

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SOUTHEAST ARKANSAS HOSPICE, INC.

PLAINTIFF

v.

CASE NO. 4:10-CV-00721 BSM

**DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Kathleen Sebelius, Secretary**

DEFENDANT

ORDER

Plaintiff Southeast Arkansas Hospice, Inc.'s ("SEARK") application for a temporary restraining order is granted in part. SEARK seeks (1) a stay of the enforcement of defendant Department of Health and Human Services's ("DHHS") demand for repayment of amounts paid to SEARK that are alleged to have exceeded the annual provider cap established by 42 C.F.R. § 418.309(b)(1); (2) an order directing DHHS not to withhold funds due and payable to SEARK; and (3) an order directing DHHS to pay SEARK all amounts billed that have been withheld. It appears that SEARK could suffer an irreparable harm, the loss of its customer base and business, if DHHS withholds further payments. *See Ryko Mfg. Co. V Eden Servs.*, 759 F.2d 671, 673 (8th Cir. 1985). Further, district courts around the country have, thus far, consistently found that DHHS's regulation is invalid, so SEARK is likely to succeed on the merits of its claim. Therefore, its application for a temporary restraining order is granted in part.

Accordingly, DHHS is directed to stay its demand for repayment from SEARK and to pay SEARK for claims that come due after the date of this order. Pursuant to Federal Rule

of Civil Procedure 65(b), this order expires in fourteen (14) days. The rule also allows an extension by the court for good cause, however. The court's trial schedule cannot accommodate a hearing for a preliminary injunction until September 7, 2010 at 3:00 p.m. Therefore, this order is extended for an additional seven (7) days, and the parties are hereby directed to appear for a hearing for a preliminary injunction on September 7, 2010 at 3:00 p.m.

IT IS SO ORDERED this 17th day of August, 2010.

A handwritten signature in cursive script, reading "Brian S. Miller".

UNITED STATES DISTRICT JUDGE