

UNITED STATE BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	:	
	:	Chapter 7
THE ROSEGARDEN HEALTH AND	:	
REHABILITATION CENTER, LLC,	:	Case No. 18-30623 (AMN)
	:	
BRIDGEPORT HEALTHCARE CENTER	:	Joint Administration
INC.,	:	
	:	
Debtors.	:	August 11, 2021

UNITED STATES OF AMERICA'S REQUEST FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
FOR MEDICARE OVERPAYMENTS

Pursuant to 11 U.S.C. § 503(a), the United States of America (the "United States"), on behalf of the Department of Health and Human Services ("HHS"), hereby files a Request for Allowance and Payment of Administrative Expense Claims in the above case. This Request is in furtherance of HHS's Notice of Administrative Claim filed on November 19, 2019. See Claim No. 13-2, Part 2. In support of this request, undersigned counsel for the United States respectfully represents as follows:

1. On November 19, 2019, the Centers for Medicare & Medicaid Services ("CMS"), part of HHS, filed a Notice of Administrative Claim representing post-petition administrative expenses in the amount of \$66,992.99 with respect to the Bridgeport Healthcare Center. See Claim No. 13-2, Part 2, ¶ 17, and Part 3 at 6. In that filing, CMS indicated that additional amounts may be determined in the future, and reserved the right to asset subsequently discovered liabilities and to amend the administrative claim. *Id.* at ¶ 18.

2. Since that time, CMS has determined that the amount of its administrative claim is actually \$67,597.72, an increase of \$604.73 from the original claim of \$66,992.99. This slight difference is the result of a review of records by NGS, a Medicare contractor. See Declaration of Victoria Abril, attached hereto, ¶¶ 11-12. In addition, the Debtor Bridgeport Health Care Center continued to participate in the Medicare program until its termination on April 12, 2020, and to seek reimbursement from CMS for such services to the benefit of the Debtor's estate. See Abril Declaration, ¶ 12.

3. Accordingly, HHS now requests the allowance and payment of its administrative claim in the amount of \$67,597.72. See Abril Declaration, ¶ 12, and Exhibit A thereto.¹

4. The Bankruptcy Code defines administrative expenses non-exclusively, to include "actual and necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The Supreme Court further explained that administrative expenses also should include "costs ordinarily incident to operation of a business, and not be limited to costs without which rehabilitation would be impossible." *Reading Co. v. Brown*, 391 U.S. 471, 483 (1968).

5. As this Court has noted,

Courts in the Second Circuit use a two-part test to determine whether a specific claim qualifies as an administrative expense under § 503(b)(1)(A): first, there must be a post-petition transaction, making it a transaction between the debtor-in-possession and the creditor; and second, the estate must receive a benefit from the transaction.... Accordingly, an expense is administrative only if it arises out of a transaction between the creditor and the bankrupt's trustee or debtor in possession...

In re Neri Bros. Constr. Corp., 593 B.R. 100, 163 (Bankr. D. Conn. 2018).

¹ This claim is timely made within 180 days from the Order for Relief. See ECF No. 1912-2 at 2.

6. In the present case, the Debtor continued to provide services during the post-petition period under the Medicare Program pursuant to its Medicare Provider Agreement and seek reimbursement from CMS for such services. See Abril Declaration; see also *In re Patient Educ. Media, Inc.*, 221 B.R. 97, 101 (Bankr. S.D.N.Y. 1998) (“If the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services.”), quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984). Medicare paid Bridgeport \$297,248.00 for the period from 4/18/2018 - 4/12/2020, and these reimbursements clearly benefited the Debtor’s estate. See Exhibit B. In connection with these payments, the Debtor also incurred post-petition overpayments of \$67,597.72. See Exhibit A.

7. Furthermore, overpayments are costs ordinarily incident to doing business in the healthcare industry. Policy dictates that compelling the estate to pay for costs ordinarily incident to the operation of the Debtors’ businesses prevents the estate from obtaining an unfair advantage in its business operations. See *In re Bos. Reg’l Med. Ctr., Inc.*, 291 F.3d 111, 124 (1st Cir. 2002) (citing *Reading Co. v. Brown*, 391 U.S. at 482-83, noting that “a bankruptcy estate is operated for the benefit of its general creditors, and that those injured by the operation of the estate should be made whole before the creditors receive their own shares”). Thus, equity dictates that CMS be allowed and paid the post-petition overpayments as administrative expenses.

For the foregoing reasons, the United States, on behalf of HHS, respectfully requests that its request for allowance and payment of its administrative expenses be granted.²

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

/s/ LAUREN M. NASH

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² Undersigned counsel is cognizant of the fact that there may not be funds available to satisfy this claim, but makes this submission in any event to correct the amount claimed by CMS in its earlier administrative claim.

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	:	
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CERTIFICATION OF SERVICE

I hereby certify that on August 11, 2021, I electronically filed: **UNITED STATES OF AMERICA'S REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM FOR MEDICARE OVERPAYMENTS** with the Clerk of the Bankruptcy Court for the District of Connecticut using the CM/ECF System, which will send electronic notification of such filing to appearing counsel.

/s/ Lauren M. Nash

LAUREN M. NASH
ASSISTANT UNITED STATES ATTORNEY
FEDERAL BAR NO. CT01705