

In the ORS 656.248 Medical Fee Dispute of

Tim A. Becker, Claimant

Contested Case No: 10-055H

FINAL ORDER

December 3, 2010

INTRACTABLE PAIN CENTER, Petitioner
LIBERTY NORTHWEST INSURANCE CORPORATION., Respondent
Before John Shilts, Workers' Compensation Division Administrator

Intractable Pain Centers (IPC), a medical provider, asserts Liberty Northwest Insurance Corporation (Liberty) failed to fully and properly pay IPC for services it provided to a worker with a compensable, accepted injury. The Workers' Compensation Division's Resolution Team (RT) issued an Administrative Order on March 18, 2010, affirming Liberty's position and finding that Liberty did not owe any additional payment. Following a hearing on the matter, Administrative Law Judge Bruce D. Smith issued a Proposed and Final Order on August 3, 2010, affirming the Administrative Order and finding Liberty did not owe any additional payment. IPC now seeks director's review of these prior orders. I find no error and affirm both orders.

FACTUAL SUMMARY

Claimant Tim A. Becker (claimant) has an accepted, compensable injury. On February 3, 2010, he received treatment from Dr. Thomas J. Purtzer at IPC. Claimant received a general examination and had his urine tested for the presence of 12 drugs. The results of the drug testing were recorded in patient records that contained multiple check boxes to note the presence or absence of the drugs.

One of the forms on which the drug testing results were recorded is titled "Intractable Pain Centers – Recheck Form." (Ex. 28, p. 13) The form is dated February 3, 2010, and signed by Dr. Purtzer on page 4. (Ex. 28, pp. 13, 16) On page three of that form there is a section set off from the rest of the page by solid lines and labeled "12 Panel Drug Screen." There are two check boxes at the top of this section. One is labeled "Sent to quantify" and the other is labeled "99070 Specimen cup." The box for "99070 Specimen Cup" is checked. Beneath these two check boxes there are 12 additional check boxes labeled for the different drugs for which testing is performed.

IPC submitted a billing form to Liberty for this visit. IPC bills using standard Current Procedural Terminology (CPT) codes, promulgated and copyrighted by the American Medical Association, and adopted in the Oregon Workers' Compensation Division administrative rules concerning medical billing.¹ Three of the billing codes are the subject of the present dispute. IPC submitted code 80101, at 12 units, sixty dollars per unit, for a total of seven hundred and twenty dollars; 99091, one unit for seventy-five dollars; and 99070, one unit, for fifty dollars. (Ex. 26, p. 10)

¹ The rules adopt both the Current Procedural Terminology and the CPT Assistant. See OAR 436-009-0004(3).

On February 19, 2010, Liberty sent IPC a check for less than the billed amount, with explanations of the amounts it was disputing. IPC submitted the bill again with an added code of 99199, at fifty dollars, with a notation that this was a rebilling charge. (Ex. 26, p. 11)

The 80101 code refers to drug testing for a single drug class method. Lida Evans is a clinical bill reviewer for Liberty. She testified at the hearing that she had contacted an unidentified person in IPC's office and was told the drug test was performed using a single urine cup containing test strips for twelve drugs. Ms. Regina Purtzer testified at the hearing on behalf of IPC. She testified that the urine was collected in a plain sample cup and then tested using twelve separate test strips, one for each drug. Ms. Evans contacted RT, asking about IPC's having billed 12 units for this drug test. Ms. Evans testified at the hearing that she was told there must be a separate report for each drug and that Liberty should only pay for one test.

IPC's bill also contained a charge under 99091, which refers to collecting physiological data. Ms. Purtzer testified at the hearing that this charge was for obtaining information from the claimant at his exam, such as reviewing his medication use, conducting a pill count, recording this information, and providing it to Dr. Purtzer.

The bill also has a charge for code 99070. This code refers to materials and supplies not ordinarily included in an office visit. Liberty believed this charge was for the urine sample cup itself. Both the RT Administrative Order and the ALJ's Proposed and Final Order address this charge as though it is for the sample cup. However, on April 5, 2010, IPC submitted a document requesting an appeal for payment with reference to claimant's February 3 visit. This document states the cost of the sample cup is included under code 80101. This document states the 99070 charge is for the cost of supplies required to test for each of the 12 drugs in the drug panel. (Ex. 28, p. 5) At the hearing, Ms. Purtzer stated repeatedly that the 99070 charge was not for the urine specimen cup. Instead, Ms. Purtzer testified that this charge was for the 12 separate testing strips used to test for each drug.

In its Administrative Order, RT found IPC had used a single urine test cup containing 12 test strips, that only one report of testing results had been provided, and that Liberty should therefore pay only one charge under the 80101 code. As to the 99070 code, RT found this was a charge for the urine sample cup itself, that this cup was an integral and necessary part of the drug screening, and that a separate charge could, therefore, not be imposed for the cup itself.

RT's order explained that the code 99091 refers to collection and transmission of physiological data, digitally stored and, or transmitted. RT found no digital data was collected, stored, or transmitted, and that Liberty was not required to pay this charge.

As to the 99199 rebilling or service charge, RT found Liberty had properly paid all of the charges to which IPC was entitled. IPC was, therefore, not entitled to receive a rebilling or service fee.

Following the hearing, ALJ Smith issued his Proposed and Final Order. That order affirms RT's order and finds that Liberty does not owe IPC any additional payment.

CONCLUSIONS OF LAW

In a medical fee dispute, I review de novo. OAR 436-001-0225(1). As the party asserting error in the prior orders, IPC bears the burden of persuasion. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982); *Marvin Wood Products v. Callow*. 171 Or App 175, 183-184 (2000), superseded by statute on other grounds, ORS 19.415(3).

Code 80101, Drug Screen Fees

The text of this code states: “single drug class method (eg (sic) immunoassay, enzyme assay), each drug class.” IPC billed Liberty for 12 units under this code, at sixty dollars per unit. Liberty concluded there had been only a single test and a single report, and paid only for one unit. IPC presented testimony at the hearing that it had performed 12 separate drug tests by using 12 individual test strips. Liberty presented testimony one of its employees had spoken with an unidentified representative of IPC who told Liberty IPC tested using a single sample cup that itself contains 12 test strips. RT found there had been a single test using the 12 strip cup. ALJ Smith concluded 12 separate test strips were used, but only a single charge was warranted because there was only one report of the test results. There is additional evidence on this issue neither RT nor ALJ Smith expressly identified.

In the hearing record, Exhibit 28, at page 13, is a document titled “Intractable Pain Centers – Recheck Form.” The form is dated February 3, 2010, and signed by Dr. Purtzer on page 4. The drug test results are provided on page 3 of this form. The section in which the test results are provided contains a check box labeled “99070 Specimen Cup.” The 12 drug screening test results are reported below this heading. The “Specimen Cup” box is checked.

IPC’s subsequent explanation of the 99070 billing is contradictory. In its April 5, 2010, request for appeal of payment, and in Ms. Purtzer’s testimony at the hearing, IPC asserted the 99070 charge was for the 12 individual test strips, not for a single 12-test cup. However, on its bill submitted to Liberty, IPC identifies the price of each unit billed, and then totals the number of units to reach a total amount billed under each code. For example, the billing for 80101 shows a sixty dollar charge for each drug test administered, for a total of seven hundred and twenty dollars for the 12 units billed. However, under 99070, which IPC asserts is a billing for 12 individual test strips, only one unit is billed, at fifty dollars.

The evidence strongly suggests IPC intended to bill under the 99070 code for a single specimen cup. IPC concedes it cannot bill for a plain sample cup as this cost is included in the charge for the drug tests. The language and formatting of the office recheck form, the fact this box is checked, and the fact IPC billed for only a single unit under this code, create a strong inference IPC in fact used a single special test cup that contained the test strips. At the very least, the evidence as to whether a single 12-test cup was used, or that 12 separate test strips were used, is close to evenly balanced. IPC bears the burden of proving error on this issue. Where the evidence on an issue is equally balanced, the party bearing the burden of persuasion loses. *State v. James*, 339 Or 476, 483-484, 487 (2005). IPC has not met its burden of persuasion in establishing error on this point.

RT and ALJ Smith also found this code only allows one charge where a single report is provided. There is a piece of documenting software entitled the “CPT Assistant” that provides further explanation of how to use the CPT codes. That document states that multiple billing codes should be used where each class of drug is reported separately. In the present case, there is a question as to whether there is even a billable “report,” considering that the drug screening information was simply recorded in the chart notes for the whole visit. No separate report was generated. At the very least however, there is only a single “report” because there is no evidence the results of each drug test were separately reported. All results simply appear in the chart notes for the visit. At the least, only a single report was provided, and IPC was only entitled to submit one code for the testing procedure. Liberty does not owe any additional payment for this code.

Code 99070, Billing for Test Supplies

IPC’s bill to Liberty contains a single fifty dollar charge for code 99070. The CPT manual states this code is for:

“Supplies and materials (except spectacles), provided by the physician over and above those usually included with the office visit or other services rendered”

RT and ALJ Smith believed this charge was for the plain urine sample cup, and found the charge for this item was not appropriate under this code because the code is meant for supplies that are not inherently required in performing the procedure billed for. Ms. Purtzer testified at the hearing that this charge actually was for the 12 separate test strips used for the drug screening. She did not explain why there was only a single unit charge for the multiple strips. In any event, the charge is not appropriate under this code, whether for the cup, or the separate strips. The code explanation states this is for materials “over and above those usually included with [the] services rendered” The drug screening cannot be performed without a sample cup and test strips, whether those strips are part of the cup or constitute separate items. Neither the cup nor the strips are materials supplied “over and above” those necessary to perform the procedure that has been billed for, the drug screening. Liberty is not required to pay this charge.

Code 99091, Collection of Digital Physiological Data

The manual states this code covers charges for:

“Collection and interpretation of physiological data (eg (sic), ECG, blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient and/or caregiver to the physician or other qualified health care professional, requiring a minimum of 30 minutes of time.”

IPC’s April 5, 2010, “request for an appeal for payment” states this charge was for the time necessary to collect data to evaluate the drug screening. Ms. Purtzer testified at the hearing this charge was for the time necessary to obtain basic physical data, review the patient’s medications, conduct a pill count, and perform other steps related to conducting and interpreting the drug screening.

This charge is not appropriate under this code. By its own language, the code refers to numeric, physiological data that is digitally stored or digitally transmitted from the patient to a health care professional. The specific examples given in the manual include ECG, blood pressure, and glucose monitoring, which clearly have numeric values that can be digitally stored

and transmitted. This code refers to a situation where data is placed into digital form in order to be stored and then later provided to the physician, or where that data is remotely transmitted to the physician. There was no digital data here, and there was no storage or transmission within the meaning of this code.

In addition, IPC states this charge is for the time required to obtain and interpret data related to claimant's medication. However this time is accounted for under other charges IPC submitted. IPC charged for the office visit under code 99215. The manual states this code is for:

“Office or other outpatient visit for the evaluation and management of an established patient, which requires at least 2 of these 3 key components:

- A comprehensive history
- A comprehensive examination
- Medical decision making of high complexity

Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs.

Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 40 minutes fact-to-face with the patient and/or family.”

Given that the nature of claimant's need for medical treatment is pain and medication management, information obtained by office personnel concerning claimant's drug status and medication use would seem to be included in either a comprehensive history or a comprehensive examination. Liberty is not required to pay the charge under code 99091.

Code 99199, Monthly Service Charge

IPC billed Liberty fifty dollars for a monthly service charge applied to unpaid bills, after Liberty paid only a portion of the amount that IPC billed. As Liberty paid all that it owed, IPC is not entitled to this charge. In addition, Liberty timely paid the amounts it believed it owed and disputed the balance. This is not a case where an insurer simply failed to pay amounts it was billed. Under OAR 436-010-0008(5)(e), bills that are subject to director review are not payable until the review is resolved. Liberty is not required to pay this charge.

IT IS HEREBY ORDERED The March 18, 2010 Administrative Order, and ALJ Smith's August 3, 2010, Proposed and Final Order are affirmed.