

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**AMERICAN HOSPITAL ASSOCIATION,  
*et al.*,**

**Plaintiffs,**

**v.**

**SYLVIA M. BURWELL, in her official  
capacity as SECRETARY OF HEALTH  
AND HUMAN SERVICES,**

**Defendant.**

**Civil Action No. 14-851 (JEB)**

**ORDER**

Early last month, the Court granted summary judgment in favor of Plaintiffs and ordered the Secretary of Health and Human Services to reduce the Medicare-appeals backlog by certain numeric targets set through the end of 2020. Am. Hosp. Ass'n v. Burwell (AHA IV), 2016 WL 7076983, at \*3-4 (D.D.C. Dec. 5, 2016). The Secretary now brings a Motion to Reconsider under Federal Rule of Civil Procedure 59(e), arguing that reconsideration is necessary to correct a clear error and prevent a manifest injustice. See ECF No. 49 at 1. The Court will deny the Motion.

A Rule 59(e) motion is analyzed under a “stringent” standard. See Ciralsky v. CIA, 355 F.3d 661, 673 (D.C. Cir. 2004) (quoting Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (*per curiam*)). Such a motion “is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” Firestone, 76 F.3d at

1208 (quoting Nat'l Tr. v. Dep't of State, 834 F. Supp. 453, 455 (D.D.C. 1993)); see also 11 Charles Alan Wright, Arthur R. Miller, *et al.*, Federal Practice & Procedure § 2810.1 (3d ed. 2016). Rule 59(e), moreover, “is not a vehicle to present a new legal theory that was available prior to judgment,” Patton Boggs LLP v. Chevron Corp., 683 F.3d 397, 403 (D.C. Cir. 2012), or to reargue previously raised theories. Piper v. U.S. Dep't of Justice, 312 F. Supp. 2d 17, 21 (D.D.C. 2004).

The Secretary contends that reconsideration is warranted here because the Court's decision to order scheduled reductions in the appeals backlog will force her to pay pending claims without regard to their merit, which the Medicare statute does not permit. See Mot. at 2 (citing 42 U.S.C. §§ 1395f, 1395g(a), 1395y(a)(1)(A)). But Defendant's argument that she cannot comply with both the reduction targets and her statutory obligation to protect the Medicare Trust Funds is not new; it was twice urged in prior briefing. See ECF No. 41 (Defendant's Motion for Summary Judgment) at 22-23; ECF No. 45-1 (Reply in Support of Defendant's Motion for Summary Judgment) at 8-9.

The Court is not unsympathetic to Defendant's plight, nor does it take lightly the decision to intervene in an executive agency's efforts to respond to a complex problem. See Am. Hosp. Ass'n v. Burwell (AHA I), 76 F. Supp. 3d 43, 55-56 (D.D.C. 2014), rev'd Am. Hosp. Ass'n v. Burwell (AHA II), 812 F.3d 183, 192 (D.C. Cir. 2016); Am. Hosp. Ass'n v. Burwell (AHA III), 2016 WL 5106997, at \*8 (D.D.C. Sept. 19, 2016). This Court must follow the instructions of the D.C. Circuit, however, and here the standard it set out, see AHA II, 812 F.3d at 192-93, led this Court to conclude that equitable grounds existed for mandamus and that the reductions timetable was the most appropriate form of such relief.

As the Secretary argues nothing she did not raise in previous filings and has not met the exacting Rule 59(e) standard, the Court ORDERS that Defendant's Motion is DENIED.

IT IS SO ORDERED.

/s/ James E. Boasberg  
JAMES E. BOASBERG  
United States District Judge

Date: January 4, 2017