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6 October 2023

REF: SHA/25881

DISPUTE AGAINST RECOVERY OF COVID-19 COSTS PAYMENTS TO QUEEN STREET PHARMACY ("THE APPELLANT")

REF: SHA/25882

DISPUTE AGAINST RECOVERY OF COVID-19 COSTS PAYMENTS TO ROSS PHARMACY ("THE APPELLANT")

REF: SHA/25883

DISPUTE AGAINST RECOVERY OF COVID-19 COSTS PAYMENTS TO SPRINGFIELD PHARMACY ("THE APPELLANT")

1 **Outcome**:

1.1 I, as an authorised officer of NHS Resolution, substitute the decision of the NHS Business Services Authority ("the NHS BSA"), that:

1.1.1 Pursuant to the Drug Tariff, the NHS BSA is entitled to recover the following amounts from the Appellant:

1.1.1.1 For Ross Pharmacy £2,368.14 relating to employers NI contributions and £6,442.29 for Superintendent costs;

1.1.1.2 For Queen Street Pharmacy £449.28 relating to employers NI contributions and £4,936.34 for Superintendent costs; and

1.1.1.3 For Springfield Pharmacy £2,527.38 relating to employers NI contributions and £5,855.60 for Superintendent costs.

A copy of this decision is being sent to:

Queen Street Pharmacy Ltd
NHS BSA

NHS Resolution

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10 South Colonnade
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E14 4PU

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DISPUTE AGAINST RECOVERY OF COVID-19 COSTS PAYMENTS TO SPRINGFIELD PHARMACY ("THE APPELLANT")

1 INTRODUCTION

1.1 The Appellant appealed the decision to recover Covid-19 Payments.

1.2 The Secretary of State for Health and Social Care, pursuant to the National Health Service Litigation Authority (Pharmaceutical Remuneration – Payment Disputes) (England) Directions 2022 (the "Payment Disputes Directions"), has directed that NHS Resolution determines this type of appeal on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2 BACKGROUND

2.1 I provided a previous determination dated 26 July 2023, in which I finally determined certain matters and provided the opportunity for the parties to provide further representations on certain other matters. I indicated that on receipt of comments, I would make a final determination on any outstanding matters.

2.2 In respect of the NHS BSA, I indicated that it should provide:

2.2.1 the original claim form from the Appellant;

2.2.2 the Appellant's request for an internal review; and

2.2.3 any other comments it considers appropriate bearing in mind the comments I make in this determination.

2.3 In respect of the Appellant, I indicated that it should:

2.3.1 fully calculate and evidence the increase in Employer's NI incurred, bearing in mind the comments I made in my previous determination;

2.3.2 provide further clarification regarding the amount stated in the bank statement provided;

2.3.3 provide an explanation for the amounts claimed by the Superintendent and consider whether it can provide any other evidence to corroborate these amounts; and

2.3.4 provide any other comments it considers appropriate bearing in mind the comments I make in this determination, particularly in respect of the type and nature of the evidence provided.

2.4 Each party was provided with a copy of the other party's further representations and provided with the opportunity to make any final observations. All comments received have been shared with all parties.

2.5 I indicated in my previous determination that I would not consider comments made in relation to any matter that I have indicated were finally determined in the earlier determination.

3 FURTHER REPRESENTATIONS

3.1 In its further representations, the Appellant stated:

3.1.1 "I refer to your letter dated 26 July 2023 re above**.**

ER NIC

3.1.2 I confirm that I am still seeking to appeal the NHS BSA's decision in relation to Employers NI.

3.1.3 I have attached a detailed working for NIC increase occurring.

3.1.4 The amount claimed was £9,839.16 for all three pharmacies.

3.1.5 The detailed working have shown, however, that £5,344.80 was overstated.

3.1.6 I therefore, agree if the above overstated amount of £5,344.80 is disregarded/disallowed.

Superintendent Costs

3.1.7 Superintendent costs totalling £ 17,234.23 were claimed for Ross/Springfield and Queen Street pharmacies respectively.

3.1.8 Total cost claimed by the director/superintendent was however £25,000 for all five pharmacies.

3.1.9 The claimed amount of £17,234.23 was split off the work done on Ross, Springfield and Queen.

3.1.10 The rest **£ 7,765.77** belonged to Middleport and Ashton pharmacies.

3.1.11 Total cost of 25k was shown as expense in Queen Street whilst as consultancy income of the director/superintendent.

3.1.12 I have attached my tax calculation or SA302 submitted to HMRC as an evidence of claim.

3.1.13 I have also attached my tax return for 05/04/2021 evidencing my claim on page 4 of 12 (Page TR 3 Column 17).

3.1.14 I have also attached Tax year overview re 05/04/2021 evident of tax paid on that income.

3.1.15 I therefore request that in light of all above evidence, the superintendent costs claimed of £17,234.23 be fully allowed."

3.2 The Appellant provided a copy of the information referred to above.

3.3 In its further representations, the NHS BSA stated:

3.3.1 "In regard to the above, please find further comment from the NHSBSA laid out in such a manner as to answer NHS Resolution's expectations:

3.3.2 In respect of the NHS BSA, it should provide:

1.3.1 the original claim form from the Appellant;

3.3.3 Please find this attached to the accompanying email.

1.3.2 the Appellant's request for an internal review; and

3.3.4 Please find this attached to the accompanying email.

1.3.3 any other comments it considers appropriate bearing in mind the comments I make in this determination.

3.3.5 The NHSBSA has no further comments at this time."

3.4 The NHS BSA provided a copy of the information referred to above.

4 FURTHER OBSERVATIONS

No further observations were received by NHS Resolution in response to the representations received.

5 CONSIDERATION

5.1 This determination should be read alongside my previous determination which set out the relevant provisions of the Drug Tariff.

5.2 I note that this appeal relates only to the Additional Staff Costs due to Covid-19 claimed for the three pharmacies. There are two costs which are being appealed, as set out in my previous determination – increased Employer's NI and Superintendent costs.

5.3 In relation to the first matter, I note that I have already determined that NI is an appropriate cost suitable for reimbursement under the Drug Tariff. I required further clarification from the Appellant in order to make a determination on the amount suitable for reimbursement. The Appellant has now provided a complete breakdown of NI paid in 2019-2020 compared to 2020-2021, based on the payslips provided as part of the previous determination.

5.4 I note that the NHS BSA has not provided any further representations or observations, therefore it is unclear if it considers the matter of NI resolved. I note that the total NI provided by the Appellant for each member of staff across the two years is consistent with the payslips provided to evidence the increase in staff wages. For each payslip provided an amount of employer NI is recorded. These have been totalled and then any

NI on a payslip before March 2020 subtracted. I therefore consider that there is now sufficient evidence to support the value of £4,494.36 in increased employer NI contributions suitable for reimbursement under the Drug Tariff. I note that the Appellant has stated that the original amount claimed across the three pharmacies was £9,839.16, therefore £5,344.80 is suitable for recovery by the NHS BSA. This can be broken down as:

5.4.1 For Ross Pharmacy £3,752.48 was claimed of which £1,384.34 has been evidenced, leaving £2,368.14 suitable for recovery by the NHS BSA;

5.4.2 For Queen Street Pharmacy £1,312.16 was claimed of which £862.88 has been evidenced, leaving £449.28 suitable for recovery by the NHS BSA; and

5.4.3 For Springfield Pharmacy £4,774.52 was claimed of which £2,247.14 has been evidenced, leaving £2,527.38 suitable for recovery by the NHS BSA.

5.5 I will now consider the amounts claimed for Superintendent costs. I note that in my previous determination I set out a number of elements on which the Appellant was invited to comment, as set out at paragraph 2.3. Three of these related specifically to Superintendent costs, the first of which was related to a bank statement provided by the Appellant in response to the NHS BSA's initial request for supporting evidence.

5.6 I have already considered the bank statement in detail in the previous determination but of particular note is that the amount on the statement was for £20,000. The Appellant has stated, as part of its further representations, that the Superintendent was paid £25,000 in total between 5 pharmacies. I consider that this does not provide any further clarity as to why the bank statement of £20,000 was provided. Instead it creates some further complexities. The Appellant stated in its initial observations that the difference between the £17,234.23 and the £20,000 could be related to the other two pharmacies. However, it has now stated that £7,765.77 was the actual amount paid by the other two pharmacies. Therefore, I consider that there appears to be no relation between the £20,000 CHAPS transfer and any of the amounts claimed for Superintendent costs.

5.7 Given my express request that the Appellant clarify the amount stated in the bank statement, I consider that it has not done so. I also made further comments in my previous determination regarding the fact that the bank statement does not demonstrate from where the payment originated and if it was from any of the three pharmacies to which this appeal relates. I consider that this issue persists. I therefore determine that the bank statement is insufficient to evidence the Superintendent costs.

5.8 I will now consider the new evidence that has been provided by the Appellant alongside its further representations. This is a series of tax documents as set out at paragraph 3.1.12 onwards. I have had regard to these and will consider each one in turn.

5.9 Firstly, the tax calculation document sets out that £25,000 of other income was recorded by the Superintendent for the year ending on 5 April 2021. I consider that this is intended to be the £25,000 stated by the Appellant as the total consultancy payment made to the Superintendent. However, this document has no detail or granularity. It is only described as "*other income*" but does not state to what end this payment was received, how the payment should be broken down or even where the payment came from. As such I consider it difficult to understand the context of this payment and to what end it supports the Appellant's claim.

5.10 The next document is the Superintendent's tax return for the same year. Whilst this also provides the same figure of £25,000.00 there is some further detail provided. The document states:

"*PLEASE NOTE THAT THE INCOME AT COLUMN 17 RELATES TO MY CONSULTANCY FEE CHARGED TO MY COMPANY CALLED QUEEN STREET PHARMACY LTD*."

5.11 This at least clarifies that the £25,000 (the figure listed in column 17) does relate to the group of 5 pharmacies that the Appellant has made reference. I consider that this is the limit of the information provided in said document as, aside from the quoted wording, it suffers from the same limitations as the tax calculation.

5.12 The final document provided is the tax year overview for the same period. It shows the same amount being paid in tax as on the tax calculations. Therefore, taken together these documents demonstrate that the Superintendent received £25,000 as a consultancy fee from Queen Street Pharmacy Ltd, and paid tax on that income. I note that Queen Street Pharmacy Ltd is the organisation which owns the three pharmacies to which this appeal relates, it is not the pharmacy of a similar name.

5.13 I made comments in my previous determination on the need for evidence and that, as an overarching principle in relation to the claims for reimbursement of additional staff, if the evidence provided is of a form, type and nature that reasonably satisfies me that additional staffing costs of a kind and nature listed in Table 1 were incurred and the amount is reasonable taking into account the evidence, then I consider that the claim should be reimbursed.

5.14 I must reiterate that a pharmacy must accept that if additional staff are engaged and the pharmacy seeks reimbursement in respect of those additional staff, then the extent of reimbursement will depend on the form, type and nature of the evidence. The stronger and more cogent the evidence, the higher the likelihood that the reimbursement claim will be successful.

5.15 The Drug Tariff sets out that additional staff costs due to Covid-19 are suitable for reimbursement. The evidence for which can be proven via a single piece or a collection of sufficiently clear and strong evidence that supports the claim.

5.16 I note the evidence provided by the Appellant to support its claim is:

5.16.1 The tables provided as part of its initial evidence, which break down the amount of extra work charged by the Superintendent to the pharmacy;

5.16.2 The bank statement; and

5.16.3 The tax documents.

5.17 I note that no other evidence has been provided to me. I considered the tables in my previous determination and noted that they do not explain how these figures were arrived at. I specifically invited the Appellant to provide an explanation for these amounts and to supply evidence to corroborate them. I note there has been no further elaboration on this by the Appellant.

5.18 I also previously considered the bank statement at length. This leaves only the tax documents. I consider that the tables provided by the Appellant are irreconcilable with the tax documents. The tables provide for the amounts of £5,855.60, £6,442.29 and £4,936.34. This totals £17,234.23. There is a lack of correlation between the amounts claimed and the tax documents which makes it difficult to verify that the £25,000 actually relates to any of these payments. I also note that the tables describe the amount as relating to "*extra work*". I consider it unclear how extra work resulted in a consultancy payment.

5.19 I consider that the evidence supporting a payment of £25,000 in isolation is not enough to warrant repayment. There is no evidence which demonstrates how the payment of £25,000 is related to Covid-19. There is also no evidence which ties the £25,000 to any of the three pharmacies under consideration in this appeal. I have noted that Queen Street Pharmacy Ltd represents 5 pharmacies, any of which may have borne this expense.

5.20 The Appellant has stated in its further representations that the:

"*cost of 25k was shown as expense in Queen Street whilst as consultancy income of the director/superintendent.*"

This could indicate that the entire cost was incurred by the Queen Street Pharmacy or this could be a reference to the name of the company, but I consider this to be unclear. I am also unsure what the latter half of this sentence is indicating. I assume that the Appellant is suggesting that the extra work by the Superintendent was paid as a consultancy fee but this is not immediately apparent. In reading it as such, it does explain the discrepancy in wording between the tables and the tax documents. However, this does not resolve the lack of actual evidence explaining the costs. I also note that, unlike the other staff payments, there has been no comparative documentation adduced. Therefore, it is not clear if £25,000 is a regular payment or not. This makes it difficult to verify the element of "*additional*" in relation to the costs.

5.21 I also note that in the Appellant's original claim form, which the NHS BSA has provided, it lists the evidence that it will provide upon request as "RP, and Diary". I consider that either of these sources may well have been helpful to the Appellant if it had provided them. I expect the reference to "RP" is likely referring to a responsible pharmacist log. This had the potential to demonstrate who was present at which pharmacy and at what time. Neither of these documents have been provided either to the NHS BSA or to me as part of this appeal.

5.22 Given the lack of evidence supporting the Superintendent costs, demonstrating how it is additional or Covid-19 related, or from which pharmacy the payment came from, I do not consider that the provisions of the Drug Tariff has been met in regard to these costs.

5.23 I therefore determine that the following amounts are suitable for recovery by the NHS BSA:

5.23.1 £6,442.29 from Ross Pharmacy;

5.23.2 £4,936.34 from Queen Street Pharmacy; and

5.23.3 £5,855.60 from Springfield Pharmacy.

6 DECISION

6.1 I have had regard to the Payment Disputes Directions which provide me with three options:

6.1.1 dismiss the appeal and confirm the decision;

6.1.2 substitute for the decision any decision could have been taken; or

6.1.3 quash the decision, with or without remitting the matter for it to be taken again subject to such directions as NHS Resolution considers appropriate.

6.2 I, as an authorised officer of NHS Resolution, substitute the decision of the NHS Business Services Authority (“the NHS BSA”), that:

6.2.1 Pursuant to the Drug Tariff, the NHS BSA is entitled to recover the following amounts from the Appellant:

6.2.1.1 For Ross Pharmacy £2,368.14 relating to employers NI contributions and £6,442.29 for Superintendent costs;

6.2.1.2 For Queen Street Pharmacy £449.28 relating to employers NI contributions and £4,936.34 for Superintendent costs; and

6.2.1.3 For Springfield Pharmacy £2,527.38 relating to employers NI contributions and £5,855.60 for Superintendent costs.

Head of Appeals
NHS Resolution