

In the ORS 656.248 Medical Fee Dispute of

June A. Black, Claimant

Contested Case No: 09-071H

PROPOSED & FINAL ORDER

December 16, 2009

INTRACTABLE PAIN CENTERS, THOMAS PURTZER MD , Petitioner

LIBERTY NORTHWEST INS CORP, Respondent

Before Bruce D. Smith, Administrative Law Judge

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to Workers' Compensation Division's Referral dated May 1, 2009. (Rec.) Hearing convened on November 18, 2009, and concluded on that date. Claimant was not present, and is not represented. Intractable Pain Centers employee Shannon McMahon was present on behalf of medical service provider Dr. Purtzer. Pacific Wood Laminates and its insurer Liberty Northwest Ins. Corp. are represented by attorney Darren W. Lee. The documentary record consists of Exhibits 1 through 13, as identified in the Division's May 21, 2009 exhibit list. The record closed on November 18, 2009, the date of hearing.

ISSUES

Issues are: (1) procedure (motion to postpone); (2) whether Liberty correctly reduced payment for the December 18, 2007 and June 8, 2007 medical services Dr. Purtzer provided; and (3) whether Liberty is liable for the May 19, 2008 through February 17, 2009 medical services Dr. Purtzer provided.

FINDINGS OF FACT

Facts Relevant to Motion to Postpone

Ms. Purtzer moves to postpone the case. She left on Monday, November 16, 2009 for Australia with her high school junior son, having just found out about the trip over the weekend. (Testimony of Shannon McMahon). Ms. Purtzer could have prepared someone else to present the case for Dr. Purtzer if she had more notice. (*Id.*).

Facts Relevant to Underlying Dispute

Claimant sustained a compensable injury on January 24, 2002, and Liberty accepted the claim as disabling bilateral CTS, left forearm contusion, left distal radius styloid fracture, left hand contractures of 3rd, 4th and 5th fingers, left arm tendon sprain. (Ex. 3-1).

Claimant sought treatment with Dr. Purtzer at Intractable Pain (Intractable Pain); and a dispute arose over several of the charges for the treatment, and Dr. Purtzer's billing.

The director found that specified additional payment was due for the following dates of service: June 8, 2007 (\$13.91); December 18, 2007 (\$13.51); July 2, 2008 (\$99.11); and February 12, 2009 (\$215.00). (Ex. 11-4). Since Liberty does not dispute these findings, a detailed

recitation of the facts regarding these charges and (partial or non-) payments is not necessary. I simply adopt and affirm the director's findings and order regarding the additional payment due.

A separate dispute arose over Dr. Purtzer's charges for special reports, billed using CPT ® code 99080 on the following dates: May 19, 2008 (\$50.00); June 25, 2008 (\$100.00); September 4, 2008 (\$125.00); November 26, 2008 (\$100.00); and February 17, 2009. (Ex. 11-2).

The director found that, since CPT ® code 99080 is used when submitting a special report, a report must accompany the HCFA form before payment is due. As there was no record that any such report(s) were submitted with the corresponding HCFA forms for the May 19, 2008 through November 26, 2008 dates of service, the director found that no payment was due. (Ex. 11-3, and -4). The director did not address the February 17, 2009 charge.

Finally, a dispute arose over Dr. Purtzer's "rebilling fees," which he charged following non-payment of previously-submitted bills, for the dates of service June 8, 2007 (Ex. 6-3), December 18, 2007 (Ex. 6-1), and July 2, 2008 (Ex. 8-3); and for the rebilling of the "special reports" submitted using CPT® code 99080 on May 19, 2008 (Ex. 8-3), June 25, 2008 (Ex. 8-3), September 4, 2008 (Ex. 8-4), and November 26, 2008. (Ex. 8-4).

Regarding the rebilling fees the director made the following findings in the April 10, 2009 Administrative Order:

"[T]here is no provision in statute or rule for charging the insurer a rebilling fee. Therefore the director concludes that Liberty is not liable for the rebilling charges Dr. Purtzer levied for dates of service from June 8, 2007 through February 17, 2009. Further Liberty is not liable for a service charge in instances where payment was issue[d], but Dr. Purtzer disagreed with payment and requested re-consideration of payment." (Ex. 11-3).

The director ordered that Liberty is liable for the additional payment for the four dates of treatment listed above; but is not liable for the special reports or the rebilling fees. (Ex. 11-4). Dr. Purtzer requested a hearing. (Ex. 12).

CONCLUSIONS OF LAW AND OPINION

Motion to Postpone

Dr. Purtzer argues that Regina Purtzer's unavailability was unavoidable due to the short notice she had regarding the trip to Australia; and that extraordinary circumstances exist, justifying postponement.

Employer argues that Ms. Purtzer's unavailability is not an emergency. In any event, the issue involves Dr. Purtzer's office, and Ms. Purtzer is not the party or an attorney; so someone else can appear if they want to pursue the appeal(s). There are no extraordinary circumstances.

I agree with employer: the unavailability of party or representative for personal reasons does not constitute extraordinary circumstances under OAR 438-006-0081(1); so the request for postponement is denied.

Scope of ALJ Review

This matter arises under ORS 656.248(12) and OAR 436-009-0008 for resolution of a dispute over payment of fees for medical services, including “rebilling fees.” (Ex. 11). The hearing is conducted under OAR 436-01.¹ Scope of ALJ review for this medical fee dispute is *de novo*. OAR 436-001-0225(1).

Alleged Non-Payment For Specified Dates of Service

Liberty does not dispute the additional charges for treatment that were ordered by the director. I find that Liberty is liable for the additional amounts: June 8, 2007 (\$13.91); December 18, 2007 (\$13.51); July 2, 2008 (\$99.11); and February 12, 2009 (\$215.00).

Provider’s Entitlement to Special Report Fees

CPT® code 99080 is to be used for special reports such as insurance forms; and does not apply to the completion of routine forms. In the case before me, however, there is no evidence to suggest that any such report(s) were submitted with the HCFA forms for the special reports that Dr. Purtzer billed using CPT® code 99080 on May 19, 2008, June 25, 2008, September 4, 2008, November 26, 2008, and February 17, 2009. Accordingly, absent evidence that any special report(s) were submitted, I agree with the director, and find that Liberty is not liable for the special reports billed for those dates.

Provider’s Entitlement to Rebilling Fees

At issue is whether Dr. Purtzer is entitled to charge and collect rebilling fees for the June 8, 2007, December 18, 2007, and July 2, 2008 dates of service (Ex. 11-1, and -2); and for the reports submitted using CPT® code 99080 on May 19, 2008, June 25, 2008, September 4, 2008, and November 6, 2008. (Ex. 11-2). Dr. Purtzer bears the burden of proving that he is entitled to charge a rebilling fee. ORS 40.105; ORS 656.283(7); OAR 436-001-0170(1).

The rule allowing a medical service provider to charge a fee for late payment of a medical bill is found at OAR 436-009-0030(7), which reads as follows:

“Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.”

¹ See OAR 436-009-0008(6).

Intractable Pain argues that Dr. Purtzer is authorized charge a flat “rebilling fee.” Employer argues that the statute and administrative rules simply do not authorize this type of fee. I agree with employer.

Intractable Pain’s office submitted two versions of its office policies. The version it sent to the Medical Reviewer provides for a “finance charge” of 1.5% per month on past due balances. (Ex. 10-3, and -5).

In a second version of its office policies, submitted with its request for hearing, Intractable Pain sets out a policy of charging a flat “rebilling fee” of \$50.00, “for all dates of serviced requiring rebilling due to non payment, partial payment, and/or incorrect payment.” (Ex. 12-5). This version of the office policy does not include mention of a “finance charge.”

There is no persuasive evidence regarding which (if either) of these two policies was in effect at the time of the disputed medical treatment. In any event, I find that Dr. Purtzer’s \$50.00 “rebilling fee” is not the equivalent of the “reasonable monthly service charge” allowed by OAR 436-009-0030(7). There is no rule authorizing a medical service provider to charge or collect a “rebilling fee” for past due accounts. Because there is no provision in the office policy of Intractable Pain for prorating the \$50.00 “rebilling fee,” it cannot be converted into a monthly charge; so it is impossible to determine on its face whether this charge is reasonable. Accordingly, the “rebilling fee” is not authorized under administrative rules.

In sum, I find that neither Liberty nor claimant is liable for the special report fees, rebilling fees, or for any further payment or charges related to the medical services provided to claimant by Intractable Pain on June 17, 2006.

ORDER

IT IS THEREFORE ORDERED that Dr. Purtzer’s motion to postpone hearing of this matter is denied.

IT IS FURTHER ORDERED that the director’s Administrative Order dated April 10, 2009 is affirmed in its entirety.