

In the The Medical Fee Dispute of

Lynne Wright, Claimant

Contested Case No: H04-043

PROPOSED AND FINAL ORDER

July 7, 2004

SAFECO Insurance, Petitioner

Lynne Wright, Respondent

Before Catherine P. Coburn, Administrative Law Judge

Insurer appeals an administrative order issued on February 23, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On March 3, 2004, WCD referred the matter to the Office of Administrative Hearings (OAH). On June 29, 2004, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner Safeco Insurance (insurer) was represented by attorney David L. Bussman. Respondent Lynne Wright was represented by attorney Rory J. Linerud. Senior Claims Adjustor Dustie Lain testified on insurer's behalf and the record closed on the date of hearing.

ISSUE

The issue is whether the insurer is liable for medical services provided to claimant by Wallowa Memorial Hospital on January 18 through January 22, 2002.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 42 were admitted into the record without objection

FINDINGS OF FACT

(1) On June 6, 1998, claimant suffered as low back injury while working as a lumber cutter and grader. (Ex. 1.) Insurer accepted an acute disc herniation at L2-3 and claimant underwent surgery. (Exs. 2, 3, 4 and 7.) The claim was closed in April 1999. (Ex. 4.)

(2) On January 18, 2002, an MRI revealed a recurrent disc herniation at L2-3. (Exs. 6 and 7.) Claimant was hospitalized at Wallowa Memorial Hospital from January 18 through January 22, 2002, prior to surgery and incurred bills totaling \$6,172.70. (Exs. 9 and 10.)

(3) In March 2002, Senior Claims Adjustor Dustie Lain was assigned to the file and insurer accepted an aggravation claim. (Ex. 13.)

(4) In June 2002, the parties entered into a Claims Disposition Agreement (CDA) and the Workers' Compensation Board approved it on July 1, 2002. (Exs. 15 and 16.) At that time, insurer's electronic and paper files contained no outstanding medical bills. (Testimony of Lain.) The CDA specified, "Insurer has paid to claimant all benefits due and payable up to the date this agreement was sent to the insurer." (Ex. 15-3.) In August 2002, the parties entered into a Disputed Claims Settlement. (Ex. 17.)

(5) Insurer's standard practice for processing workers' compensation insurance billings is that the billings are received in its mail room and date stamped. The billings and the attachments, consisting of chart notes and HCFA form, are sent directly to Safeco's medical billing audit company which audits the medical billings pursuant to WCD's rules. The medical billings are then returned to insurer within one week with a form indicating the amounts to pay on each billing. When the medical billing is returned to insurer, Ms. Lain reviews the audit sheet to ensure the amounts are correct and pays the billings usually within two weeks of the submission by the medical provider. All other medical bills on the claim have been paid timely. (Ex.22; testimony of Lain.)

(6) On January 15, 2003, insurer first received the bill for medical services provided to claimant by Wallowa Memorial Hospital from January 18 through January 22, 2002. (Ex. 11-3; testimony of Laine.) On January 16, 2003, insurer's medical billing audit company received the disputed bill. (Exs. 18 and 19.)

(7) On February 5, 2003, insurer notified Wallowa Memorial Hospital that it declined to pay the disputed bill for date of service January 18, 2002 because the claim was settled by CDA and DCS. (Ex. 20.)

(8) On February 28, 2003 and on May 31, 2003, Wallowa Memorial Hospital billed claimant for the disputed medical services. (Exs. 21 and 24.) Claimant sought legal advice and on June 4, 2003, requested administrative review. (Exs. 22 and 25.)

(9) On July 3, 2003, insurer replied to WCD that it declined to pay the disputed bill because it was not in insurer's possession on or before the date of settlement. (Exs. 26-3 and 27.)

(10) In Administrative Order MS 03-722 dated August 1, 2003, MRU determined that insurer was liable for the disputed medical services pursuant to ORS 656.245 which pertains to medical services. (Ex. 31.) Insurer appealed. (Ex. 31.) The parties held a contested case hearing and on December 11, 2003, ALJ Ella D. Johnson remanded the matter to MRU for consideration under ORS 656.248 which pertains to medical fee disputes. (Ex. 36.) ALJ Johnson made a finding of fact that insurer did not receive the disputed bill until January 18, 2003. (Ex. 36-3, FF 5.)

(11) In Administrative Order MF 04-196 dated February 23, 2004, MRU determined that insurer was liable for the disputed medical services pursuant to ORS 656.248. (Ex. 38.)

CONCLUSION OF LAW

Insurer is not liable for medical services provided to claimant by Wallowa Memorial Hospital from January 18 through January 22, 2002.

OPINION

This case presents a medical fee dispute involving a self-insured employer's nonpayment of a bill for compensable medical services. The self-insured employer does not dispute that the surgery and hospitalization were compensable, reasonable and necessary. However, the self-insured employer denied bill payment on grounds of late submission. Therefore, the case arises under ORS 656.248(12). The statute does not specify a standard of review. Consequently, I review *de novo*. *Archie M. Ulbrich*, 2 WCSR 152 (1997); OAR 436-001-0225(2).

The burden of proof falls upon the proponent of a fact or position. ORS 183.450(2). In that regard, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. *Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of proof is that burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or 437 (1982) (in the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is by a preponderance of the evidence). Proof by a preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

ORS 656.245 requires a self-insured employer to provide medical services for a compensable medical condition for so long as the nature of the injury or the process of recovery requires. This obligation continues for the life of the injured worker. ORS 656.245(1)(b).

ORS 656.236 provides in pertinent part:

(1)(a) The parties to a claim, by agreement, may make such disposition of any or all matters regarding a claim, except for medical services, as the parties consider reasonable, subject to the terms and conditions as the Workers' Compensation Board may prescribe.

OAR 436-009-0010 appears under the heading "General Requirements for Medical Billings." OAR 436-009-0010(5) provides:

"(5) Billings for treatment shall be rendered at reasonable intervals not to exceed 60 days following treatment. Late billings will be subject to discounts, not to exceed 10 percent for each 30 day period or fraction thereof, beyond 60 days."

MRU determined that insurer was liable for the disputed bill. MRU rejected insurer's contention that it did not receive the bill until January 2003, approximately one year after the date of service. MRU noted, "The original hospital bill (UB92) sent by Wallowa on February 6, 2002, clearly lists both the claim number for [insurer] and the number for [the private health insurer]." In contrast, the exhibits admitted into evidence before me contain no hospital bill UB92 or any indication that Wallowa Memorial Hospital sent the bill on February 6, 2002. To the contrary, the only evidence presented is a bill date stamped by insurer as received on January 15, 2003 and received by its medical billing audit company on January 16, 2003. These dates track insurer's standard business practice for processing medical bills. Moreover, insurer's account is supported by Lain's credible testimony that the disputed bill was not contained in

insurer's electronic or paper file in July 2002 when the parties entered into settlement agreements. Finally, the CDA, which the represented claimant signed, specified that insurer had previously paid all outstanding medical bills. Based on the record, I conclude that insurer did not receive the disputed medical bill until January 2003 approximately one year after the date of service. Based on this fact, I conclude that insurer is not liable for the disputed medical bill pursuant to two legal authorities.

First, pursuant to ORS 656.236(1), when the parties execute a CDA, the insurer is liable for only those medical bills in its possession. Here, the Workers' Compensation Board approved a CDA in July 2002 and the record establishes that insurer first received the disputed medical bill in January 2003, more than six months after the CDA was finalized. Therefore, insurer is not liable for the bill.

Next, under OAR 436-009-0010(5), insurer is entitled to reduce the amount of a medical bill by ten percent for each tardy month beyond 60 days. Inasmuch as insurer first received the disputed bill approximately one year after the date of service, it owes zero on the bill. Finally, I note that claimant is not liable for the disputed medical bill. OAR 436-009-0015.¹

ORDER

IT IS HEREBY ORDERED that:

Administrative Order MF 04-196 dated February 23, 2004 is reversed.

DATED this 7th day of July, 2004.

¹ OAR 436-009-0015 appears under the heading "Limitations on Medical Billings" and provides in pertinent part: (1) An injured worker shall not be liable to pay any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436.