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OMHA Appeal # 3-1081 7205 455;  
ECAPE Id. E1021112, Medicare Part C  
Medicare No. Q8WV67; EmblemHealth case no. 824311  
Before Administrative Law Judge Loranzo Fleming  
[Loranzo.Fleming@hhs.gov](mailto:Loranzo.Fleming@hhs.gov);  
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Dr. Richard Cordero, Esq.  
Appellant  
  
v.  
  
HMO EmblemHealth and  
Maximus Federal Services  
Appellees

Motion  
for ALJ Loranzo Fleming  
to recuse himself or  
be disqualified;  
and for other relief

1. This motion concerns the Administrative Law Judge (hereinafter ALJ) hearing in the above-captioned case, ALJ Loranzo Fleming (ALJ Fleming or the Judge) presiding, held at the Office of Medicare Hearings and Appeals (OMHA) in Atlanta, GA, via recorded video teleconference on Monday, August 8, 2022 (the hearing).
2. Dr. Richard Cordero, Esq., is the appellant. One of the appellees is HMO EmblemHealth Insurance Plan of Greater New York (Emblem), of which he is a beneficiary (also referred to as member), which was represented by its Deputy General Counsel, Carlos Manalansan. Paralegal Ms. Luz Campos was also present, but after being sworn in, she was not addressed by ALJ Fleming and did not speak. The other appellee was Maximus Federal Services (Maximus), the Qualified Inde-

pendent Contractor to which Emblem took the initiative to submit for review its denial of one of Dr. Cordero’s medical services claims. Maximus is identified in the Amended Notice of Hearing dated August 2, 2022, page 2, as one of the “parties, participants, and/or witnesses...scheduled to appear at the hearing”. However, Maximus did not appear. Emblem Manalansan did not claim to represent it. ALJ Fleming did not even comment on its failure to appear, let alone fault it for its non-appearance.

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**A. What the facts reveal about ALJ Fleming’s attitude toward Dr. Cordero**

**1. Emblem and Maximus filed no answer and served no documents**

3. At the beginning of the hearing, ALJ Fleming asked Dr. Cordero whether he accepted the list of documents in the “Index of the Administrative Record and Exhibits List”, which was part of the Notice of Hearing dated August 2, 2022, on OMHA-156 form; and the issue on appeal consisting of Emblem’s and Maximus’s

reason for denying his medical service claim. Dr. Cordero objected to both.

4. Dr. Cordero objected to the list of documents because they are identified by meaningless descriptions. Can you reasonably expect a beneficiary of Emblem, or for that matter of any other HMO, to understand whatever the following means, let alone what their particular content may be?:

“All Documents: Appellant Voicemail: [date] File Name 15-22, 31, 34-36”

“Procedural – CMS Levels: [e.g., EOC?, Case File ACK to ALJ?] File Name 1-8

“Procedural – OMHA Levels: [e.g., whose contact or response?; to whom was notice given?] File Name 10-14, 23-24, 26-30, 32-33, 37-40”

5. Those descriptions cannot be matched to any document that Dr. Cordero sent, not even to his [Statement on Appeal](#)<sup>1</sup> of May 22, 2022. Nor can they be matched to any document that Emblem or Maximus could have served on him because neither of them ever served on him any document for the hearing, much less an answer to his Statement, though it had been served on them more than 2½ earlier.

## **2. The Judge disregarded the motion to default Emblem and Maximus**

6. Emblem dragged out the case for months since its inception on September 8, 2021. All along, Dr. Cordero complained about the pain and suffering that he was experiencing, so that his PCP, Dr. Monte Ezratty, certified the medical necessity of the medical services claim. Emblem showed reckless disregard for Dr. Cordero’s

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<sup>1</sup> Statement on Appeal, containing Dr. Cordero’s issues on appeal; filed and served by him on May 22, 2022; and since then repeatedly referred to by him in phone conversations and subsequent papers, e.g., his Responses of May 31, July 21, and August 5, to the Notices of Hearing, respectively; [http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero\\_Statement\\_on\\_Appeal.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf).

wellbeing.

7. Because Dr. Cordero's persistent complaint, Emblem took the initiative to send the case to Maximus on or around January 12, 2022. The latter sent Dr. Cordero a letter dated January 21, which he received on January 31, stating that it had received the case for review and would inform him of its redetermination. But it never did.
8. Dr. Cordero complained about the non-receipt of Maximus's redetermination to Emblem Grievance and Appeals supervisor Sean Hillegass on March 14. He said that he had received it and that it confirmed Emblem's denial of Dr. Cordero claim. Mr. Hillegass agreed to send Dr. Cordero a copy of it. However, he failed to do so. As a result, Dr. Cordero had to call him again on March 31 and say that he would wait on the phone until he saw the decision delivered to his email inbox.
9. Maximus's redetermination bears the date of February 15, 2022. Although it is addressed to Dr. Cordero, Maximus sent it to Emblem, not to him. However, Maximus's letter of January 21 stated that Maximus would inform Dr. Cordero of its redetermination.
10. Maximus's redetermination was part of a packet of documents. The latter did not include the official Medicare-100 form, titled "Request for Administrative Law Judge (ALJ) Hearing or Review of Dismissal". Maximus replaced it with its own form, where it only allows the beneficiary to provide his signature and contact information. Maximus's replacement form neither requests from the beneficiary, nor gives him the opportunity, to make a statement of the reason for requesting the hearing. By contrast, the official Medicare form does:

"Section 5: What is being appealed?"

"Section 7: Why do you disagree with the Reconsideration or Dismissal being appealed? (Attach a continuation sheet if necessary)"

"Section 8: Are you submitting evidence with this request, or do you plan

to submit evidence?

“Section 9: Is there other information about your appeal that we should know?”

“Section 10: Certification of copies sent to other parties (Part A and Part B appeals only)”

“Section 11: Filing instructions [containing the address of OMHA Central Operations in Cleveland, OH”

11. It is well established that a defendant’s failure to answer the plaintiff’s complaint, brief, or motion paper is so grave as to warrant defaulting the defendant. Their failure to answer was a violation of due process, which requires not only that notice be given to the defendants of the charges against them, but also that they give notice of their defenses to the plaintiff so that he too may prepare to reply to them rather than be ambushed at a hearing where the defendants, with the condonation of the judge, unfairly surprise him with objections and arguments never before raised.
12. Hence, Dr. Cordero moved, as he had done in writing before<sup>2</sup>, for ALJ Fleming to hold Emblem and Maximus in default for their failure to answer his May 22 [Statement on Appeal](#)<sup>1</sup>. It is obvious that if their default had been entered, there would have been no reason for the hearing to continue.
13. Far from it, the Judge did not even ask Emblem representative Manalansan why Emblem had failed to answer the Statement<sup>1</sup>. Much less did the Judge hold that Emblem and Maximus had waived any objection to the issues raised by Dr. Cordero, and had admitted them, as requested by Dr. Cordero. ALJ Fleming allowed Emblem and Maximus to conceal information from Dr. Cordero by not answering his

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<sup>2</sup> See his Response to the Notice of Hearing of July 21, 2022, subparagraph a., page emails:136, and August 5, 2022, paragraph 3.a., page emails:140, in the file at [http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH\\_OMHA-email\\_evidence.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH_OMHA-email_evidence.pdf).

Statement.

### **3. Emblem’s and Maximus’s failure to respond to the Notices of Hearing**

14. The Amended Notice of Hearing dated August 2, 2022, provides as follows:

#### **What do I do next?**

You must respond to this notice within 5 calendar days of receipt. You are encouraged, but not required, to use the enclosed *Response to Notice of Hearing* (form OMHA-102) when responding. If you are a party to the appeal, your response must indicate whether you plan to attend the scheduled hearing, or whether you object to the proposed time and/or place of the hearing. If applicable, you must specify who else from your organization or entity plans to attend the hearing and in what capacity. [**bold** and *italics* in the original]

15. By its own term, the Notice of Hearing is addressed to every “party to the appeal”.

Three Notices were sent to Dr. Cordero and he timely provided the required “Response to the Notice of Hearing” on May 22, July 22, and August 5, respectively<sup>2</sup>. By contrast, neither Emblem nor Maximus served on Dr. Cordero a single Response. Did they provide any to OMHA?

16. ALJ Fleming condoned Emblem’s and Maximus’s flouting of the unambiguous and peremptory requirement of the Notice of Hearing: “You must respond to this notice within 5 calendar days of receipt”. By so doing, he allowed them to gain an advantage of knowledge, which is so important, for “KNOWLEDGE IS POWER”. They benefited from learning Dr. Cordero’s response to the three Notices sent to him, without having to provide responses that would have allowed Dr. Cordero to do the same. They retained the ability to choose the time and venue for

revealing their positions until they could do so with the greatest positive effect on them and the most negative impact on Dr. Cordero. This allowed them to put him at an unfair disadvantage.

17. By ALJ Fleming allowing such asymmetry of knowledge, he showed partiality against Dr. Cordero and in favor of Emblem and Maximus.
18. ALJ Fleming did not even ask the Emblem representative Manalansan to explain why Emblem had not answered Dr. Cordero's Statement. Far from it, the Judge cut off Dr. Cordero and brushed the default motion aside without any discussion of its merits. The Judge held Emblem and Maximus unaccountable, the harm to Dr. Cordero's rights notwithstanding.
19. ALJ Fleming showed no interest in asking Emblem representative Manalansan to answer Dr. Cordero's charges that Emblem and Maximus had engaged in wrongful conduct and colluded to cover it up. He exonerated them before even finding out whether they objected to Dr. Cordero's charges. He did not bother to find out whether they had come to the hearing with dirty hands.

#### **4. Appellees were allowed to act as appellants raising the issue on appeal**

20. As shown in Maximus's letter of January 21, 2022, Emblem and Maximus took the initiative to launch the appeal from their own claim denial decision and confirmatory redetermination, respectively. However, they can only be appellees. Yet, they were the ones that self-servingly chose the one and only one issue on appeal to Medicare. Dr. Cordero is the appellant, the only one who can who raise issues on appeal.
21. Judge Fleming disregarded the obvious roles of the parties. He came to the hearing with his mind firmly made up that the issue self-servingly raised by the appellees, who did not even answer Dr. Cordero's Statement on Appeal<sup>1</sup>, was the single one on appeal, and that it was Dr. Cordero who had to address it at the hearing. Thus, he

disregarded without discussion the issues<sup>3</sup> raised by Dr. Cordero since the inception of the case; recapitulated in his May 22 Statement on Appeal; added to since; and referred to in his three Responses to the Notices of Hearing, respectively. Thereby he favored again Emblem and Maximus to the detriment of Dr. Cordero. The Judge compromised the fairness and impartiality of the hearing.

22. What is more, ALJ Fleming mocked Dr. Cordero for bringing up issues that formed an irrelevant ‘universe of things’. Among them was Dr. Cordero’s experience with Emblem receptionists and supervisors in The Philippines, where Emblem has a call center. Its only justification is that it costs significantly less to run it there than in the U.S., regardless of its staff’s substandard training, capacity for critical thinking, and language difficulties, which inevitably diminish the quality of their services. ALJ Fleming dismissed out of hand that Emblem’s preeminent consideration of saving money could likewise be the consideration that led it to deny Dr. Cordero’s medical service claim.
23. ALJ Fleming disregarded with no discussion what Dr. Cordero said was the term that lawyers use to identify the proper reference context: the totality of circumstances. They comprise the facts that must be laid forth as the indispensable basis for choosing the proper law to apply and deciding how to apply it. All that mattered nothing to the Judge, for he came to the hearing with his mind made up.

#### **5. The Judge disregarded the appellees/Medicare’s conflict of interests**

24. Emblem, Maximus, and the ALJs work for Medicare. Their work relation causes them to have conflicts of interests. Their interest lies in sparing Medicare the hundreds of millions of dollars that it would cost to satisfy most beneficiaries’ medical services claims. Their interest does not lie in applying either the Medicare

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<sup>3</sup> See 11 of those issues at [http://Judicial-Discipline-Reform.org/ALJ/22-8-4Notice\\_of\\_Hearing-Response.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-4Notice_of_Hearing-Response.pdf), subparagraph d., page emails:141.



rules or Emblem's own extra benefits advertisements faithfully, for that would cost Emblem a lot of money. If an ALJ found in favor of appellants most of the time, he or she would risk being terminated or not having his or her employment contract renewed.

25. Moreover, a substantial number of beneficiaries bring their appeal to Medicare pro se because the money that they do not have to pay for the medical services that they need, they do not have either to pay attorney's fees. So, they improvise themselves as lawyers only to fall prey to the other parties. Consequently, Emblem, Maximus, and the ALJs have no interest in risking their money and careers for beneficiaries who have no clue about the law and will never be able to figure out how they were deprived of due process and equal protection of the law.
26. Additionally, Emblem, Maximus, and Medicare are partners in business. They share a common interest in keeping in, and adding to, their networks as many medical services providers as possible. Their common interest is in not applying any rules, such as those against balance billing, so strictly as to cause ever more providers to refuse to accept their health insurance, thus quitting or not joining their networks.
27. Although Maximus is identified as a "Quality Independent Contractor", it is by no means "Independent". In fact, the front page of its letters carries the following information as a fixture:

**For more information about appeals**

If you have questions please call Medicare at 1-800-MEDICARE (1-800-633-4227)...**To check the status of your appeal and learn more about the appeal process, visit our website at [www.medicareappeal.com](http://www.medicareappeal.com).** [bold letters in the original]

28. Maximus is so close to Medicare that it considers Medicare's website "our

website”.

29. In the same vein, when providing its contact information, Maximus states its physical address, phone numbers, and its website, namely, “[www.medicareappeal.com](http://www.medicareappeal.com)”.

30. Additionally, it self-identifies thus:

**Who We Are**

We are Maximus Federal. We are experts on appeals. Medicare hired us to review the file and decide if the health plan made the correct decision. **We work for Medicare.** We do not work for the health plan. [bold letters in the original]

31. This shows that Maximus and Medicare are one entity as the inherent result of their relation: They are bound by an employment contract where Medicare is the principal and Maximus is its agent. The role of the agent is not to become unleashed to go on a folly of its own to increase its principal’s cost of doing business.

32. Nor is it in the interest of Medicare to allow an adverse precedent to be set that can be invoked by other appellants/beneficiaries, for that can warrant the reversal and remand of many decisions, and the payment of medical benefits. That can turn out to be very expensive for it. Therefore, Medicare has a conflict of interests between ensuring that OMHA conducts hearings according to law and protecting itself from the consequences of so doing.

33. Entities such as Emblem and Maximus, and Medicare have a common interest: to save money by denying beneficiaries’ claims; and keep HMOs, such as Emblem, and medical services providers in their respective network by upholding their decisions and not faulting them for their conduct, e.g., engaging in, and condoning,

balance billing, which is illegal<sup>4</sup>.

34. Here applies the legal maxim: “One cannot be a fair and impartial judge in its own cause”. This maxim underlies the provision of 28 U.S.C.:

§47. Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

35. Maximus self-portrayal as “Independent” is a pretense. It is intended to mislead beneficiaries with a false assurance that it is fair and impartial when it reviews the HMOs’ denials of their medical services claims and submits its redeterminations to Medicare. However, ALJ Fleming expressed no interest in the facts and contractual relations giving rise to Maximus’s and the other entities’ conflict of interests.

36. Nor did the Judge express any interest in finding out why Maximus did not appear at the hearing. Yet, the Notice of Hearing dated August 2, 2022, that he had caused to be sent to Dr. Cordero, just as the previous Notice of May 11, 2022, page 2, identifies Maximus as one of the “parties, participants, and/or witnesses...scheduled to appear at the hearing”.

37. Maximus did not appear. The representative of Emblem, Deputy General Counsel Manalansan, did not claim to represent it. And the Judge did not even ask why. He was at the hearing to protect both from the interests and rights of Dr. Cordero.

## **6. The Judge cross-examined Dr. Cordero and made him out to be a fool**

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<sup>4</sup> Section 1902(n)(3)(B) of the Social Security Act, as modified by Section 4714 of the Balanced Budget Act of 1997, prohibits Medicare providers from balance billing Medicaid QMB's for Medicare cost-sharing. Please have your provider submit to Medicaid.

Emblem Grievance and Appeals supervisor Sean Hillegass stated in his letter of June 28, 2022, to Dr. Cordero as follows: “...providers that accept Medicare patients and payments are not permitted to balance bill Dual Eligible members for any cost sharing applied, regardless of Medicaid participation, and risk being issued sanctions from Medicare if they do”.

38. ALJ Fleming made out Dr. Cordero to be a fool who needed the Judge to say pointedly ‘for the second time I will read the issue on appeal...for the third time...for the fourth time...for the fifth time...’.
39. Dr. Cordero repeatedly objected to the procedural and substantive absurdity of allowing the appellees, not the appellant, to pick self-servingly the issue on appeal and not even answer the issues raised by Dr. Cordero. That did not mean that Dr. Cordero simply could not understand the Judge’s and the appellees’ pretense that there was only one issue on appeal, namely, ‘the Medicare rules do not cover your claim’.
40. That was the issue that Emblem and Maximus conjured up after months of discussion between some of the more than 15 Emblem *supervisors* who have dealt with this case<sup>5</sup> by phone, email, and mail and Dr. Cordero. The Judge showed no interest in finding out what those supervisors had told Dr. Cordero. The Judge capriciously accepted the pretense that the Medicare rules were dispositive of the appeal and disregarded without discussion all of Dr. Cordero’s issues.
41. ALJ Fleming conducted the overwhelming majority of the hearing, which lasted more than an hour, not as an impartial judge hearing the statement of facts and arguments of the parties, but rather as the attorney for Emblem and Maximus cross-examining Dr. Cordero. He was condescending and offensive toward Dr. Cordero with the intent to impugn his competence and diminish his credibility.
42. By contrast, ALJ Fleming did not ask a single question of Emblem Deputy General Counsel Manalansan. He limited himself to giving him the opportunity to talk. Mr. Manalansan said that his statement was going to be very short and it was: ‘Dr.

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<sup>5</sup> See their names and contact information on paragraph 40 of Dr. Cordero’s Statement on Appeal filed and served on May 22, 2022; [http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero\\_Statement\\_on\\_Appeal.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf). Since then, the list of Emblem supervisors who have dealt with this case has only grown longer.

Cordero had failed to prove that the Medicare rules had been wrongly applied to deny his medical service claim’.

43. Mr. Manalansan did not respond to Dr. Cordero’s objection that he was putting on Dr. Cordero a heavier burden than the more than 15 Emblem supervisors had been trained by Emblem to bear, that is, to know the Medicare rules and state them clearly from the beginning of the case on September 8, 2021. As much was acknowledged by Emblem Grievance and Appeals supervisor Sean Hillegass in a letter written as late as December 29, 2021:

We reviewed the call logs from your contacts with the EmblemHealth and DentaQuest Customer Service centers. It does appear from the records that there was a significant amount of back and forth in trying to determine if the providers you wished to see for these services were participating or non-participating, and what sort of coverage is available for these services. On behalf of both EmblemHealth and DentaQuest I apologize that there was so much difficulty in this and for any frustration it caused. We realize you have a choice when it comes to your health insurance provider, and we value you as a member. We value you as a member and continually strive to resolve any issues you may have as efficiently and clearly as possible. We’re sorry you were not afforded that in these calls.

44. Those supervisors did not refer to Medicare rules, which they ignored. Nor did they make any such rules dispositive of anything precisely because they stated that what controlled the outcome of the claims was the benefits that Emblem offers its members in excess of what Medicare provides. They did not know what those benefits were. Nor did they know what medical services providers were in Emblem’s network, never mind whether they accepted Medicare or Medicaid health insurance. These statements are borne out by the emails<sup>6</sup> exchanged between the Emblem

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<sup>6</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH\\_OMHA-email\\_evidence.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-8-5DrRCordero-EH_OMHA-email_evidence.pdf)

supervisors and Dr. Cordero as well as the recorded phone conversations between them. ALJ Fleming showed no interest in introducing them into evidence, let alone granting Dr. Cordero's request for disclosure and discovery before the case was ripe for a hearing. Why would the Judge bother given that he had already made up his mind and no new evidence would be allowed to enter it?

## **B. Connection between ALJ Fleming and the OMHA Phoenix Office**

45. Dr. Cordero repeated his request for the hearing to be converted into a pre-hearing to determine the pending outcome-determinative motions for defaulting Emblem and Maximus, and finding that they had waived any objection to, and admitted, Dr. Cordero's statements of facts, issues of law, and requests for relief. ALJ Fleming denied his request without explanation. The facts leading up to the Judge's denial are enlightening.

### **7. The "case file" was filed with Medicare but concealed from Dr. Cordero**

46. Maximus never served on Dr. Cordero the "case file" that it used to submit Emblem's denial of claim and its confirmatory redetermination on appeal to Medicare. Dr. Cordero learned about its existence only incidentally on May 3, 2022, on a hearing-scheduling call that he received from Ms. Deniese Elosh, legal assistant to ALJ Dean Yanohira of the OMHA Phoenix, AZ, Office<sup>7</sup>, to whom this hearing had been initially assigned. He asked her how ALJ Yanohira would prepare for the hearing given that Dr. Cordero had not even been asked, or afforded the opportunity in Maximus's ALJ Hearing Request form, to make a statement on his appeal. Ms. Elosh said that Maximus had sent in a "case file". Upon further inquiry by Dr. Cordero, she said that it consisted of 'over 100 pages'.

47. When Ms. Elosh finally sent Dr. Cordero the "case file" in the agreed upon digital format on a CD, it consisted of 1,800 pages. However, they did not contain a single

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<sup>7</sup> <https://www.hhs.gov/about/agencies/omha/index.html>

email out of the tens of emails exchanged between Emblem and Dr. Cordero during more than half a year, let alone any of their tens of phone conversations.

48. Maximus and Emblem had merely slapped together Medicare rules that the Emblem supervisors<sup>5</sup> had never referred to and that whichever ALJ was assigned to the hearing was most unlikely ever to read. Their purpose was to impress that ALJ and mislead him or her into thinking that such a massive amount of Medicare rules somehow so overwhelmingly warranted Emblem's denial of Dr. Cordero's medical services claim and Maximus's confirmatory redetermination that there was nothing else for the ALJ to do but to rubberstamp their affirmance.
49. Emblem and Maximus pretended that the claim and thus the hearing could be disposed of by a perfunctory and insidious dump of materials never before discussed and not then specifically connected to the case, that is, Medicare rules. They colluded to unfairly surprise Dr. Cordero by replacing those rules for the interactions for months between Emblem and Dr. Cordero as the material controlling the appeal, thereby resorting to bait and switch fraud.
50. Far from ALJ Fleming finding objectionable Emblem's or Maximus' conduct, he did not even ask the Emblem representative to respond to Dr. Cordero's charge. He condoned their wrongdoing and mocked Dr. Cordero's statement as part of his rambling into an irrelevant 'universe of things'
51. The outrageous circumstances under which the "case file" was sent by Ms. Elosh on Team Yanohira to Dr. Cordero include a complaint against him filed with Homeland Security Federal Protective Services...as if Dr. Cordero were a terrorist! They are described in Part I of his Statement on Appeal<sup>1</sup>.
52. Understandably enough, Dr. Cordero moved for ALJ Yanohira to recuse himself. ALJ Yanohira disposed of it offhand by rubberstamping a denial of recusal request form, namely OMHA-183T. It did not make any reference whatsoever to the

substantive issues of his request. Hence, Dr. Cordero filed an appeal with the Medicare Appeals Council<sup>8</sup> dated June 3, which he filed and served on June 4, 2022. Till this day, the Council has not acknowledged receipt of that appeal.

53. Nevertheless, ALJ Yanohira caused an undated order to be mailed to Dr. Cordero, who received it in mid-June, where he withdrew his previous recusal request denial and recused himself. He stated that the hearing would be assigned to another ALJ.

54. Dr. Cordero requested that the case be transferred out of the OMHA Phoenix Office to another office in order to avoid the risk of the forced recusal of ALJ Yanohira being avenged by other people in that office. Solid precedent justified fearing that risk:

a. After President Trump issued his first immigration ban, Federal District Judge James Robart of the 9<sup>th</sup> Circuit suspended it nationwide. The President referred to him disparagingly as “this so-called judge”. When his justiceship nominee, Judge Neil Gorsuch, who at the time was sitting on the Court of Appeals for the 10<sup>th</sup> Circuit, paid a goodwill visit to Congress in anticipation of his confirmation hearings, he was asked about the President’s reference. He reportedly remarked that “An attack on one of our brothers and sisters of the robe is an attack on all of us”.

b. His remark was confirmed by the conduct of the three-judge appellate panel of 9<sup>th</sup> Circuit judges who unanimously upheld *nationwide* the suspension, thus sending President Trump a warning: ‘*Don’t you ever mess with us!*’

c. The ‘attack on all of us’ remark is a manifestation of conduct that is not determined by reflection upon legal principles, professional duty, or ethical considerations of right or wrong. It expresses judges’ gang mentality. That is

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<sup>8</sup> [http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare\\_Appeals\\_Council.pdf](http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero-Medicare_Appeals_Council.pdf)



the way the gang survives in the hood. Every act of every non-gang member is a potential deadly threat to all gang members, their turf, and their material privileges and ‘respect’ in the hood, that is, mortal fear earned through sheer abuse of power and brutal retaliation. The gang mentality is a reversion to a tribal, primitive, atavistic state of mind. Every perceived offense launches a fight to the death against Tyrannosaurus Rex. T-Rex is at the entrance of the cave. Gang members are driven by the most unprincipled motive: survival. ‘We against the rest of the world’. Their mentality is not moderated by any sense of proportion. ‘We do everything we want because we get away with everything we do.’ Revenge is in the nature of savages, gangs, and judges: ‘Whoever causes one of us to recuse himself or herself disrespects all of us and is predetermined to be disrespected, mocked, and crushed at the hands of whomever the case is reassigned to.’

#### **8. The first indicia of ALJ Fleming’s attitude toward “Mr. Cordero”**

55. The forced recusal of ALJ Yanohira and judges’ gang mentality provide probable cause to believe that they constituted important factors in determining ALJ Fleming to disrespect Dr. Cordero from the very beginning of the hearing on August 8.
56. ALJ Fleming opened the hearing by addressing each of the parties present so that they could confirm their identity. He addressed Emblem Deputy General Counsel Carlos Manalansan; paralegal Luz Campos; and Mr. Richard Cordero. When the latter responded, he politely corrected the Judge by saying “Dr. Cordero”. Maximus was not represented.
57. In the papers in this case, ALJ Fleming must have seen the names “Dr. Richard Cordero, Esq.” and “Dr. Cordero”. Those papers include the following:
- a. ALR Hearing Request Form<sup>9</sup> signed on April 12, 2022, by and as Dr.

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<sup>9</sup> Exhibits in support of the Motion to recuse ALJ Loranzo Fleming

Richard Cordero, Esq.

- b. the [Statement on Appeal](#)<sup>1</sup> that Dr. Cordero filed and served on May 22, 2022
- c. the Appeal to the Medicare Appeals Council<sup>8</sup>,
- d. the Filing of New Evidence<sup>6</sup> that he filed and served for the first time on July 22 and then on August 5, which collects scores of emails and letters exchanged between Emblem, Maximus, OMHA, and Dr. Cordero for months since September 8, 2021, including the emails exchanged between ALJ Fleming's legal assistant Andre Rutledge and Dr. Cordero; the former has always addressed the latter as "Dr. Cordero".
- e. the Response to Notice of Hearing of May 31, July 21, and August 5, 2022, signed in each case by and as Dr. Richard Cordero, Esq.<sup>6</sup>

58. However, ALJ Fleming kept addressing Dr. Cordero during the course of the hearing as "Mr. Cordero". What could have possessed him to do so? How would he have reacted if Dr. Cordero had addressed him from the beginning as Mr. Fleming?

59. After ALJ Fleming said that he was going to read to "Mr. Cordero" for the fifth time the issue on appeal, Dr. Cordero objected to his making him out to be a fool that could not understand what the issue was.

60. ALJ Fleming stress the need to pay attention to the issue and to discuss it showing respect.

61. That is when Dr. Cordero pointed out that he had treated ALJ Fleming with respect from the beginning, always addressing him as "Your Honor". By contrast, the Judge had disrespected him by addressing him as "Mr. Cordero" from the start and had continued throughout the hearing to do so in spite of Dr. Cordero's correction by stating "Dr. Cordero". Dr. Cordero said that he was not only a lawyer, but also a

doctor of law, that he held a Ph.D. in law. ALJ Fleming kept looking straight into the video teleconference camera without flinching a muscle in his face or the rest of his body. He did not say a word in response.

62. Had he not been intentionally disrespecting Dr. Cordero, he would have blurted a protest at the accusation that he was doing so. He would have excused himself by saying something like ‘I’m sorry. I didn’t mean to disrespect you’. He would have said so if only to protect himself by removing from the record any impression that he was biased against him. His counter-expected unperturbed reaction betrayed his feeling: He had set out to disrespect Dr. Cordero and was not going to take back anything at all. In the rest of the hearing, the Judge did not address him as “Dr. Cordero”.
63. If an appellate judge addressed you in open court and for the record as Mr. M. or Ms. W. instead of ALJ M. or Judge W., despite your objection and did not apologize at all when you called him out, how would you feel? Would it be reasonable for you to expect that a judge that so insistently disrespected you would even with greater likelihood feel free to disrespect your rights when writing them down on paper in his decision in his chambers?
64. If by a preponderance of the evidence it is determined that from the beginning of the hearing ALJ Fleming intended to disrespect Dr. Cordero and mock his statements of facts and issues; and/or set out to avenge his OMHA Phoenix colleagues, the conclusion will follow that he conducted the August 8 hearing in bad faith and abused his power to harm Dr. Cordero. The hearing that he conducted was not to administer justice, but rather to teach Dr. Cordero a lesson: *“Never mess with one of us!”*

### **C. ALJ Fleming was biased in favor of Emblem and Maximus**

65. ALJ Fleming favored Emblem and Maximus by not deciding as a matter in limine Dr. Cordero’s motion to find them in default for their failure to answer his Statement on Appeal<sup>1</sup> and to deem that they had waived any objection to the Statement,

admitted its statements of facts and legal issues, and were barred from raising objections and arguments at the hearing.

66. The Judge denied without stating any reason Dr. Cordero's motion for the August 8 hearing to be turned into a pre-hearing to decide pending motions that could determine whether there should be a hearing at all.
67. The Judge did not subject the Emblem representative to any questioning.
68. Nor did the Judge make any comment on the failure of Maximus to appear, never mind find it in default.
69. ALJ Fleming would not discuss the conflict of interests of, on the one hand, Emblem, Maximus, and Medicare, and on the other hand, Dr. Cordero and similarly situated people.
70. ALJ Fleming did not act as a fair and impartial judge at the August 8 hearing. He came to it with his mind made up: Dr. Cordero could do nothing right. Emblem and Maximus could do no wrong. The former would lose. The latter would not even be asked a question.
71. He was determined not to give even the appearance of holding Emblem or Maximus accountable to Dr. Cordero's charges, with no regard for how dirty their hands were.

#### **D. Actions and relief requested**

72. An impartial observer informed of the facts and intent on being fair can reasonably find that ALJ Fleming is biased against Dr. Cordero.
73. ALJ Fleming conducted a hearing that had nothing to do with "traditional notions of fair play and substantial justice"; *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). He did not act as a fair and impartial judge applying due process rules to take in the evidence presented by parties confronting each other in an adversarial process. Rather, he behaved like the opposing counsel cross-examining

Dr. Cordero. ALJ Fleming merely went through the motions of a hearing as he conducted a sham.

74. Therefore, Dr. Cordero respectfully requests that the following actions be taken:

- a. ALJ Loranzo Fleming recuse himself; and
- b. upon his denial of that recusal request, his superiors disqualify him and remove him from this appeal;
- c. upon his recusal or disqualification, and even if both actions are denied, this appeal be filed with the Medicare Appeals Council for it to:
  - 1) default Emblem and Maximus;
  - 2) hold Emblem and Maximus to have waived all objections to, and admitted, Dr. Cordero's statements of facts, legal issues, and requests for relief;
  - 3) order Emblem to pre-authorize Dr. Cordero's medical services claims;
  - 4) order Emblem and Maximus to compensate Dr. Cordero for the work that he has done and the expenses that he has incurred in pursuit of his medical services claims;
  - 5) order Emblem and Maximus to pay his bill of attorney's fees;
  - 6) treble the amount of compensation and the attorney's fees as punitive damages payable by Emblem and Maximus and recoverable by Dr. Cordero;
  - 7) find that OMHA engaged in ex-parte communications with Emblem and Maximus when it allowed them to submit to it the "case file" and other documents without requiring that they serve them on Dr. Cordero, thus according them an unfair advantage that showed partiality toward them;

8) order the production, inclusion in the record of this appeal, and service on Dr. Cordero of a copy of the video the August 8 hearing; all emails, mail, and recordings of conversations concerning him directly as a party to this case or indirectly as a member of a class of people similarly situated and sent or received from September 8, 2021, to date, by:

- a) the OMHA Phoenix, AZ, Office
- b) the OMHA Atlanta, GA, Office
- c) a member of Team Yanohira
- d) a member of Team Fleming
- e) Dr. Cordero
- f) Federal Protective Services of the Department of Homeland Security
- g) Inspector Cory Hogan of the Federal Protective Services
- h) Emblem and the supervisors and receptionists that have dealt with this case<sup>5</sup>
- i) DentaQuest
- j) Quest Diagnostics
- k) Inform Diagnostics, Inc.
- l) PCP Dr. Monte Ezratty and his Park South Medical staff
- m) Weill Cornell Medicine and Dr. Forrest Manheimer and his staff
- n) Northwell Health and Dr. David Ritterband and his staff
- o) Harris & Harris of Chicago
- p) Credit Collection Services
- q) Medicare
- r) a member of any OMHA office
- s) Medicaid
- t) Social Security
- u) New York City Human Resources Administration

v) Maximus Federal Services

9) order the investigation of Emblem and Maximus for engaging separately or through collusion in a pattern of deception concerning:

- a) their failure to serve on Dr. Cordero any document pertaining to this case and this appeal, including the redetermination dated February 15, 2022, and the “case file” filed with OMHA
- b) the suppression of emails and recorded phone conversations from the “case file”
- c) the replacement of the official Request for ALJ Hearing (OMHA-100) with one that neither asks, nor affords the opportunity for, the appellant/beneficiary to state his issues on appeal and related evidence
- d) the self-serving choice of the issue on appeal and exclusion of Dr. Cordero’s issues
- e) their failure to answer Dr. Cordero’s Statement on Appeal<sup>1</sup>
- f) the provision of health insurance with disregard for generally accepted standards of medical care, which imposed upon Emblem and Maximus a fiduciary duty and a duty of trust
- g) protracted dealings with beneficiaries with the foreseeable and thus intentional consequence of wearing them down so as to cause them to desist from pursuing their medical services claims
- h) the substandard training of supervisors and management of cases
- i) the offshoring of its call center to The Philippines, for the purpose of saving money despite the substantially lower quality services that they offer.

10) order the investigation by an independent entity of Medicare and OMHA. It is warranted by the fact that Emblem's and Maximus's deceptive conduct is blatant and their dealings with Medicare and OMHA frequent and institutionalized. Such conduct and dealings give probable cause to believe that Medicare and OMHA, including ALJ Fleming, knew and should have known about them had they proceeded with due diligence to ensure the integrity of ALJ hearings. Instead, they joined Emblem and Maximus in covering up and pursuing their conduct and dealings. Hence, Medicare and OMHA have injured Dr. Cordero and people similarly situated by allowing the non-provision in part or in whole to them of the benefits that they reasonably expected to receive when they contractually accepted the benefits offered by Emblem, Maximus, and Medicare in their advertisements. The latter turned out to be false. Those three entities' misrepresentations have caused injury in fact. In the commission of such breach of contract, cover-up, and frustration of reasonable expectations, those entities have deprived beneficiaries of equal protection and due process of law. They must be held accountable and liable to compensation.

I, Dr. Richard Cordero, Esq., declare pursuant to 28 U.S.C. §1746 and under penalty of perjury that to the best of my knowledge the foregoing statements are true and correct.

Executed on August 17, 2022  
Bronx, New York

*Dr. Richard Cordero, Esq.*  
Dr. Richard Cordero, Esq.  
2165 Bruckner Blvd. Bronx, New  
York 10472-6506  
tel. 1(718)827-9521

[Dr.Richard.Cordero\\_Esq@verizon.net](mailto:Dr.Richard.Cordero_Esq@verizon.net),

[DrRCordero@Judicial-Discipline-Reform.org](mailto:DrRCordero@Judicial-Discipline-Reform.org), [CorderoRic@yahoo.com](mailto:CorderoRic@yahoo.com)



31jan 22

MAXIMUS Federal

The Appeal Number is:  
1-10817205455

January 21, 2022

Medicare  
Managed Care & PACE  
Reconsideration  
Project

RICHARD CORDERO  
2165 BRUCKNER BLVD  
BRONX, NY 10472

Date(s) of Service: not yet provided

Dear RICHARD CORDERO:

This letter is about **your appeal to EMBLEMHEALTH (Health Plan).**

**Reviewing  
Medicare Appeals**

You asked the Health Plan to **provide a medical item or service.** The Health Plan denied your request and you appealed the denial. Medicare hired us to review your appeal. The Health Plan sent us your file to decide if they made the correct decision. **We will review the information in your file** and send you the decision as soon as possible.

Maximus Federal  
Medicare Managed Care &  
PACE Reconsideration  
Project  
3750 Monroe Avenue, Suite  
702  
Pittsford, NY 14534-1302  
Tel: (585) 348-3300  
Fax: (585) 425-5292  
www.medicareappeal.com

**What we do**

First we have to **decide if your case is really an appeal** (most cases are appeals). If the case is really an appeal, we will decide if the Health Plan made the correct decision. We will review Medicare rules and the agreement between you and the Health Plan to decide your case. We do this to see if the Health Plan should pay for or give you the medical service. If the Health Plan says that an item or service is "not medically necessary", we may ask a doctor to review your file and help with our decision.

**Who We Are**

*We are Maximus Federal. We are experts on appeals. Medicare hired us to review the file and decide if the health plan made the correct decision. We work for Medicare. We do not work for the health plan.*

**We will send you a letter with our decision**

You **do not** have to call or write to us to find out our decision. We will review your file and send you our decision.



**For more information about appeals**

If you have questions please call Medicare at 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048. **To check the status of your appeal and learn more about the appeal process, visit our website at www.medicareappeal.com.**

Office of the Project Director  
Medicare Managed Care &  
PACE Reconsideration  
Project

cc: STEFANIE MACIALEK, EMBLEMHEALTH





**The Appeal Number is:  
1-10817205455**

February 15, 2022

R. CORDERO  
2165 BRUCKNER BLVD  
BRONX, NY 10472

RE: Enrollee: R. Cordero  
Medicare Number: XXXX-XXX-WV67

Dear R. CORDERO:

This letter is about our decision in your appeal to HEALTH INSURANCE PLAN OF GREATER NEW YORK (the Plan). You asked the Plan to pre-approve a guided tissue regeneration (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported cast metal crown (D6062), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066).

### **Our Decision**

Based on a new independent review, the decision for this appeal is **UNFAVORABLE**. We decided that the Plan does not have to pre-approve the guided tissue regeneration, endosteal implant, custom fabricated abutment, abutment supported cast metal crown, implant supported porcelain/ceramic crown, and an implant supported crown.

To learn more about how we made our decision, read the following pages of this letter.

### **If you do not agree with us**

You may have rights to review by the Office of Medicare Hearings & Appeals (OMHA). This review can include an Administrative Law Judge (ALJ) or an on-the-record review by an Attorney Adjudicator.

There are two types of reviews available:

You may have a **hearing**, which is a **meeting with you and the ALJ** or Attorney Adjudicator so that you can talk about your appeal. A hearing is **FREE OF CHARGE** and can be done over the phone. You are not required to attend the hearing in person and there is no cost to you for this service.

If you prefer not to participate in the hearing, you may have an **on-the-record review**. This is also **FREE OF CHARGE** and is based on the administrative records and case file sent to OMHA by Maximus Federal Services.

You can ask for an OMHA review if the amount of money at issue in your appeal meets the hearing threshold. For hearings requested during 2022, the hearing threshold is \$180. This means that the cost of the service you are requesting or the amount of money you are disputing must exceed \$180. **This is not the cost of the hearing or a fee that you have to pay.**

To ask for an OMHA review, fill out the “ALJ Hearing Request Form” with this letter and send it to us. You must send the ALJ Hearing Request Form to us **within 60 days** of the date of this letter. To have an on-the-record review, also fill out the “Waiver of Right to an Administrative Law Judge (ALJ) Hearing” and send it to us.

**Maximus Federal Services will then send your request form and the case file used to decide your appeal to the OMHA office in your jurisdiction for review. Once this is done, any further communications regarding your appeal will come directly from the OMHA office.**

## How we made our decision

[All yellow highlighting is by Dr. Cordero.]

1. **We read all the papers in the file.**
2. We checked Medicare rules.
3. **We checked the contract with the Plan.**
4. If required, we sent the file to a Maximus Federal Services physician reviewer.

To make our decision we read all the papers in the file very carefully. We used the Medicare rules. We looked to see if the Plan correctly followed Medicare rules and regulations.

Medicare rules say that the Plan must give the member a subscriber agreement. It is a contract between the Plan and the member. It is usually called the “Evidence of Coverage” (EOC) or “Member Agreement.” We read this contract carefully to see **what the Plan is supposed to cover.**

## Medicare rules

The rules say that plans must pay for a medical service or item if regular Medicare would pay for it in this case. You can find this rule at 42 Code of Federal Regulations (CFR) Section 422.101.

The rules say that Medicare will not pay for dental services. Dental services are items and services involving the care, treatment, filling, removal or replacement of teeth or structures directly supporting the teeth. Medicare defines “structures directly supporting the teeth” as the periodontium, which includes the gingivae, dentogingival junction, periodontal membrane, cementum of the teeth, and alveolar process. You can find this rule in the Social Security Act, Section 1862(a)(12) and in the Centers for Medicare and Medicaid Services, Internet Only Manual, Publication 100-02, Medicare Benefit Policy Manual, Chapter 15, Section 150.

If you want to read these Medicare rules, you can go to this website [www.medicareappeal.com](http://www.medicareappeal.com).

The Plan contract says that the Plan covers items and services in accordance with Medicare rules. The Plan contract says that services are covered when medically necessary and based on the benefit limitations and clinical criteria described in the **Plan’s Office Manager Reference Manual (ORM)**. You can find this information on page 66 of the Plan’s 2021 Evidence of Coverage (EOC).

The Plan contract includes a list of covered supplemental dental services. Guided tissue regeneration (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported cast metal crown (D6062), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066) are not included on this list and is not a covered supplemental benefit. You can find this information on pages 305 to 344 of the Plan’s 2021 ORM.

## Explanation of decision

We decided that the Plan does not have to pre-approve a guided tissue regeneration (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported cast metal crown (D6062), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066).

You asked the Plan to pre-approve the guided tissue regeneration, endosteal implant, custom fabricated abutment, abutment supported cast metal crown, implant supported porcelain/ceramic crown, and an implant supported crown. The Plan denied your request. The Plan says these services are not covered under your benefit plan.

Medicare generally does not cover dental services. However, the Plan offers a dental benefit that exceeds Medicare coverage. For that reason, the Plan's coverage rules apply in this case.

Though the Plan offers a dental benefit in excess of Medicare coverage, the requested items or services are not among those covered under this benefit. Therefore, we decided that the Plan does not have to pre-approve a guided tissue regeneration (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported cast metal crown (D6062), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066).

Sincerely,

Office of the Project Director Medicare Managed Care & PACE Reconsideration Project

cc: H3330: HEALTH INSURANCE PLAN OF GREATER NEW YORK, c/o Stefanie Macialek  
New York CMS Regional Office

**ALJ HEARING REQUEST FORM**

Date: April 12, 2022

RE: Appeal Number 1 - 1081 7205 455

I request a Hearing before an Administrative Law Judge to appeal Maximus Federal Services Reconsideration Determination.

Very truly yours,

Dr. Richard Cordero, Esq.  
Signature

2165 Bruckner Blvd  
Address

Dr. Richard Cordero, Esq.  
Print Name

Bronx, NY 10472-6506  
City, State, Zip

(718)827-9521  
Telephone Number

**SOLICITUD DE AUDIENCIA ANTE EL JUEZ DE DERECHO ADMINSTRATIVO**

Fecha: \_\_\_\_\_

Ref: Número de apelación \_\_\_\_\_ - \_\_\_\_\_

Pido una audiencia ante un juez de derecho administrativo para apelar la deteminación de reconsideración de Maximus Federal Services.

Atentamente,

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Dirección

\_\_\_\_\_  
Nombre en letra de molde

\_\_\_\_\_  
Ciudad, Estado, código postal

\_\_\_\_\_  
Numero de teléfono

Mail to:  
(Enviar por correo a)

**Maximus Federal Services  
3750 Monroe Ave. Suite 702  
Pittsford, NY 14534-1302**

Maximus Federal Services  
Medicare Managed Care & PACE Reconsideration Project



**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Office of Medicare Hearings and Appeals  
REQUEST FOR ADMINISTRATIVE LAW JUDGE (ALJ)  
HEARING OR REVIEW OF DISMISSAL**

**Section 1: Which Medicare Part are you appealing (if known)?** (*Check one*)

Part A     Part B     Part C (*Medicare Advantage*) or Medicare Cost Plan     Part D (*Prescription Drug Plan*)

**Section 2: Which party are you, or which party are you representing?** (*Check one*)

- The Medicare beneficiary or enrollee, or a successor (such as an estate), who received or requested the items or services being appealed, or is appealing a Medicare Secondary Payer issue.
- The provider or supplier that furnished the items or services to the Medicare beneficiary or enrollee, a Medicaid State agency, or an applicable plan appealing a Medicare Secondary Payer issue.
- Other. *Please explain:*

**Section 3: What is your (the appealing party's) information?** (*Representative information in next section*)

Name ( <i>First, Middle Initial, Last</i> )		Firm or Organization ( <i>if applicable</i> )	
Address where appeals correspondence should be sent		City	State      ZIP Code
Telephone Number	Fax Number	E-Mail	

**Section 4: What is the representative's information?** (*Skip if you do not have a representative*)

Name		Firm or Organization ( <i>if applicable</i> )	
Mailing Address		City	State      ZIP Code
Telephone Number	Fax Number	E-Mail	

Did you file an appointment of representation (form CMS-1696) or other documents authorizing your representation at a prior level of appeal?     No. *Please file the document(s) with this request.*  
 Yes

**Section 5: What is being appealed?** *Submit a separate request for each Reconsideration or Dismissal that you wish to appeal. If the appeal involves multiple beneficiaries or enrollees, use the multiple claim attachment (OMHA-100A).*

Name of entity that issued the Reconsideration or Dismissal ( <i>or attach a copy of the Reconsideration or Dismissal</i> )		Reconsideration (Medicare Appeal or Case) Number ( <i>or attach a copy of the Reconsideration or Dismissal</i> )	
Beneficiary or Enrollee Name		Health Insurance Claim Number	
Beneficiary or Enrollee Mailing Address		City	State      ZIP Code
What item(s) or service(s) are you appealing? ( <i>N/A if appealing a Dismissal</i> )		Date(s) of service being appealed ( <i>if applicable</i> )	
Supplier or Provider Name ( <i>N/A for Part D appeals</i> )		Supplier or Provider Telephone Number ( <i>N/A for Part D appeals</i> )	
Supplier or Provider Mailing Address ( <i>N/A for Part D appeals</i> )		City	State      ZIP Code

**Section 6: For appeals of prescription drugs ONLY** (*Skip for all other appeals*)

Part D Prescription Drug Plan Name	What drug(s) are you appealing?
<p>Are you requesting an expedited hearing?  <i>(An expedited hearing is only available if your appeal is not solely related to payment (for example, you do not have the drug) and applying the standard time frame for a decision (90 days) may jeopardize your health, life, or ability to regain maximum function)</i></p> <input type="checkbox"/> No. <input type="checkbox"/> Yes. <i>On a separate sheet, please explain or have your prescriber explain why applying the standard time frame for a decision (90 days) may jeopardize your health, life, or ability to regain maximum function.</i>	

**Section 7: Why do you disagree with the Reconsideration or Dismissal being appealed?** (Attach a continuation sheet if necessary)

**Section 8: Are you submitting evidence with this request, or do you plan to submit evidence?**

I am not planning to submit evidence at this time. (Skip to Section 9, below)

I am submitting evidence with this request.

I plan to submit evidence. Indicate what you plan to submit and when you plan to submit it:

Was the evidence already submitted for the matter that you are appealing?

No. Part A and Part B appeals only. If you are a provider or supplier, or a provider or supplier that is representing a beneficiary, you must include a statement explaining why the evidence is being submitted for the first time and was not submitted previously.

Yes.

**Section 9: Is there other information about your appeal that we should know?**

Are you aggregating claims to meet the amount in controversy requirement? (If yes, attach your aggregation request. See 42 C.F.R. § 405.1006(e) and (f), and 423.1970(c) for request requirements.)  No  Yes

Are you waiving the oral hearing before an ALJ and requesting a decision based on the record? (If yes, attach a completed form OMHA-104 or other explanation. N/A if requesting review of a dismissal.)  No  Yes

Does the request involve claims that were part of a statistical sample? (If yes, please explain the status of any appeals for claims in the sample that are not included in this request.)  No  Yes

**Section 10: Certification of copies sent to other parties** (Part A and Part B appeals only)

If another party to the claim or issue that you are appealing was sent a copy of the Reconsideration or Dismissal, you must send a copy of your request for an ALJ hearing or review of dismissal to that party.

Indicate the party (or their representative) to whom and address where you are sending a copy of the request, and when the copy will be sent (attach a continuation sheet if there are multiple parties).

Name of Recipient		
Mailing Address		
City	State	ZIP Code
Date of Mailing		

Check here if no other parties were sent a copy of the Reconsideration or Dismissal.

**Section 11: Filing instructions**

Your appealed claim must meet the current amount in controversy requirement to file an appeal. See the Reconsideration or Dismissal or visit [www.hhs.gov/omha](http://www.hhs.gov/omha) for information on the current amount in controversy. Send this request form to the entity in the appeal instructions that came with your reconsideration (for example, requests for hearing following a Part C reconsideration are generally sent to the entity that conducted the reconsideration). If instructed to send to OMHA, use the addresses below.

<b>Beneficiaries and enrollees, send your request to:</b> OMHA Central Operations Attn: Beneficiary Mail Stop 1001 Lakeside Ave., Suite 930 Cleveland, Ohio 44114-1158	<b>For expedited Part D appeals, send your request to:</b> OMHA Central Operations Attn: Expedited Part D Mail Stop 1001 Lakeside Ave., Suite 930 Cleveland, Ohio 44114-1158	<b>All other appellants, send your request to:</b> OMHA Central Operations 1001 Lakeside, Suite 930 Cleveland, Ohio 44114-1158
--	--	---

We must receive this request within 60 calendar days after you received the Reconsideration or Dismissal that you are appealing. We will assume that you received the Reconsideration or Dismissal 5 calendar days after the date of the Reconsideration or Dismissal, unless you provide evidence to the contrary. If you are filing this request late, attach a completed form OMHA-103 or other explanation for the late filing.

**PRIVACY ACT STATEMENT**

The legal authority for the collection of information on this form is authorized by the Social Security Act (section 1155 of Title XI and sections 1852(g)(5), 1860D-4(h)(1), 1869(b)(1), and 1876 of Title XVIII). The information provided will be used to further document your appeal. Submission of the information requested on this form is voluntary, but failure to provide all or any part of the requested information may affect the determination of your appeal. Information you furnish on this form may be disclosed by the Office of Medicare Hearings and Appeals to another person or governmental agency only with respect to the Medicare Program and to comply with Federal laws requiring the disclosure of information or the exchange of information between the Department of Health and Human Services and other agencies.

**If you need large print or assistance, please call 1-855-556-8475**





DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Office of Medicare Hearings and Appeals

RESPONSE TO NOTICE OF HEARING

**Instructions:** Complete sections 2 through 8 below, as applicable, and return this form to the assigned Administrative Law Judge (ALJ) **within 5 days of receiving the notice of hearing**. For expedited Part D hearings, contact the ALJ at the telephone number provided at the top of the notice of hearing or complete and return this form to the assigned ALJ **within 2 days of receiving the notice of hearing**. The return mailing address and fax number are at the top of the notice of hearing. You do not need to include the notice of hearing with your response.

Please note that only a party to the hearing may call witnesses; object to the time, place, or type of hearing; object to the statement of issues to be decided at the hearing; or object to the assigned ALJ (sections 4 through 6 below). Non-party participants are not permitted to call witnesses and may not file objections.

**Section 1: Hearing information. [TO BE COMPLETED BY THE OFFICE OF MEDICARE HEARINGS AND APPEALS]**

OMHA Appeal Number 3-10817205455	Appellant Dr. Richard CORDERO, Esq.		
Type of Hearing <input checked="" type="checkbox"/> Telephone <input type="checkbox"/> Video-Teleconference (VTC) <input type="checkbox"/> In-Person	Assigned ALJ ALJ Yanohira		
Hearing Day of Week Tuesday	Hearing Date 6/14/2022	Hearing Time 10:00 AM	
Telephone Hearing Call-in Number (if applicable) (833) 419-1926	Passcode or Collaboration Code (for telephone hearing) 43358550##		
VTC or In-Person Hearing Address (if applicable)	City	State	ZIP Code

**Section 2: What is the responding party's or participant's information? (Representative information in next section)**

Name (First, Middle initial, Last) Dr. Richard Cordero, Esq.	Firm or Organization (if applicable)	Telephone Number (718) 827-9521	
Mailing Address 2165 BRUCKNER BLVD	City Bronx	State NY	ZIP Code 10472-6506

If the respondent is an entity or organization, please list all individuals who plan to attend the hearing and the capacity in which they are attending (attach a continuation sheet if necessary):

**Section 3: What is the representative's information? (Skip if you do not have a representative)**

Name	Firm or Organization (if applicable)	Telephone Number	
Mailing Address	City	State	ZIP Code

**Section 4: Will you be present at the time and place shown above? (Check one)**

I will be present at the time and place shown on the notice of hearing. If an emergency arises after I submit this response and I cannot be present, I will notify the ALJ at the telephone number shown at the top of the notice of hearing as soon as possible.

I cannot be present at the time and place shown on the notice of hearing and would like to request that my hearing be rescheduled. I understand that the ALJ has the discretion to change the time and place of the hearing as long as my explanation for my request to reschedule meets the good cause standard for changing the time and place of the hearing. (For example, good cause may be found due to an inability to attend the hearing because of a serious physical or mental condition, incapacitating injury, or death in the family or if severe weather conditions make it impossible to travel to the hearing. See 42 C.F.R. sections 405.1020(f) and (g), and 42 C.F.R. sections 423.2020(f) and (g) for additional circumstances that may establish good cause.) I understand that if I am the appellant and the hearing is postponed at my request, the time between the originally scheduled hearing date and the new hearing date is not counted toward any applicable adjudication period.

I would like to reschedule my hearing for the following date and time, and I have good cause to reschedule my hearing because:

See Part I: Upon the shocking complaint that Ms. D. Elosh, Legal Assistant to ALJ Yanohira, filed against Dr. Cordero with the Federal Protective Services!, Dr. Cordero petitions for the recusal or disqualification of ALJ Yanohira and a case transfer...

I want to waive my right to appear at the ALJ hearing. (Please complete form OMHA-104 and attach it to this response.)

**Section 5: Do you intend to call any witnesses to provide testimony at the hearing?**

- No.  
 Yes, I intend to call the following witnesses (*attach a continuation sheet if necessary*):

I can only determine whom to call after the parties answer my Statement, which I have served on them. Cf. subheading 10, *infra*

**Section 6: Do you object to any of the following conditions? (Check all that apply)**

- I object to the type of hearing scheduled.** If you are an unrepresented beneficiary or enrollee, and a telephone hearing is scheduled, you have the right to request that a VTC hearing be held instead if VTC technology is available. For all other parties, if a telephone hearing is scheduled, the ALJ may find good cause for an appearance by VTC if he or she determines that VTC is necessary to examine the facts or issues involved in the appeal.

If a telephone or VTC hearing is scheduled and the party, including an unrepresented beneficiary or enrollee, requests that an in-person hearing be held instead, the ALJ, with the agreement of the Chief ALJ or designee, may find good cause for an in-person hearing if VTC or telephone technology is not available, or if special or extraordinary circumstances exist.

I object to the type of hearing scheduled and request a (*check one*)  VTC or  in-person hearing because:

See subheading, *infra*, 8. Objection to a phone hearing and petition that it be a VTC hearing

**Note:** No explanation is required if you are an unrepresented beneficiary or enrollee requesting a VTC hearing.

- I object to the issues described in the notice of hearing.** I understand that I must send a copy of my objection to the issues to all the other parties who were sent a copy of the notice of hearing, and to CMS or a CMS contractor that elected to be a party to the hearing (if you do not have these addresses, please contact the ALJ's adjudication team at the telephone number shown in the letterhead of the notice of hearing). I understand that the ALJ will make a decision on my objection either in writing, at a prehearing conference, or at the hearing.

I object to the issues described in the notice of hearing because:

See subheadings 11-17, *infra*.

I respectfully request a list of the names of all the individuals and entities that have elected to be a party to this hearing, and that their physical and digital addresses together with their phone numbers be stated.

- I object to the ALJ assigned to my appeal.** I understand that an ALJ cannot adjudicate an appeal if he or she is prejudiced or partial with respect to any party or has an interest in the matter pending for decision, and that I may object to the ALJ assigned to my appeal for these reasons. I understand that the ALJ will consider my objection and decide whether to proceed with the appeal or withdraw. I understand that if I object to the ALJ assigned to my appeal, and the ALJ subsequently withdraws from the appeal, another ALJ will be assigned, and any applicable adjudication time frame will be extended by 14 calendar days.

I object to the assigned ALJ because:

See Part I, *infra*. Section 7: Require parties to file an answer by June 22, 2022, to my below Statement, which I served on them by May 22, 2022, and allow me to serve on them and the ALJ my reply by July 22, 2022, provided by that time the VTC hearing has been transferred out of the Phoenix office to NYC or VA, and an ALJ unrelated to that office has been assigned.

**Section 7: If you are the appellant, do you want to waive or extend the time frame to decide your appeal? (If yes, check one)**

- I want to waive the time frame for the ALJ to decide my appeal. I understand that by waiving this time frame, the ALJ does not have to decide my appeal within any applicable adjudication period that would otherwise apply.  
 I want to extend the time frame for the ALJ to decide my appeal. I want the time frame to be extended \_\_\_\_\_ calendar days beyond any applicable adjudication period. See the 2nd sentence of the paragraph above Section 7: If you...

**Section 8: Sign and date this form.**

Party, Participant or Representative Signature

*Dr. Richard Cordena, Esq.*

Date

May 31, 2022

**Privacy Act Statement**

The legal authority for the collection of information on this form is authorized by the Social Security Act (section 1155 of Title XI and sections 1852(g)(5), 1860D-4(h)(1), 1869(b)(1), and 1876 of Title XVIII). The information provided will be used to further document your appeal. Submission of the information requested on this form is voluntary, but failure to provide all or any part of the requested information may affect the determination of your appeal. Information you furnish on this form may be disclosed by the Office of Medicare Hearings and Appeals to another person or governmental agency only with respect to the Medicare Program and to comply with Federal laws requiring the disclosure of information or the exchange of information between the Department of Health and Human Services and other agencies.

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3/may22



Department of Health and Human Services  
OFFICE OF MEDICARE HEARINGS AND APPEALS  
Phoenix, AZ

Appeal of: <b>R. CORDERO</b>	OMHA Appeal No.: <b>3-10817205455</b>
Beneficiary: <b>R. CORDERO</b>	Medicare Part: C
Medicare No.: <b>*****Q8WV67</b>	Before: <b>Dean Yanohira</b> Administrative Law Judge

**ORDER DENYING REQUEST FOR ALJ RECUSAL**

The Appellant objects to the undersigned ALJ as the assigned judge for his appeal and requests that the undersigned ALJ recuse himself from the above-referenced appeal for reasons stated in his position statement dated May 21, 2022.

42 C.F.R. § 405.1026(a) states: "An ALJ or attorney adjudicator cannot adjudicate an appeal if he or she is prejudiced or partial to any party or has any interest in the matter pending for decision."

The undersigned ALJ has not had any prior personal communication, interaction or dealings with the Appellant that would cause bias or prejudice against him in any way. Any matters or communications that do not involve the undersigned ALJ directly with the Appellant will not have any impact on the impartiality and fairness of the adjudication of the Appellant's appeal.

Therefore, the Appellant's request is **DENIED**.

**MAY 27 2022**

**SO ORDERED**

Dean R. Yanohira Digitally signed by  
-S Dean R. Yanohira -S

\_\_\_\_\_  
Dean Yanohira  
Administrative Law Judge



Department of Health and Human Services  
OFFICE OF MEDICARE HEARINGS AND APPEALS  
Phoenix, AZ

Appeal of: <b>R. CORDERO</b>	OMHA Appeal No.: <b>3-10817205455</b>
Beneficiary: <b>R. CORDERO</b>	Medicare Part: C
Medicare No.: <b>*****Q8WV67</b>	Before: <b>Dean Yanohira</b> Administrative Law Judge

**ORDER WITHDRAWING AS ALJ FROM THE ABOVE-REFERENCED APPEAL**

The Appellant objected to the undersigned Administrative Law Judge (“ALJ”) as the assigned judge for his appeal and requested that the undersigned ALJ recuse himself from the above-referenced appeal for reasons stated in his position statement dated May 21, 2022.

On or about May 26, 2022, the undersigned ALJ issued an order denying the Appellant’s request for ALJ recusal for the reasons stated in the order. However, after recent events that have transpired since the undersigned ALJ issued the order denying the Appellant’s request for ALJ recusal, and after careful consideration and deliberation, the undersigned ALJ has come to the conclusion that he can no longer be impartial in the adjudication of the Appellant’s appeal.

42 C.F.R. § 405.1026(a) states: “An ALJ or attorney adjudicator cannot adjudicate an appeal if he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.”

The undersigned ALJ regrets having to disqualify himself from the above-referenced appeal. However, under these very rare circumstances, the undersigned ALJ finds that this is the only resolution for the Appellant’s appeal to be fairly and impartially adjudicated.

Therefore, the Appellant’s request is now **GRANTED** and the undersigned ALJ disqualifies himself for the above-referenced appeal.

The Appellant’s pending request for ALJ hearing will be reassigned in rotation to a new ALJ at which point he will receive written notice of the reassignment.

**SO ORDERED**

Dean R. Yanohira - Digitally signed by  
S Dean R. Yanohira -S

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Dean Yanohira  
**Administrative Law Judge**