

OCT 18 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO GARCIA,

Plaintiff - Appellant,

v.

U.S. SECRETARY OF HEALTH &
HUMAN SERVICES,

Defendant - Appellee.

No. 12-55057

D.C. No. 2:10-cv-08820-PA-RZ

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted October 10, 2013**
Pasadena, California

Before: PAEZ and HURWITZ, Circuit Judges, and ERICKSON, Chief District
Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Ralph R. Erickson, Chief District Judge for the U.S. District Court for the District of North Dakota, sitting by designation.

Marco Garcia appeals a district court judgment upholding a Medicare recoupment determination by the Secretary of Health and Human Services. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Substantial evidence supports the Secretary’s conclusion that Garcia was a Medicare “provider.” Garcia applied for and obtained a six-digit Medicare billing Provider Identification Number, bills were processed under this PIN, and Medicare payment checks were made out in Garcia’s name.

2. Substantial evidence also supports the Secretary’s conclusion that Garcia is not entitled to a liability waiver. *See* 42 U.S.C. § 1395pp(a). The Secretary also reasonably found that Garcia did not act “without fault.” *See* 42 U.S.C. § 1395gg(b)(1).

3. Garcia waived any argument that the Secretary denied him due process by not raising it below. *Malhiot v. S. Cal. Retail Clerks Union*, 735 F.2d 1133, 1137 (9th Cir. 1984).

AFFIRMED.