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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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REGIONS HOSPITAL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–1375. Argued December 1, 1997– Decided February 24, 1998

Under the Medicare Act and its implementing regulations, a hospital (a provider) may obtain reimbursement for "allowable cost[s]" (including the costs of certain graduate medical education (GME) programs for interns and residents) by preparing a report at the close of each fiscal year and filing it with a "fiscal intermediary" designated by respondent Secretary. The intermediary examines the cost report, audits it when found necessary, and issues a written "notice of amount of program reimbursement" (NAPR), which determines the total amount payable for Medicare services during the reporting period. The NAPR is subject to review by the Provider Reimbursement Review Board (PRRB), the Secretary, and ultimately the courts. By regulation, the Secretary may reopen, within three years, any determination by an intermediary, the PRRB, or the Secretary herself to recoup excessive (or correct insufficient) reimbursement for a given year. In 1986, Congress changed the method for calculating reimbursable GME costs. In lieu of discrete *annual* determinations of "reasonable cost . . . actually incurred," 42 U. S. C. §1395x(v)(1)(A), the "GME Amendment" now requires the "Secretary [to] determine, for [a] hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under [the Act] for direct [GME] costs of the hospital for each full-time-equivalent resident," §1395ww(h)(2)(A), and directs the Secretary to use the 1984 amount, adjusted for inflation, to calculate a hospital's GME reimbursement for subsequent years, §1395ww(h)(2). Based on indications that some "questionable" GME costs had been "erroneously reimbursed" to providers for their 1984 base year, the Secretary's "reaudit" regulation, 42 CFR §413.86(e), interprets the GME Amendment to authorize in-

termediaries to conduct a second audit of the 1984 GME costs to ensure accurate reimbursements in future years. The reaudit rule permits no recoupment of excess reimbursement for years in which the reimbursement determination has become final. Rather, the rule seeks to prevent *future* overpayments and to permit recoupment of prior excess reimbursement *only* for years still within the three-year reopening window.

Petitioner Regions Hospital (Hospital) is eligible for GME cost reimbursement. A reaudit commenced in late 1990 yielded a determination that the Hospital's total allowable 1984 GME costs were $5,916,868, down from the original NAPR of $9,892,644. The recomputed average per-resident amount was $49,805, in contrast to the original $70,662. The Secretary sought to use this recomputed amount to determine reimbursements for future years and past years within the three-year window. The Secretary did not attempt to recoup excessive reimbursement paid to the Hospital for its 1984 GME costs, for the three-year window had already closed on that year. Appealing to the PRRB, the Hospital challenged the validity of the reaudit rule. The PRRB responded that it lacked authority to invalidate the rule. On expedited review, the District Court granted the Secretary summary judgment, concluding that §1395ww(h)(2)(A)'s language was ambiguous, that the reaudit rule reasonably interpreted Congress' prescription, and that the reauditing did not impose an impermissible "retroactive rule." The Eighth Circuit affirmed.

Held:

1. The Secretary's reaudit rule is not impermissibly retroactive. The rule is in full accord with *Landgraf* v. *USI Film Products*, 511 U. S. 244, which explained that the legal effect of conduct should ordinarily be assessed under the law existing when the conduct took place, *id.*, at 265, but further clarified that a prescription is not made retroactive merely because it draws upon antecedent facts for its operation, *id.*, at 270, n. 24. The reaudit rule calls for the correct application of the cost reimbursement principles in effect at the time the costs were incurred, not the application of any new reimbursement principles. Cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 207. Furthermore, the reaudits leave undisturbed the actual reimbursements for 1984 and any later reporting years on which the three-year reopening window had closed. The adjusted reasonable cost figures resulting from the reaudits are to be used solely to calculate reimbursements for still open and future years. Pp. 5–6.

2. The reaudit rule is a reasonable interpretation of the GME Amendment. Pp. 6–14.

(a) In determining whether an agency's interpretation of a statute is entitled to deference, a court asks first whether Congress' in-

tent is clear as to the precise question at issue. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842. If, by employing traditional statutory construction tools, *id.*, at 843, n. 9, the court determines that Congress' intent is clear, that ends the matter, *id.*, at 842. But if the statute is silent or ambiguous as to the specific issue, the court next asks whether the agency's answer is based on a permissible construction of the statute. *Id.*, at 843. An agency's reading that fills a gap or defines a term in a reasonable way in light of the Legislature's design controls, even if it is not the answer the court would have reached in the first instance. *Id.*, at 843, n. 11. Pp. 6–7.

(b) While other provisions of the Medicare Act speak clearly to the timing of other "recognized as reasonable" determinations, §1395ww(h)(2)(A) is silent, and therefore ambiguous, on the question whether Congress intended to prohibit the Secretary from reauditing a provider's statement of 1984 GME costs to eliminate past errors, outside the three-year reopening window. The statute's instruction to determine for 1984 the "amount recognized as reasonable" does not inevitably refer to the amount *originally*, or on reopening within three years, recognized as reasonable, but could plausibly be read to mean, in light of the new methodology making 1984 critical for all subsequent years, an "amount recognized as reasonable" through a reauditing process designed to catch errors that, if perpetuated, could grossly distort future reimbursements. There is no apparent support for the Hospital's contention that Congress could not have intended "recognized as reasonable" to mean two separate amounts: one for 1984 itself; and a lower, recalculated amount once the Secretary, cognizant that 1984 had become the base year for subsequent determinations, checked and discovered miscalculations. It is hard to believe that Congress intended that misclassified and nonallowable costs would continue to be recognized through the GME payment indefinitely. Thus, while the Hospital's reading is plausible, it is not the only possible interpretation. See *Sullivan* v. *Everhart*, 494 U. S. 83, 89. Pp. 7–10.

(c) The reaudit rule merits this Court's approbation because it reflects a reasonable interpretation of the law. See *Holly Farms Corp.* v. *NLRB*, 517 U. S. 392, 409. The GME Amendment's purpose was to *limit payments* to hospitals. The reaudit rule brings the base-year calculation in line with Congress' pervasive instruction for *reasonable* cost reimbursement. The rule does not permit recoupment of any time-barred 1984 overpayment, but it enables the Secretary, for open and future years, to carry out her responsibility to reimburse only reasonable costs, and to prevent payment of uncovered, improperly classified, or excessive costs. Until the GME Amendment in 1986,

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GME costs were determined annually; one year's determination did not control a later year's reimbursement. The GME Amendment became law at a time when many other Medicare changes were underway, so that GME costs were not given prompt scrutiny. The GME Amendment introduced the new statutory concept of per-resident GME costs; it was this innovation that caused the Secretary to examine GME costs reimbursed in the past and to question the significant variation in costs once allowed. Concerned that providers may have been reimbursed erroneously, the Secretary attempted to assure reimbursement in future and still open years of reasonable costs, but no more. To accomplish this, the Secretary endeavored to strip from the base-period amount improper costs, *e.g.*, physician costs for activities unrelated to the GME program, malpractice costs, and excessive administrative and general service costs. The Secretary so proceeded on the assumption that Congress, when it changed the system for GME cost reimbursement, surely did not want to cement misclassified and nonallowable costs into future reimbursements, thus perpetuating literally million-dollar mistakes. Viewed in the context of the other, contemporaneous changes in Medicare and the Secretary's decision not to pursue recoupment of 1984 GME reimbursements, the three-year gap from the 1986 enactment of the GME Amendment to release of the Secretary's final regulations in 1989 was not exorbitant. The Court rejects the Hospital's "fairness" and "issue preclusion" arguments against the reaudit rule's reasonableness as an interpretation of the governing legislation. Pp. 10–14.

91 F. 3d 57, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined.