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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Feds Must Cough Up Full Funding For Navajo Hospital

By **Andrew Westney**

Law360, New York (November 29, 2016, 8:02 PM EST) -- A New Mexico federal judge has ruled that the Indian Health Service must provide the remainder of about \$32 million required to fully fund a Navajo-run hospital in Arizona for fiscal year 2016, saying the U.S. Department of Health and Human Services agency illegally refused to approve the hospital's funding plan.

Navajo Health Foundation-Sage Memorial Hospital Inc., located in Ganado, Arizona, within the Navajo Nation's reservation, hit the IHS with a complaint in October 2014, seeking to force the agency to fully fund a pair of three-year Indian Self-Determination and Education Assistance Act contracts that authorize the Navajo foundation to manage the hospital, as well as funding agreements for the years 2014 through 2016.

U.S. District Judge James O. Browning granted summary judgment to the hospital on Nov. 23 on its claims for funding under the 2016 annual funding agreement, known as an AFA, and awarded damages to cover the hospital's 2016 expenses, which it had said it urgently needed to pay for its programs.

"Because the court has concluded that IHS unlawfully declined the 2016 AFA, IHS must fully fund the 2016 AFA," the judge said.

The judge didn't specify exactly how much the IHS owes the hospital after already making some payments, but a hospital attorney, Lloyd Miller of Sonosky Chambers Sachse Miller & Munson LLP, told Law360 on Tuesday that the agency still owes the hospital \$14.4 million for the 2016 fiscal year.

Judge Browning had already awarded summary judgment to the hospital on its claims that the federal government illegally declined the hospital's proposed three-year renewal contracts for fiscal years 2014-2016 and 2015-2017 and the proposed 2014 and 2015 AFAs, and ruled that those contracts and AFAs must be fully funded.

Miller called the Nov. 23 ruling "the latest in a string of stunning defeats that the Indian Health Service is suffering because it refuses to embrace the principle of collaboration and self-governance."

The hospital had urged the court at a Sept. 16 hearing to rule quickly on its claim for the 2016 AFA, saying that without full funding for 2016, the hospital wouldn't have enough money to run millions of dollars' worth of programs that the court had already approved, according to the opinion.

Judge Browning ordered the government to provide those funds in his order, ruling that the IHS was required to approve the 2016 AFA as a substantially similar successor agreement to the 2015 AFA.

While the government contended that the 2016 agreement proposal couldn't technically be considered a "successor agreement" because the 2015 proposal it stemmed from hadn't been negotiated as required by federal regulations, Judge Browning rejected that argument.

Even though the proposed 2015 agreement wasn't completed, the hospital had taken steps — including starting contract discussions and beginning to set up a transaction for program costs — that meant the agreement had been negotiated, the judge ruled.

In addition, the ISDA's purpose to encourage tribal contractors supported the hospital's case, the judge said.

The hospital recently amended its complaint to seek funding for fiscal year 2017, after the government also refused to accept the hospital's proposed AFA for that year.

The federal government does not comment on pending litigation.

The Navajo Health Foundation-Sage Memorial Hospital Inc. is represented by Stephen D. Hoffman, Craig Murdy and Jenna Gamble of Lewis Brisbois Bisgaard & Smith LLP and Lloyd B. Miller of Sonosky Chambers Sachse Miller & Munson LLP.

The federal government is represented by Karen Grohman, Devin A. Wolak and Russell J. Upton of the U.S. Department of Justice.

The case is Navajo Health Foundation-Sage Memorial Hospital Inc. v. Burwell et al., case number 1:14-cv-00958, in the U.S. District Court for the District of New Mexico.

--Editing by Jill Coffey.