

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

SLATER HEALTH CENTER, INC. : BK No. 01-10273
Debtor Chapter 11

SLATER HEALTH CENTER, INC. :
Plaintiff :

v. : A.P. No. 02-1048

UNITED STATES OF AMERICA, :
UNITED STATES OF AMERICA DEPARTMENT :
OF HEALTH AND HUMAN SERVICES, :
SECRETARY OF THE DEPARTMENT OF :
HEALTH AND HUMAN SERVICES OF THE :
UNITED STATES OF AMERICA, :
CENTERS FOR MEDICARE AND MEDICAID :
SERVICES ("CMS") and the Predecessor :
Agency thereto, the Health Care :
Financing Administration of the :
Department of Health and Human :
Services ("HCFA"), :
BLUE CROSS BLUE SHIELD OF RHODE :
ISLAND, in its Capacity as Fiscal :
Intermediary of and for CMS and/or :
HCFA

Defendants

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TITLE: *Slater Health Center, Inc. v. United States (In re Slater Health Center, Inc.)*

CITATION: 2002 WL 31433286 (Bankr. D.R.I. Aug. 9, 2002)

**ORDER DENYING DEBTOR'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

APPEARANCES:

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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on July 9, 2002, on the Debtor's Motion for Temporary Restraining Order to enjoin the Defendants from:

(i) continuing to threaten to and/or actually reducing, withholding, setting off and/or attempting to recoup against any Medicare monies owing to Slater post-petition, and to otherwise prohibit any such withholding or reduction of such amounts due Slater in the future during the pendency of this Chapter 11 case; and (ii) declining or refusing to forthwith process post-petition Medicare claims of and turning over or otherwise paying to Slater all monies owed to it from such claims from and after Slater's Chapter 11 filing, without withholding or reduction of such amounts due Slater for any alleged pre-petition claims owed by Slater to such parties.

Slater's Motion for TRO, Document Number 2, page 2. At the hearing it was learned that Slater has not sought reimbursement from Medicare since January 2002, and now has a claim in excess of \$720,000. Slater now seeks relief in this Court on an emergency basis, after its own inaction for over six months.¹

Even if Slater had properly filed a Medicare claim, the matter must first be heard by a Provider Reimbursement Review Board, and only after an adverse decision by the Board may a

¹ While it is understandable that the Debtor wants to spend as little time in Medicare territory as possible, and that a favorable result there is unlikely, that sinking feeling does not relieve the Debtor of the requirement to exhaust its administrative remedies before seeking judicial review.

provider seek judicial review. See 42 U.S.C. § 1395oo.²

Because this statutory prerequisite has not been met, this Court lacks jurisdiction to hear this matter *at this time*, see *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1 (2000). Accordingly, the Debtor's Motion for Temporary Restraining Order is DENIED.

Dated at Providence, Rhode Island, this 9th day of August, 2002.

² The statute provides in relevant part:

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. ...

42 U.S.C. § 1395oo(f)(1).

BK No. 01-10273; A.P. No. 02-1048

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge