

In the Matter of ORS 656.248 Medical Fee Dispute of

**Jeffrey T. Wilson, Claimant**

Contested Case No: 06-076H

**PROPOSED & FINAL ORDER**

August 24, 2006

OREGON CONTRACTORS WORKERS' COMPENSATION TRUST INC, Petitioner

JEFFREY T. WILSON, Respondent

Before Robert A. Davis, Administrative Law Judge

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Hearing convened and closed in this matter on July 25, 2006, in Portland, Oregon, before the undersigned administrative law judge. Claimant was not present. Bay Area Hospital was represented by its Business Office Supervisor, Janet M. Vos. Oregon Contractors Workers Compensation Trust, Inc., and the processing agent, Empire Pacific Risk Management, Inc., were represented by their attorney, David P. Levine. Gregory Forbes was present as a party representative for Empire Pacific Risk Management.

Exhibits 1 through 18, as transferred from the Workers' Compensation Division, were admitted into evidence in this case.

**ISSUES**

The processing agent seeks review of the Department's April 5, 2006 Administrative Order that found Oregon Contractors Workers Compensation Trust liable for an additional payment to Bay Area Hospital in the sum of \$7,352.61.

**FINDINGS OF FACT**

In late August 2003, claimant struck his head on a metal scaffold while on the job. In October 2003, the processing agent issued a Notice of Acceptance for a nondisabling acute cervical neck strain. The agent later denied the compensability of cervical spondylosis, status post-1992 C5-6 cervical fusion, and C6-7 osteophyte—right.

Dr. Bert proposed surgery on claimant's cervical spine and he intended to perform the surgery in the Bay Area Hospital. The hospital was aware that claimant was hurt at work and that the claim relevant to claimant's surgery had been denied. The hospital also knew of pending workers' compensation litigation over the matter. Claimant indicated to the hospital that the surgery would be billed through his private medical insurance.

In early July 2004, Dr. Bert took claimant to surgery and addressed a disc herniation at C6-7.

On July 26, 2004, the hospital submitted a bill for \$23,304.62 to claimant's private health-insurance carrier. The private carrier reviewed the claim and later rejected it.

The hospital referred the bill to a collection agency.

In the fall of 2004, claimant and the employer/processing agent had gone to hearing on the compensability of the C6-7 disc condition. In a February 2005 Opinion and Order, an administrative law judge found the condition compensable.

On May 18, 2005, the processing agent modified its acceptance to include an acute cervical neck strain and C6-7 disc herniation combined with a “pre-existing and non-compensable” degenerative cervical osteoarthritis and spondylosis.

The collection agency used by the hospital learned at some point that claimant was, with the assistance of his attorney, pursuing a workers’ compensation claim relevant to the billing the collection agency was handling. The collection agency asked the hospital to provide an appropriate billing form, which was faxed to Empire Pacific, the workers’ compensation processing agent, on November 7, 2005.

By check dated November 14, 2005, the insurer paid the hospital the sum of \$6,000.94 as to the bill associated with claimant’s surgery and hospital stay. That left a balance of \$17,303.68 unpaid.

Empire Pacific took the position that the \$6,000 payment was gratuitous on its part, and that because of the untimely billing by the hospital, Empire Pacific owed nothing. Empire Pacific had applied the late-billing factor pursuant to OAR 436-009-0010(5) and reduced the bill to zero.

The hospital sought review of the matter with the Medical Review Unit of the Workers’ Compensation Division.

On April 5, 2006, the Workers’ Compensation Division of the Department of Consumer and Business Services issued an Administrative Order that found the Oregon Contractors Workers Compensation Trust liable for an additional payment to the hospital in the sum of \$7,352.61.

### **CONCLUSIONS OF LAW AND OPINION**

The workers’ compensation processing agent takes the position that the Bay Area Hospital submitted its bill so late that the discount provisions of OAR 436-009-0010(5) have reduced the total of the bill to zero (Exhibit 16-1). The hospital, of course, disagrees.

Prior to claimant’s surgery at Bay Area Hospital, the hospital knew claimant’s treatment arose in the context of a workers’ compensation claim. Further, the hospital knew that Empire Pacific was the processing agent for the claim and even knew the name of the claims adjuster (Exhibit 12-1). The hospital had the address for Empire Pacific. The hospital had the name and phone number of claimant’s attorney (Exhibit 12-1).

The hospital knew of a claim denial and knew that the matter was in litigation (Exhibit 12-1).

Despite all of the above-described information in the hospital's possession, the hospital did not send the billing for claimant's care to Empire Pacific, and did not do so even following rejection of the bill by claimant's private carrier in late 2004 (Exhibit 12-2). The hospital knew in the spring of 2005 that claimant had prevailed at hearing in the matter of his workers' compensation claim (Exhibit 12-2) and still did not send the billing to Empire Pacific.

Instead of billing Empire Pacific, the hospital turned the bill over to a collection agency. At some point apparently in late 2005, the collection service determined that claimant had pursued a workers' compensation claim (Exhibit 14-2) and the billing was submitted to Empire Pacific.

The treatment to claimant was rendered in early July 2004. The hospital did not submit its billing to the workers' compensation processing agent until November 2005, some 16 months following treatment.

The applicable version of OAR 436-009-0010(5) provides as follows: "Billings for treatment shall be rendered at reasonable intervals not to exceed 60 days following treatment. Late billing may be subject to discounts, not to exceed 10 percent for each 30-day period or fraction thereof, beyond 60 days, provided the medical provider has notice or knowledge of the responsible workers' compensation insurer or processing agent."

The medical reviewer for the Department interpreted the rule to mean that a provider is required to render a bill within 60 days of treatment, but the rule does not require that the insurer actually receive the bill within that time. The reviewer notes that the definition of "render" is "to present for approval, payment, etc." (Exhibit 17-2).

If "render" means to present for approval or payment, it would appear that under the rule, the billing must be presented to the insurer or processing agent. How can one present a bill for payment without providing it to the party being asked to pay it?

The medical reviewer also concluded that because the hospital had given the bill to claimant's private carrier within 60 days of treatment, the hospital timely rendered the bill within the meaning of OAR 436-009-0010(5). The rule, however, is concerned with presentation of billings to workers' compensation carriers, not to other carriers. The rule is designed to provide a timeframe within which the medical provider must present the billings for treatment to a carrier operating in the workers' compensation system. The rule does not attempt to govern the relationship between a medical provider and a carrier providing coverage other than for workers' compensation. I cannot conclude that the rule is satisfied by the hospital's provision of its billing to Regence Blue Cross (Exhibit 14-2).

The processing agent had accepted the claim in October 2003 (Exhibit 1). The dispute between claimant and the agent was over the scope of the acceptance. There is no suggestion in this record that some insurer other than Oregon Contractors Workers Compensation Trust could be responsible for the claim. The hospital knew from the outset the agent to whom billings should be directed (Exhibit 12-1). The administrative rule does not distinguish between denied and accepted claims. I conclude that the hospital should have rendered its billing to Empire

Pacific within 60 days of the treatment claimant received in July 2004. The workers' compensation carrier was entitled to discount the billing by 10% for each 30-day period following that 60 days. Because of the protracted period during which the billing should have been rendered and was not, and because of application of the discount authorized by rule, the carrier has no liability to Bay Area Hospital for this claim.

As side note, I acknowledge that counsel for the insurer/processing agent argued for application of a recent version of OAR 436-009-0010(5). I decline to apply the revised rule. It was adopted in Administrative Order 06-052, which order by its own terms made the rule changes effective as of April 1, 2006. The revised rule is inapplicable to this case in which the operative facts occurred prior to April 2006. Further, there can be no justice in requiring Bay Area Hospital in 2004 and 2005 to follow procedures that had not been adopted by rule until 2006.

### **ORDER**

IT IS HEREBY ORDERED:

The April 5, 2006 Administrative Order, MF 06-144, is reversed. Oregon Contractors Workers Compensation Trust is found to have no liability to Bay Area Hospital for this claim.