

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1478

RAHEEM NADER, M.D.,

Plaintiff - Appellant,

v.

ERIC HARGAN, Acting United States Secretary of Health and Human Services,

Defendant - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia,
at Charleston. John T. Copenhaver, Jr., District Judge. (2:14-cv-24993)

Submitted: February 23, 2018

Decided: May 4, 2018

Before NIEMEYER, MOTZ, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Timothy J. LaFon, CICCARELLO, DEL GIUDICE & LAFON, Charleston, West Virginia, for Appellant. Carol A. Casto, United States Attorney, Suzanne K. Yurk, Special Assistant United States Attorney, Office of the General Counsel, UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES, REGION III, Philadelphia, Pennsylvania, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Raheem Nader, M.D., appeals the district court's order granting summary judgment for the Secretary of Health and Human Services ("Secretary") in Nader's appeal from the Secretary's determination that he was liable for \$350,548 in overpayments for services billed under Medicare Part B. We affirm.

We review a district court's summary judgment determination de novo. *Carter v. Fleming*, 879 F.3d 132, 139 (4th Cir. 2018). Like the district court, an appellate court reviews the Secretary's final decision in this case "based solely on the administrative record, and the Secretary's findings of fact, if supported by substantial evidence, shall be conclusive." *MacKenzie Med. Supply, Inc. v. Leavitt*, 506 F.3d 341, 346 (4th Cir. 2007) (citing 42 U.S.C. § 1395ff(b)(1)(A) (2012)). In addition, judicial review of the Secretary's decision is governed by the Administrative Procedures Act, which provides that final agency action shall be upheld absent a finding that it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "without observance of procedure required by law," or is otherwise "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (D), (E) (2012); *see also Ohio Valley Envtl. Coal., Inc. v. U.S. Army Corps of Eng'rs.*, 828 F.3d 316, 321 (4th Cir. 2016). We have noted that "review under this standard is highly deferential, with a presumption in favor of finding the agency action valid." *Almy v. Sebelius*, 679 F.3d 297, 302 (4th Cir. 2012) (alterations and internal quotation marks omitted).

We have reviewed the record and find no reversible error.* The Secretary applied the correct legal standards in evaluating Nader's appeal of the claims determination, and the Secretary's factual findings are supported by substantial evidence. Furthermore, Nader presents no evidence creating a genuine dispute of material fact as to whether the Secretary's final decision was arbitrary, capricious, or otherwise not in accordance with law. Finally, Nader has failed to establish that the Secretary should be equitably estopped from recovering payment. Accordingly, we affirm the district court's order granting summary judgment for the Secretary. *See Nader v. Hargan*, No. 2:14-cv-24993 (S.D.W. Va. Mar. 16, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* Neither this Court nor the district court has jurisdiction to review the Secretary's decision to reopen the claims at issue. 42 U.S.C. § 405(g) (2012); 42 C.F.R. § 405.980(a)(5) (2014) (amended Apr. 17, 2015); 42 C.F.R. § 405.926(l) (2014). Accordingly, we do not address Nader's arguments on this issue.