

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

February 15, 2019

Elisabeth A. Shumaker
Clerk of Court

NEW MEXICO HEALTH
CONNECTIONS, a New Mexico non-
profit corporation,

Plaintiff - Appellee,

v.

UNITED STATES DEPARTMENT OF
HEALTH & HUMAN SERVICES, et al.,

Defendants - Appellants.

No. 18-2186
(D.C. No. 1:16-CV-00878-JB-JHR)
(D. N.M.)

ORDER

This matter is before the court on its own initiative following the opening of this appeal and review of the orders and judgment the government appellants seek to appeal; namely: (1) the district court's February 28, 2018 order [ECF No. 55] that granted in part and denied in part each side's summary judgment motion, "set[] aside and vacate[d] the agency action as to using a statewide average premium for the 2014, 2015, 2016, 2017, and 2018 rules", "remand[ed] the case to the agency for further proceedings", and dismissed New Mexico Health Connections' remaining claims with prejudice; (2) the district court's judgment [ECF No. 56]; and (3) the district court's order denying the government's post-judgment motion to alter or amend the judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure [ECF No. 90].

This court directs the parties to address with specificity in their briefs whether this court has jurisdiction to review the district court's order and judgment. *See Bender v. Clark*, 744 F.2d 1424, 1426–27 (10th Cir. 1984) (“The remand by a district court to an administrative agency for further proceedings is ordinarily not appealable because it is not a final decision.”). *But cf. Rocky Mtn. Wild v. Dallas*, Nos. 17-1366 & 17-1413 (10th Cir. Dec. 11, 2018) (unpublished) (“[T]here is a limited exception [to the administrative-remand rule] permitting a government agency to appeal [an adverse ruling immediately.]” (quoting *N.C. Fisheries Ass'n, Inc. v. Gutierrez*, 550 F.3d 16, 19 (D.C. Cir. 2008)); *W. Energy Alliance v. Salazar*, 709 F.3d 1040, 1049 (10th Cir. 2013) (recognizing that administrative-remand rule is “not without exception”); *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 697-98 (10th Cir. 2009) (recognizing that an order of remand to an agency for further proceedings may, in fact, be a “final decision” under 28 U.S.C. § 1291, depending upon the “nature of the agency action as well as the nature of the district court’s order”).

All previously established deadlines remain in effect.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lisa A. Lee
Counsel to the Clerk