World Bank Administrative Tribunal

2013

Decision No. 473

Ramesh Bhatia,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

Ramesh Bhatia,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Francis M. Ssekandi and Ahmed El-Kosheri.

2. The Application was received on 23 January 2012. The Applicant was represented by Nicolas C. Johnson of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the Bank's policy of mandatory enrollment in Medicare Part B under the Retiree Medical Insurance Plan ("RMIP").

FACTUAL BACKGROUND

The 1985 policy of mandatory enrollment in Medicare

4. The Bank provides medical coverage for its retirees under the RMIP. Pursuant to the RMIP, if the retiree is in the U.S., the coverage is administered by Aetna; and if outside the U.S., the coverage is administered by Vanbreda International.

5. Since 1985, under Staff Rule 6.12 and the RMIP, the Bank had required all retirees to enroll in the National Health Plan ("NHP") of the retirees' country of residence. Accordingly, all eligible U.S. retirees, i.e. those living in the U.S., are required to enroll in the U.S. Medicare program ("Medicare"), an NHP system in the U.S., upon reaching age 65.

6. Medicare has a number of parts, including Medicare Part A for Hospital Room and Board, and Medicare Part B for Medical Expenses (inpatient and outpatient). The Bank explains that it does not require retirees to participate in Medicare Part A because coverage under Part A depends on individual taxpayers' contribution to the U.S. social security regime, and staff members who are not U.S. citizens will not have made such social security contributions during

the years they worked for the Bank Group. However, persons living in the U.S. at the age of 65, and who have lived in the U.S. for the last five years, even if in G-4 visa status, can enroll in Medicare Part B without having made social security contributions during their working life. Under the RMIP, all eligible U.S. retirees must enroll in Medicare Part B. If the retirees fail to enroll in Medicare Part B, they face a penalty, primarily in the form of reduced RMIP medical benefits.

7. By mandating enrollment in Medicare Part B, the Bank makes considerable savings. The Bank explains that its costs associated with RMIP coverage exceed $65 million a year. The savings to the RMIP from retirees' participation in Medicare arise from the fact that when a retiree enrolls in Medicare Part B at the age of 65, Medicare becomes the primary insurer and the RMIP becomes secondary. Medicare covers approximately 80% of the individual's medical costs, with the RMIP picking up the difference. The total level of subsidy that the Bank receives from the U.S. government because its retirees enroll in Medicare is approximately 25% of total annual RMIP costs.

8. Enrollment in Medicare Part B is not free. Each participant is required to pay a monthly premium, the amount of which is based on his or her annual salary. Depending on the retiree's level of income, the premium ranges between $99 to $319. The Bank, however, reimburses a certain percentage of retirees' Medicare premium.

9. The Bank states that this long-standing policy of mandatory enrollment in Medicare Part B ensures the financial viability of the RMIP. The Bank explains that retirees also benefit from this policy because the savings from Medicare participation allow the Bank to control increases in the premiums charged to retirees, and also allow the Bank to reimburse Medicare participants for their Medicare premiums. Some retirees, however, have complained that the Bank's reimbursement does not cover the full cost of the Medicare premium and some doctors do not accept Medicare patients.

The recent reforms

10. The Bank states that in 2009, in response to continued increases in Medicare Part B premiums, the Bank began considering revisions to the RMIP. The issues considered included whether to increase the amount reimbursed to retirees who participate in Medicare, and whether to continue requiring enrollment in Medicare. After consultation with the 1818 Society (a non-

profit organization representing interests of the retirees of the World Bank), the Bank hired an outside consultant firm at the end of 2010 to conduct a review.

11. In January 2012, the Bank formed a working group, comprised of various stakeholders throughout the Bank, including the Staff Association and the 1818 Society, to review the issues relating to the RMIP, such as whether to continue requiring retirees to participate in Medicare and whether to modify the level of reimbursement for the costs associated with Medicare enrollment. The outside consultant firm assisted the working group in this matter.

12. The working group recommended, among other things, that the Bank: (i) continue to require mandatory enrollment in NHPs, including Medicare; and (ii) increase the amount of reimbursement of the Medicare premium to 100% of the premium. Management agreed to make changes to the RMIP and accordingly briefed the Human Resources Committee of the Board of the Executive Directors in May 2012.

13. The Bank announced the changes to the RMIP in June 2012. It reconfirmed that enrollment in Medicare is mandatory and announced that it would "begin reimbursing RMIP participants 100% of Medicare B base premiums." In an announcement dated 25 June 2012, the Bank informed the retirees that "effective July 1, 2012, changes to the premium and benefit structure of … RMIP will be implemented for plan participants who are eligible for U.S. Medicare." The Bank explains that it decided to continue requiring eligible retirees to enroll in Medicare Part B because even though some doctors might not accept Medicare patients, the problem is not pervasive enough to warrant a change in the policy.

The present Application

14. While RMIP reform was underway, the Applicant filed the present Application on 23 January 2012. He framed the impugned Bank decisions as follows:

> Respondent's decision to limit his access to medical providers due to forced enrollment in Medicare Part B … . Respondent's decision not to allow Applicant to choose whether or not to enroll in Medicare Part B under the RMIP without penalty.

15. The Bank requested a stay of proceedings until it had completed a comprehensive review of the RMIP, which included certain issues also raised in this Application. The Tribunal accordingly granted the request on 17 February 2012.

16. The completion of the RMIP review did not resolve matters for the Applicant. He maintains that the policy of mandatory enrollment in Medicare, which was retained after the review, is arbitrary and discriminatory. In particular, he asserts that "mandating him to enroll in Medicare Part B has severely limited his access to quality medical care providers of his choosing at a critical time, when quality health care choices are of utmost importance to his wellbeing." The parties requested that the Tribunal resume proceedings, which the Tribunal did on 20 June 2012.

17. The Bank raised preliminary objections to the admissibility of the Application. The Applicant requested that the Bank's preliminary objections be joined to the merits to avoid further delay in adjudicating his Application. The Tribunal granted the Applicant's request and invited the parties to file pleadings on both the preliminary objections and the merits of the case.

The Bank's preliminary objections

18. The Bank argues that the Application is inadmissible for a number of reasons. First, the Bank contends that the Applicant has not filed his Application in a timely manner; the time for the Applicant to challenge the requirement of enrollment in Medicare as a condition of his RMIP participation began to run the day the Applicant enrolled in Medicare, which was in May 2008. The Bank adds that the Applicant cannot plead ignorance of the alleged problem of availability of physicians associated with Medicare coverage. The Bank argues that the Applicant sat on his claim for too long for it to be considered by the Tribunal; he had raised concerns about the adequacy of Medicare coverage and the availability of doctors in April 2008, prior to his enrollment in Medicare, but he did not challenge these limitations until late 2011.

19. Second, the Bank contends that the Applicant is contesting a policy that was "uniformly and equitably" applied to him. Moreover, the Bank argues, he traces the triggering date to September 2011 when he sought treatment with a physician who was outside the Aetna network, and who refused to treat the Applicant because he did not want to take any new Medicare patients. The Bank states that if there was a decision that aggrieved the Applicant, that decision was not made by the Bank.

The Applicant's response to the preliminary objections

20. The Applicant argues that the Application is timely and is admissible. First, he argues that the triggering event happened in October 2011. He explains that, in mid-September 2011, he was faced with a health problem that required treatment by a certain medical care specialist. The specialist physician the Applicant approached did not accept the Applicant as a patient. The physician explained that he had "stopped accepting new Medicare Part B patients (while continuing to remain under Medicare and not technically opting out of Medicare Part B in the eyes of Medicare)."

21. The Applicant adds that on 20 and 21 September 2011, he made several telephone and e-mail enquiries with Aetna and with the Human Resources Service Center at the Bank about this new limitation under the RMIP. The Applicant states that on 3 October 2011, the Bank finally responded. On 3 October 2011, the Bank's Insurance Administration Unit wrote to the Applicant informing him that "Aetna has no leverage in discussing this providers' ability to accept you as a patient." The Applicant states that this is the triggering event; the time began to run when the Applicant was refused medical coverage by his doctor, i.e. on 3 October 2011 when he received notice of the application of the policy.

22. The Applicant also argues that he can challenge a Bank policy if he believes that the application of that policy is arbitrary and violates his rights. The Applicant also contends that Aetna is charged with administering the RMIP and the Bank is responsible for Aetna's actions.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

Preliminary objections

23. The Applicant retired from the Bank in 2001 upon reaching the mandatory retirement age of 62. He enrolled in Medicare Part B in May 2008. From that time on, Medicare became his primary insurer and the RMIP became his secondary insurer.

24. In April 2008, prior to his enrollment in Medicare, he sent an e-mail message on 9 April 2008 to the Bank raising some questions about his coverage. In his e-mail message, he referred to an article published in the Washington Post on 6 April 2008 in which a columnist wrote about problems with Medicare. The article highlighted that some patients were having problems finding doctors who would accept them as new Medicare patients. In the e-mail to the Bank, he raised the question of what he was expected to do if faced with a similar problem. In response,

the Bank provided him with some guidelines and also stated that: "We are fortunate that most doctors still accept Medicare patients … . This issue seems to come up every four years, but the AARP [American Association of Retired Persons] lobby is quite strong and there is enough focus on [Social Security] and Medicare at this time to ensure that funding continues so that doctors are paid reasonable and fair prices for their services."

25. Based on this correspondence, the Bank argues that the Applicant knew about the limitation of availability of doctors for Medicare patients as of April 2008, and should have challenged the Bank's policy of mandatory requirement in Medicare Part B within 120 days of the day he enrolled in Medicare, as clearly required by the Tribunal's Statute.

26. The Applicant argues that the statutory limit for filing can only begin to run when the Bank's application of the policy detrimentally affected the Applicant's individual case. The Applicant argues that he suffered no detriment until September 2011, when a physician declined to accept him as a patient because the physician had stopped accepting new Medicare Part B patients. The Applicant states that he immediately sought the Bank's help. He received a response from the Bank on 3 October 2011, in which the Bank wrote:

> [T]he provider from whom you would like to receive services is not in the Aetna network of physicians. Therefore, Aetna has no leverage in discussing this providers' ability to accept you as a patient. …
>
> Your coverage by Aetna is being administered consistent with the terms of the … RMIP and the Bank Group must operate the RMIP within its terms and consistently for all members. In addition, under Staff Rule 6.12, there is no provision to waive enrollment in Medicare if such participation can be done without penalty. …
>
> We are sorry that the physician is not accepting new Medicare patients. We are ready and able to assist you in locating another provider who can provide the services you require.

27. The Applicant claims that the policy was applied to him with detrimental effect on 3 October 2011.

28. Article II of the Tribunal's Statute requires that an application be filed with 120 days of "the occurrence of the event giving rise to the application." In *Briscoe*, Decision No. 118 [1992], para. 30, the Tribunal stated that:

> Article II, para. 1, of the Statute of the Tribunal empowers the Tribunal to pass judgment "upon any application by which a member of the staff of the Bank Group alleges nonobservance of the contract of employment or terms of appointment of such staff member." The Tribunal, along with other international administrative tribunals, has consistently held that a claim of non-observance of a staff member's contract or terms of appointment must be directed not against the organization's promulgation of some general rule or policy but rather against an application of that rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner. In *Agodo*, Decision No. 41 [1987], paras. 27 and 29, the Tribunal held that
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> > [T]he Statute contemplates the making by the Respondent of a 'decision' that adversely affects the applicant specifically and that will justify "compensation … for an injury individually sustained."
> > …
> >
> > In all other cases decided by the Tribunal, the applicant has alleged some detriment to his own status, compensation or working conditions resulting from a specific Bank decision affecting him.

29. The Tribunal is not convinced that the time should start to run from May 2008. Considering the correspondence between the parties in April 2008 and the circumstances of the case, the Tribunal is not convinced that his Application was ripe in May 2008 for the Tribunal's adjudication. Based on the record, the Tribunal finds that the time began to run from 3 October 2011, and the Application is thus timely.

30. The Tribunal also rejects the Bank's argument that the Applicant is challenging a general Bank policy over which the Tribunal lacks jurisdiction. From the record, it is evident that his Application is not directed against a general policy of the Bank; he is challenging the application of a policy which he believes violated his rights. The Tribunal surely has jurisdiction when a claim is filed "against an application of [a] rule or policy – be it reflected in an action or an omission – that directly affects the employment rights of a staff member in an adverse manner." *Briscoe*, para. 30.

31. The Tribunal accordingly dismisses the Bank's preliminary objections and now proceeds to the merits of the case.

Merits

32. The Applicant's principal claim is that the policy mandating his enrollment in Medicare Part B as applied to him violated his rights as it is discriminatory, arbitrary and inconsistent with the principle of parallelism.

33. The Bank asserts that this long-standing policy has a rational basis. The Bank states that:

> Respondent's policy of requiring enrollment in NHPs, reflected in the Staff Rule, applies to all retirees eligible to enroll in an NHP system, whether in the U.S., through Medicare, or other countries with an NHP. It was recently reviewed and reaffirmed by Respondent, with the input of the 1818 Society, the Staff Association, representatives of major functions of the World Bank Group, and an outside consulting firm.
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> Because of the subsidies RMIP receives from the U.S. government for Medicare, Respondent determined that it would be cost prohibitive to make Medicare enrollment discretionary. Such a decision would result in premium increases for all retirees participating in RMIP, increased annual costs for the RMIP (about $10-$15 million a year), and significant increases in Bank long-term medical insurance liabilities (increases of about $300-$400 million). Simply put, it would jeopardize the sustainability and quality of the Plan that is currently one of the most generous and competitive plans in the marketplace.
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> For the Tribunal to grant relief requested by Applicant would mean unraveling the carefully considered, Bank-adopted policy which saves Respondent between $16 and $20 million, or 25% of total RMIP costs, every year. These savings allow Respondent to successfully control increases in premiums charged to the retirees, and maintain the generous 3 to 1 contribution ratio for the RMIP. These savings also mean that Respondent can reimburse Medicare participants for their Medicare premiums, which range between $99 and $319 a month.
>
> Respondent's policy of requiring NHP enrollment falls within Respondent's sound business judgment, and Applicant's attempt to change the policy should be rejected.

34. The scope of the Tribunal's review is limited when a policy of this kind is challenged. In *Oinas*, Decision No. 391 [2009], the Tribunal dismissed a retiree's challenge to the Bank's policy of mandatory retirement at the age of 62. The Tribunal stated at paras. 27-28 that:

> The Tribunal is mindful of the limits of its powers. It is not a policy-making or a policy-reviewing institution. These functions fall within the discretionary ambit of the powers of the Bank and its governing institutions. *See Einthoven*, Decision

> No. 23 [1985], para. 43; *Chakra*, Decision No. 70 [1988], para. 25. It is also well-established that in respect of policy-making "it is not for the Tribunal to override the Bank's considered judgment and to replace it with its own" (*von Stauffenberg*, Decision No. 38 [1987], para. 123), nor to "consider which alternative would have been best or more effective to attain the desired objectives of reform" (*Crevier*, Decision No. 205 [1999], para. 17).
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> In light of these limits, the Applicant's petition to have the Tribunal order the Bank to discontinue the application of its mandatory retirement age policy or, in the alternative, to order the Bank to modify its policy with regard to former NRS [Non-Regular staff members] participating in the Net Plan so as to raise the mandatory retirement age for those employees to at least 65, is quite evidently beyond the powers of the Tribunal, irrespective of whether the policy might be good or bad.

35. Consistent with the Tribunal's jurisprudence, the limited inquiry before the Tribunal is whether the policy as applied to the Applicant has violated his contract of employment or terms of appointment. In *Oinas*, para. 29, the Tribunal held that:

> As firmly established in its jurisprudence, the Tribunal's role is to examine whether there has been non-observance of the contract of employment or terms of appointment of the Applicant. *See Einthoven*, Decision No. 23 [1985], para. 40. The Tribunal stated that: "So long as the Bank's resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member." *Id*., para. 43.

36. The Applicant claims that the Bank's current scheme for Medicare Part B enrollment results in unjustifiable discriminatory treatment. The Applicant explains as follows:

> Applicant submits that the current scheme under the RMIP mandating obligatory enrollment in Medicare Part B for all eligible U.S. retirees over age 65 (and indeed subjecting those who do not enroll to severe financial penalties) while at the same time limiting his access to medical providers, discriminates against him versus all other retirees who are not required to enroll, whether they are non-U.S. resident RMIP participants, are U.S. resident RMIP participants under 65 and/or RMIP participants not yet eligible for Medicare Part B. Without justification, the current regime results in Applicant and all other U.S. retirees enrolled in Medicare Part B incurring significantly less medical coverage than other similarly situated staff, even though Medicare Part B participation undoubtedly results in large savings for all RMIP stakeholders, with the Bank benefiting disproportionately.

37. In determining what constitutes impermissible discrimination, the Tribunal stated in *Crevier*, Decision No. 205 [1999], para. 25 that "staff members in different situations will

normally be governed by different rules or provisions … discrimination takes place where staff who are in basically similar situations are treated differently.” In this case, the Tribunal finds no discriminatory treatment among retirees in similar situations to the Applicant. The Bank imposes the same policy on NHP participation on any retiree who becomes eligible to participate. All U.S. retirees over the age of 65, who are eligible to participate, are required to enroll in Medicare.

38. In support of his claim of discrimination, the Applicant states that he “would have better access to doctors of his choosing were he to reside in the country of his birth, India, under the RMIP because he would not be forced to enroll in Medicare Part B.” He also refers to the fact that U.S. retirees under 65 years of age are not required to enroll in Medicare Part B.

39. The Tribunal is unconvinced. The Applicant is not in the same group as a non-U.S. retiree whose country does not have an NHP. Like other U.S. retirees he was not required to enroll in Medicare when he was under 65 years of age. As the Bank argues, his discrimination claim might have some merit if he could show, for example, that a group of retirees eligible to participate in an NHP was not required to enroll in it, or that some U.S. retirees in the same situation as the Applicant were not required to enroll in Medicare. In *Oinas*, para. 32, the Tribunal held that: “Since former NRS appointed after 15 April 1998 are treated under the same rules governing the Net Pension Plan, there is of course a difference with those governed by the Gross Pension Plan, but those within the same group are not treated differently. Discrimination is thus not an argument that could be upheld in this case.” The Tribunal finds that the application of the policy has not resulted in impermissible discrimination against the Applicant.

40. The Applicant next argues that the Bank’s policy is inconsistent with the principle of parallelism. The Applicant argues that at the International Monetary Fund (“IMF”), enrollment in Medicare Part B is voluntary. He adds that “the UN’s approach of mandating Medicare Part B enrollment also assures retirees full access of their physician of choice.” The Applicant argues that the Bank’s action violates the principle of parallelism recognized by the Tribunal.

41. The Bank answers that as part of its reform it has examined the policies of other international organizations, such as the IMF, the United Nations, the Inter-American Development Bank, and the Organization of the American States. The Bank states that, with the exception of the IMF, all these other organizations require their retirees to participate in Medicare. The Bank states that after conducting a comparative analysis, the working group charged with the reform found that “the IMF’s approach in making Medicare enrollment optional

would be cost-prohibitive for the World Bank, due to the different size of the retiree population and the different cost structure of the two plans."

42. The Tribunal finds that the principle of parallelism does not bind the Bank to adopt the policies of the IMF or for that matter any other international organization. In *Oinas*, the retiree argued that the Bank's implementation of the mandatory retirement age was inconsistent with the practice of the IMF. Rejecting the argument, the Tribunal stated at para. 42 that:

> Finally, while the principle of parallelism with the IMF has also been invoked by the Applicant, the Tribunal has held on various occasions that this does not mean that the Bank is tied to IMF policies but rather that it should consider them as a reference point. *See Crevier*, Decision No. 205 [1999], para. 36. The realities of the two institutions are different. The IMF's policies are established in the light of that institution's own determinations.

43. Based on the record, the Tribunal is satisfied that the Bank's management gave due consideration to the policies of other organizations. The Bank's management determined that for the Bank the most suitable option would be to continue mandating enrollment in Medicare Part B. The Tribunal is not in a position to say that IMF policy or other policies are better for the Bank, as it is well-established that in respect of policy-making, "it is not for the Tribunal to override the Bank's considered judgment and to replace it with its own" (*von Stauffenberg*, Decision No. 38 [1987], para. 123), nor to "consider which alternative would have been best or more effective to attain the desired objectives of reform" (*Crevier*, para. 17).

44. The final matter to consider is whether the application of the challenged policy has resulted in violation of any guaranteed rights of the Applicant or whether the application of the policy is so arbitrary in the Applicant's case that the Tribunal must provide effective remedies.

45. By the Applicant's own description, he experienced the limitation of the policy in September 2011 when for the first time he was denied access to a physician of choice. The Bank acknowledges that some doctors may not accept Medicare patients. The Bank explains that it implements its policy in the following manner:

> Some doctors do not accept Medicare patients. The reimbursements that Medicare pays doctors for their services are negotiated in advance and are lower, in some cases, than the reimbursement that a doctor receives from a private insurer, such as Aetna. By some accounts, 13-15% of medical providers opted out of Medicare.

> When a retiree encounters a medical provider who opted out of Medicare, retiree may still see the medical provider under a Private Contract, in which case the RMIP will be the primary insurer for the covered services. A Private Contract is a contract between the patient and medical provider stating that neither will submit claims to Medicare. A copy of the Private Contract, submitted to Aetna, will allow Aetna to process the services for that medical provider as if the retiree did not have Medicare as the primary insurer.
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> In some circumstances, however, medical providers accepted Medicare patients, but elect not to accept any new Medicare patients. In that case, under Medicare Program regulations, where the medical provider is still seeing some Medicare patients, he or she cannot opt out of Medicare, nor issue a Private Contract to the patient. If a retiree encounters this problem, Aetna can help a retiree to find a medical provider in their network who will accept Medicare patients.

46. The Bank explains that it attempted to address the Applicant's problem but the Applicant demanded that he must be exempt from the Medicare enrollment requirement. The Bank explains that:

> Respondent does not have any influence over a doctor's decision to opt out of Medicare, or not to accept new Medicare patients. In Applicant's case, the situation was complicated by the fact that the doctor that Applicant wanted to see was out of the Aetna network, and, while the provider accepted Medicare patients, it did not accept any new Medicare patients. Therefore, Applicant could not enter into a private contract with the provider to enable Applicant to see the doctor.
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> Instead, both Respondent and Aetna, on several occasions, offered Applicant assistance to help Applicant find another specialist. With the vast number of doctors in Aetna's network, Aetna would have likely found Applicant an appropriate provider. But Applicant never took Aetna up on its offer, demanding instead that he be exempt from the Medicare enrollment requirement.

47. The Applicant refers to Staff Rule 6.12 (Participation in the Medical Insurance Plan) and the World Bank Circular No. 85/06 (Coordination of Benefits Under the Medical Insurance Plan with National Health Schemes) arguing that "he has a right to see a physician of his choosing under the RMIP." He insists that the Bank must respect his contractual rights.

48. The Tribunal, however, does not accept the Applicant's reading of Staff Rule 6.12 and the Circular. The Applicant suggests that his right to see any doctor of his choosing under the Bank's rules is absolute, restricted by nothing. Obviously, he can always see any doctor of his choosing; but if he wishes the Bank to cover the costs, he is subject to the RMIP. The policy of mandatory enrollment in Medicare Part B has been in place since 1985, before the Applicant

joined the Bank in 1989. He therefore cannot argue that the Bank took away any contractually guaranteed right after he became a staff member.

49. The Tribunal is mindful of the fact that an increasing number of specialists does not accept Medicare patients. The Tribunal finds that the following undertaking addresses the Applicant's concerns and is to be taken seriously by the Bank:

> Respondent is aware of reports that access to specialist doctors accepting Medicare is sometimes more difficult because doctors prefer to accept those insured by private insurance. It is understandable that for a medical provider, dealing with a private insurance company is more convenient and usually more profitable than with the program run by the U.S. government.
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> Respondent is continuously reviewing this situation, and is in contact with the 1818 Society to monitor the claims of restricted access. Aetna also advises Respondent on access to physicians under Medicare in the U.S. medical system. If and when Respondent determines that limitations on access to medical providers becomes more pervasive, it will be in a position to re-evaluate comprehensively whether mandatory enrollment should still be required, and what accompanying changes to the RMIP structure would need to be made. Until now, Respondent has been of the view, based on the data provided that, while some limitations may exist in some cases, the overall situation does not warrant a change in policy. Currently, the issue is up for further discussion at the triennial review of the RMIP in January, 2014. As part of the RMIP reform done in 2012, Respondent and the 1818 Society also agreed to set up a consultative group, to meet semi-annually to discuss pending RMIP issues, including lack of access to care, if sooner action is required.

50. The Applicant also claims that he has faced problems with processing his medical claims. He states that he "must routinely cope with two sets of claim processes/documents – as opposed to only one before for each medical service encounter/event." The Bank states that in response it asked Aetna to look into this complaint. The Bank states that: "Aetna confirmed that in the last 12 months, 56 claims made by Applicant were filed with Medicare Direct, which is done electronically, by provider, directly with Medicare. After Medicare pays its portion of charges, it electronically sends a claim to Aetna for additional payment. The Applicant is not involved in that process." The Bank therefore contends that the Applicant's claim that the process is burdensome is unfounded because the vast majority of his medical claims do not require his involvement.

51. Based on the record, the Tribunal is not convinced that the implementation of the policy has imposed on the Applicant a burden so great as to amount to a denial of the Applicant's rights.

DECISION

1) The Bank shall contribute to the Applicant's attorneys' fees in the amount of $5,000 for the preliminary objections phase of proceedings.

2) All other claims are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D. C., 13 February 2013