

In the United States Court of Federal Claims

No. 17-877C
(Filed: March 7, 2019)

COMMON GROUND HEALTHCARE *
COOPERATIVE, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

In a February 15, 2019 Opinion and Order, the court concluded that the government’s failure to make cost-sharing reduction (“CSR”) payments to plaintiff and the CSR class violates 42 U.S.C. § 18071. It therefore directed the parties to file a joint status report indicating the amount due to plaintiff and the other class members for their unpaid CSR reimbursements for 2017 and 2018, and indicated that upon being informed of the amounts, it would direct the entry of judgment on the CSR claims pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims (“RCFC”).¹

The parties filed the requested joint status report on March 5, 2019, presenting their respective positions regarding further proceedings. Plaintiff proposes that the court direct the entry of judgment for the CSR class in the amount of \$2,358,817,206.33, which “is the sum of (1) the Government’s calculations for the unpaid 2017 amounts for the members of the CSR Class, as calculated after the reconciliation process; and (2) the total of the Government’s calculated 2018 monthly advance payments for members of the CSR Class, as determined before the reconciliation process.” Joint Status Report 1-2. Thereafter, plaintiff suggests, the parties would engage in a postjudgment “claims adjudication process to determine the amounts owed to each member of the CSR Class, with any remaining funds being returned to the Government.” Defendant objects to plaintiff’s proposal, and instead suggests that the amounts due to the CSR class members for 2018 be determined through the government’s prior practice of collecting

¹ A judgment disposing of the entire case is not appropriate at this time because plaintiff also asserts a claim related to the government’s failure to make risk corridors payments, and proceedings on that claim are currently stayed pending final, nonappealable judgments in Moda Health Plan, Inc. v. United States, No. 16-649C, and Land of Lincoln Mutual Health Insurance Co. v. United States, No. 16-744C.

CSR claims data from insurers in April and May, validating that the claims are for eligible qualified health plan enrollees, reconciling that data against the advance CSR payments it made to insurers (or, in these circumstances, the advance CSR payments the government would have made to the insurers), and notifying insurers of the reconciled CSR payment amounts. Defendant represents that

[a]ssuming that a class member completes its own verification process and makes timely data submissions (by April 29, 2019), [the Centers for Medicare and Medicaid Services (“CMS”)] expects to be able to notify those class members of their benefit year 2018 reconciled amounts in early-May 2019. These numbers would reflect actual CSR payments made by such issuers in 2018 and not estimated advance CSR payments CMS calculated for benefit year 2018. The Court could therefore enter a final judgment reflecting actual 2018 CSR amounts by June.

Id. at 11; see also id. at 9 (“HHS is more than willing to expedite the process of reconciliation for the class, but the class parties must first do their part in assembling their own data . . .”).

The court has reviewed the parties’ positions and the case law upon which they rely in support of those positions, and concludes that defendant’s proposal is the most legally sound. The court is not prepared, in the absence of an agreement between the parties to engage in such a process, to enter judgment for an estimated amount of damages and provide for postjudgment proceedings to determine the actual amount of damages. Accordingly, the court adopts the following schedule for further proceedings:

- The parties shall file a joint status report **no later than Friday, March 22, 2019**, in which they indicate their position(s) regarding whether the court should enter judgment pursuant to RCFC 54(b) for the amount due to the CSR class for 2017 (\$101,704,853.65).
- The parties shall file a joint status report **no later than seven days after CMS completes its notification to all of the CSR class members of the actual CSR payments due to the class members for 2018** in which they propose the amount due to the class for 2018.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Chief Judge