

1 HONORABLE RONALD B. LEIGHTON

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 INTERNATIONAL REHABILITATIVE
11 SCIENCES, INC., d/b/a RS MEDICAL, a
Washington corporation,

12 Plaintiff,

13 v.

14 KATHLEEN SEBELIUS, in her official
15 capacity as Secretary, United States
16 Department of Health and Human Services,

17 Defendants.

Case No. C08-5442RBL

ORDER GRANTING MOTION TO
SUPPLEMENT THE
ADMINISTRATIVE RECORD

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19 THIS MATTER comes before the Court on Plaintiff's Motion to Supplement the Administrative
20 Record [Dkt. #45]. The Court has reviewed the materials filed for and against said motion. The Court has
21 participated in a conference call with counsel to discuss the merits of the motion. Further argument is not
22 necessary for the Court to resolve the issue raised by this motion. For the following reasons, the motion is
23 **GRANTED** and the documents identified in Exhibits A, B and C to the Declaration of Debra M. Parrish will
24 be added to the government's certified administrative record and the Defendant will forthwith issue a new
25 certification of administrative record and index thereto consistent with this Order.
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27 In the administrative process underlying this matter the Administrative Law Judge issued a single
28 decision (in the '535 et. al. case) that covered claims for Bioni Care Medical Technologies, Inc. and for RS

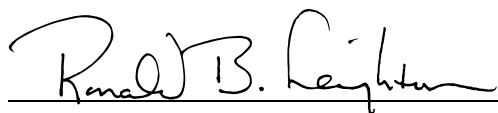
1 Medical. The ALJ did not distinguish between the beneficiaries for either Appellant. The Bioni Care appeal
2 is before the Maryland District Court captioned Almy v. Sebeluis, Civ. Action No. 08-CV-1245 (D. Md.).
3 This action before the Western District of Washington covers the appeal of RS Medical.
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5 Plaintiff argues that the entire record before the ALJ in the ‘535 et. al. case, which includes documents
6 that pertain to both RS Medical and Bioni Care beneficiaries, constitutes the “evidence upon which the
7 findings and decision complained of are based.” 42 U.S.C. § 405(g).

8 Defendant argues that the so-called missing documents listed in Exhibits A, B and C to the Parrish
9 Declaration (documents added by agreement of the parties (Exhs. A & B) or by Court Order (Exh. C) in the
10 Almy case in Maryland) are not relevant to this case as they pertain only/primarily to the Bioni Care
11 beneficiaries. Defendants contend that the current record is sufficient to allow the Court to evaluate the
12 Secretary’s challenged action and that the Court should not augment the record with documents that are not
13 relevant to the RS Medical cause before the Court.
14

15 The Court disagrees. The Court will supplement the record with the documents listed in Exhibits A,
16 B and C to the Parrish Declaration and will resolve issues of relevance with respect to specific documents
17 within the context of their use by the parties in a merits-based presentation to the Court. The Motion to
18 Supplement the Administrative Record [Dkt. #45] is **GRANTED**. The Defendant will forthwith issue a new
19 certification of record and index consistent with this Order. Plaintiff’s Opening brief is due Friday, February
20 26, 2010. The Defendant’s Responsive brief is due on Monday, March 22, 2010. The Reply brief is due on
21 the noting date which is Friday, March 26, 2009.
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23 Dated this 31st day of December, 2009.
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26 RONALD B. LEIGHTON
27 UNITED STATES DISTRICT JUDGE
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