

D seeks relief ~~from~~ in form of permanent injunction of C to prevent violation of the stay.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:]
]
 GEORGE WALTER CROSBY, JR.]
 d/b/a Crosby Brothers Drugs]
 SS #257-90-0377]
 (Chapter 11 Case #485-00683)]
]
 Debtor]
]
 GEORGE WALTER CROSBY, JR.]
 d/b/a Crosby Brothers Drugs]
]
 Plaintiff]
]
 v.]
]
 AARON J. JOHNSON,]
 Commissioner State of Georgia]
 Department of Medical]
 Assistance]
]
 CHARLIE SMITH and STATE OF]
 GEORGIA DEPARTMENT OF MEDICAL]
 ASSISTANCE]
]
 Defendants]

Adversary Proceeding
Number 487-0021

FILED

at 8 O'clock & 50 min. A.M

Date 5/27/87

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

Bona

MEMORANDUM AND ORDER

George Walter Crosby, Jr., d/b/a Crosby Brothers Drugs ("Crosby"), is a Chapter 11 Debtor before this Court, having filed on October 1985. His Plan has not yet been confirmed. More than 90% of Crosby's income is generated from receipts for Medicaid prescriptions. The Commissioner of the State of Georgia, Department of Medical Assistance ("the

Department") is obligated to reimburse Crosby on properly filed Medicaid claims. To accomplish this Crosby has been submitting his claims for reimbursement on magnetic tape where they are processed by computer. On or about December 12, 1986, the Department advised Crosby that he would no longer be allowed to file for reimbursement by this method, but would have to use a slower method known as paper claims or the hard copy method. Crosby thereupon filed this adversary seeking an injunction against the Department alleging their action violated the automatic stay by interfering with the conduct of Crosby's business. Pursuant to Summons and Notice the trial of the injunction came on as scheduled.

FINDINGS OF FACT

Crosby is enrolled as a provider of medical services to Medicaid recipients pursuant to a Statement of Participation signed by George Walter Crosby, Sr. on May 12, 1978. Some time subsequent to that, the assets of Crosby Brothers Drugs were turned over to George Walter Crosby, Jr. who became the sole proprietor and continued as a Medicaid provider under said Statement of Participation.

George Walter Crosby, Sr. also executed a "tape to tape" agreement with the Department on April 28, 1978. That

agreement allowed Crosby to submit its Medicaid claims to the Department of Medical Assistance using a magnetic tape and computer. Crosby continued operating under the tape to tape agreement signed by his father.

The Department, prior to February 27, 1985, identified abnormal claims from Crosby for central nervous systems stimulants. The Department then did a desk audit and scheduled an on-site audit for March 19, 1985. A letter dated February 27, 1985 was sent to Crosby informing him that the on-site audit was scheduled.

On March 4, 1985, at 7:52 a.m. a fire took place at Crosbys which destroyed some of the pharmacy records. This prevented the on-site audit from taking place as scheduled. The Department, then attempted to identify significant discrepancies from the desk audit.

Testimony given by the Department auditor, Richard McDonald, shows that for the year 1984 the Department identified discrepancies in five categories for a total number of 440 claims containing discrepancies out of 9,673 claims reviewed. The total dollar amount of overpayments identified because of these discrepancies was \$9,421.12. The Department decided not to pursue overpayments made in the year 1982 and 1983, but sent

Crosby a letter dated August 27, 1986, identifying the overpayment. The letter did not constitute a demand for payment.

An unannounced on-site audit was performed by the Department at Crosbys on July 19, 1986. Based on the results of that on-site audit and a desk audit for the year 1985, alleged discrepancies and overpayments were identified as follows: There were ten categories of discrepancies and the total number of claims with discrepancies was 2,916 out of 8,529 reviewed. The dollar amount of overpayments identified for the calendar year 1985 was \$58,282.52.

The letter identifying the 1985 overpayments was dated March 5, 1987. A further on-site audit was conducted on February 17, 1987, and based on that information and the Department's records, the Department's auditor, Richard McDonald, reached the conclusion that for the calendar year 1986, Crosby's overpayments were at an error rate of 82.8%, based on the number of claims in error. The claims with alleged errors represented 90.5% of the Medicaid dollars paid to Crosby for 1986. The Department offered testimony to show that Crosby ranks the highest of all pharmacy providers in Georgia with respect to the amount of overpayments he received in 1984 and 1985.

Further testimony showed that in May and June,

1986, the Department began to receive complaints from Wachtels Pharmacy and Village Pharmacy in the Savannah area that their claims for services provided to Medicaid recipients were being denied for the reason that more than six claims for that recipient for that month had already been paid.

Because of these apparent problems, the Department in late July and early August of 1986, began an abuse investigation of Crosbys. Charlie Smith, investigator for the Department, was assigned to this investigation and made his first trip to Savannah on July 29, 1986. This investigation involved interviewing recipients, interviewing other pharmacists in Savannah and reviewing the Department's records on claims submitted by and paid to Crosby as well as claims submitted by and paid to other pharmacies in the Savannah area.

The investigation revealed that there were a number of instances in which Crosby was billing for recipients for the same months in which other pharmacies were billing for those recipients. Other pharmacists in the Savannah area who were submitting claims on paper forms, were having their claims for recipients denied when they had provided service to those recipients, because more than six claims had already been presented and paid for that recipient for the month to Crosby.

The investigator obtained Medicaid cards from Crosby. He also obtained Medicaid cards for the same recipients for the same months from Wachtel, Inc., Village Rexall Pharmacy, Savannah Pharmacy, Hamilton's Apothecary and Persse's Prescription Shop. Samples of Medicaid cards from these pharmacies and the Medicaid cards from Crosby were examined by James H. Kelly of the GBI Forensic Lab. His professional opinion was that the cards submitted by Crosby were counterfeit and that the cards submitted by the other pharmacies were genuine. No evidence was offered to show the origin of the counterfeit cards.

For four recipients, Dorothy Eady, Earnestine Carson, April McPherson and Randall Peterson, Crosby submitted claims that were apparently improper, and Crosby was paid for those claims over a period of several months in 1986. No conclusive evidence was offered to prove that these improper purchases and claims that followed occurred because of Crosby's activities, or the activities of the claimants, or otherwise. Counterfeit cards could have been submitted by the recipients to Crosby without his knowing they were bogus.

Claims for Randall Peterson were received from Wachtel, Inc. and Crosby from January, 1986 through August, 1986. Some of the claims from Wachtel, Inc. were denied because Crosby had previously been paid for six prescriptions. For each of the

months involved it appears that Wachtel, Inc. provided the service, and Crosby did not. Wachtel submits Medicaid claims on paper forms which, because of the system, are not honored as rapidly as tape to tape claims submitted by Crosby. Claims were received for April McPherson from Crosby from March 5, 1986, through November, 1986. April's mother, Patricia McPherson testified she always purchased her daughter's medication, but that she did not have April's prescription filled at Crosbys during 1986.

Claims were received for Earnestine Carson from Crosby from March, 1986 through September, 1986. Ms. Carson had testified she had not been to Crosbys since March 17, 1986. She stated she had her prescriptions filled during that period of time by Don Auld Prescription Shop.

Claims were received from Village Pharmacy and from Crosby for Dorothy Eady from March, 1986, through September, 1986. Ms. Eady denied going to Crosbys after February, 1986. Some of the 1986 claims from Village Pharmacy were denied because Crosby had already been paid for six prescriptions a month for Ms. Eady during that period. Village Pharmacy also submits Medicaid claims on paper form.

From testimony given, this Court has learned

that the Medicaid system operates as follows: Each Medicaid recipient is only allowed six Medicaid paid prescriptions a month. In order to establish the right to obtain the prescriptions from pharmacies, the Medicaid recipient turns over a part of the monthly Medicaid card to the pharmacists each month in which prescriptions are needed. The recipient then goes to that pharmacy for Medicaid prescriptions during that month. All tape to tape provided claims, including those submitted by pharmacies are processed by using a computer. That computer is unable to distinguish fraudulent claims from legitimate claims, but only pays the first six pharmacy claims for any given recipient for any given month. As a result of this, other pharmacies in Savannah who submitted claims by the paper method have had their claims denied even though they actually provided service where Crosby filed claims by the tape to tape method before they submitted their paper claims.

A notice dated December 8, 1986, was sent to Crosby informing him of the Department's decision to require his claims be on hard copy forms and terminating the agreement for tape submission 30 days from the date notice was received. This is the specific act which Crosby contends violates the stay, interferes with the operation of its business, and therefore should be permanently enjoined.

The Department has further shown to the Court, if this question of fraud is to be solved, that it is necessary to take Crosby off the tape to tape method and require him to file paper or hard copy claims. This is the first step needed if it is to be finally determined whether the fraud exist with Crosby or with recipients who are obtaining counterfeit cards from some unknown source.

The Department has the absolute right, under the circumstances that exist here, to take Crosby off the tape to tape method. His activities are surely suspect. If he has committed no fraudulent acts as he contends, he must be willing to endure the filing of his claims by the hard copy method so that they might be fully examined. What the Department has done and proposes to do is in the exercise of its legitimate regulatory powers.

CONCLUSIONS OF LAW

The Department has demonstrated to this Court's satisfaction that fraud does exist as it relates to the medicaid claims submitted by Crosby. Whether this fraud originates with Crosby, or whether it exists because Medicaid recipients may be able to obtain counterfeit Medicaid cards which they then use and thereby involve Crosby and other pharmacists in fraudulent schemes, is not clear to this Court. It is obvious that the

origin of the fraudulent acts must be established. For that reason this Court in a separate Order of even date has approved the Department's right to complete its investigation of allegations of fraud and to seek criminal indictment where needed. This Court, by that Order, also approved the Department's right to proceed with appropriate action to terminate Crosby's status as a provider.

O R D E R

Pursuant to the foregoing IT IS THE ORDER OF THIS COURT that the prayer of George Walter Crosby, Jr. for permanent injunction against the Department of Medical Assistance and that he be restored to the tape to tape method of submitting Medicaid claims is denied.

ORDERED FURTHER that Medicaid claims submitted by George Walter Crosby, Jr. shall be by paper or hard copy claims until further Order of this Court.


Herman W. Coolidge
United States Bankruptcy Judge

Dated at Savannah, Georgia

this 27 of May, 1987.