

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5116

September Term, 2010

FILED ON: DECEMBER 2, 2010

LOMA LINDA UNIVERSITY MEDICAL CENTER,
APPELLEE

v.

KATHLEEN SEBELIUS, SECRETARY, UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:08-cv-01520)

Before: ROGERS, TATEL and BROWN, *Circuit Judges*.

J U D G M E N T

This appeal from a judgement of the United States District Court for the District of Columbia was presented to the court and briefed and argued by the parties. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. Rule 36(d). It is hereby

ORDERED and ADJUDGED that the district court's grant of partial summary judgment to appellee be affirmed. Appellee did not receive notice "with 'ascertainable certainty,'" *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995) (quoting *Diamond Roofing Co. v. OSHRC*, 528 F.2d 645, 649 (5th Cir. 1976)), of the billing deadline for seeking payment for medical education costs associated with Medicare+Choice (Part C) inpatient days. Moreover, appellant failed to "provide an explanation that will enable the court to evaluate the agency's rationale" for rejecting appellee's proposed alternative computation method. *Dickson v. Sec'y of Def.*, 68 F.3d 1396, 1404 (D.C. Cir. 1995) (quoting *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 654 (1990)). Accordingly, the case is remanded to the district court for further proceedings.

The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk