEFENDANT**

ORDER

This is an appeal from Defendant's determination that Plaintiff was overpaid for certain claims, primarily urine drug screenings provided to Medicare beneficiaries between January 1, 2011, and May 29, 2014. After various levels of administrative appeal, the total amount of alleged overpayment was approximately $3,000,000.00. Plaintiff seeks judicial review of the final decision rendered by the Medicare Appeals Council ("MAC"). Plaintiff contends that the substantial weight of the evidence demonstrates that the services provided and billed for were medically reasonable and necessary, and supported by documentary evidence. Plaintiff also argues that the MAC made certain errors in its statistical extrapolation.

42 U.S.C. § 405(g) "is the sole avenue for judicial review of all claims arising under the Medicare Act. Under § 405(g), a final decision of the Secretary of Health and Human Services ("Secretary") may be reviewed by a federal court." *RenCare, Ltd. v. Humana Health Plan of Texas, Inc.*, 395 F.3d 555, 557 (5th Cir. 2004). Among other things, § 405(g) permits the Court to "remand the case to the [Secretary] for further

action" and "order additional evidence be taken before the [Secretary], but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." 42 U.S.C. § 405(g). The Secretary "shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the [Secretary's] findings of fact or the [Secretary's] decision, or both, and shall file with the court any such additional and modified findings of fact and decision . . . ." *Id.*

"In order to justify a remand, the evidence must first be 'new,' and not merely cumulative of what is already in the record." *Pierre v. Sullivan*, 884 F.2d 799, 803 (5th Cir. 1989). At least some of the evidence Plaintiff submitted is new. Exhibit D to the Complaint is a report from the Governor's Opioid and Heroin Study Task Force. *See* Exhibit D to Complaint, *Inland Family Practice Ctr., LLC*, No. 2:18-CV-140-KS-MTP (S.D. Miss. July 23, 2018), ECF No. 1-5. The report is dated August 2, 2017, after Plaintiff escalated its appeal to the MAC. Therefore, it was not part of the administrative record. Likewise, Exhibits 3 and 4 to Plaintiff's Motion for Summary Judgment are dated October 18, 2018, and February 18, 2019 – after the administrative record was closed. *See* Exhibits 3 & 4 to Motion for Summary Judgment, *Inland Family Practice Ctr., LLC*, No. 2:18-CV-140-KS-MTP (S.D. Miss. Oct. 7, 2019), ECF Nos. 44, 44-1. Therefore, the Court concludes that Plaintiff has good cause for not presenting these exhibits below, in that they did not exist.

Evidence is "material" if "there is a 'reasonable possibility' that new evidence

would have changed the outcome of the [Secretary's] decision." *Jones v. Astrue*, 228 F. App'x 403, 406 (5th Cir. 2007). The report from the Governor's Opioid and Heroin Study Task Force provides: "Point of service drug testing should be done each time a Schedule 2 medication is written for the treatment of non-cancer pain. Point of service drug testing should be done at least every 90 days for patients on benzodiazepines for chronic medical and/or psychiatric conditions." Exhibit D [1-5], at 5. Moreover, Exhibits 3 and 4 to Plaintiff's Motion for Summary Judgment demonstrate that C2C, a Qualified Independent Contractor, issued a partially favorable Medicare reconsideration decision on claims for the same services at issue in this appeal, in some cases rendered to the same patients. Exhibit 3 [44]; Exhibit 4 [44-1]. Moreover, Exhibits 3 and 4 indicate that Plaintiff's counsel submitted the same supporting materials presented with the instant appeal, including the report from the Governor's Opioid and Heroin Study Task Force. Exhibit 3 [44], at 1; Exhibit 4 [44-1], at 4-5. Therefore, the Court concludes that at least some of the new materials Plaintiff presented here are material.

For these reasons, the Court concludes that Plaintiff has demonstrated that "there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding." 42 U.S.C. § 405(g). Accordingly, the Court **denies** the parties' cross-motions for summary judgment [39, 47] and **remands** this case to the Secretary for reconsideration of its decision in light of the new evidence.

SO ORDERED AND ADJUDGED this 11th day of September, 2020.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE