

In the Medical Fee Dispute of

Jolene Petty, Claimant

Contested Case No: 09-127H

PROPOSED & FINAL ORDER

January 11, 2010

THOMAS PURTZER MD, INTRACTABLE PAIN CENTER , Petitioner

LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent

Before Bruce D Smith, Administrative Law Judge

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to Workers' Compensation Division's Administrative Order dated July 2, 2009. Hearing convened on November 18, 2009; and was continued to December 30, 2009. Claimant was not present, and is not represented. Regina Purtzer was present on behalf of medical service provider Dr. Purtzer. Peerless Restaurant LLC and its insurer Liberty Northwest Insurance Corporation are represented by attorney Darren W. Lee. The documentary record consists of Exhibits 1 through 13, as identified in the Division's August 19, 2009 exhibit list. The record closed on December 30, 2009, the date of final argument.

ISSUES

At issue is whether Liberty is liable for medical services, and rebilling fees from November 12, 2008 through February 9, 2009.

FINDINGS OF FACT

Claimant suffered a compensable injury, and sought treatment with Dr. Purtzer at Intractable Pain Centers (Intractable Pain). (Ex. 12-1). Intractable Pain sent Liberty charges for dates of service from November 12, 2008 through February 9, 2009; and, when Liberty did not pay, Intractable Pain requested administrative review. (Ex. 1).

On July 2, 2009 the director issued an Administrative Order, finding that Liberty was not liable for the disputed charges. (Ex. 12).

On July 30, 2009 Intractable Pain requested a hearing. (Ex. 13).

I adopt and affirm the following findings of fact from the director's Administrative Order:

"The request for Administrative Review by Intractable Pain included charges totaling \$1655.00 for dates of service November 12, 2008 through February 9, 2009. * * * The submitted record shows no supporting documentation in the record when these charges were actually applied to the account. Additionally, when the request for Administrative Review was submitted by Intractable Pain, there was no documentation submitted to support the disputed charges. On RT inquiry, specifically for the supporting documentation, Intractable Pain did not respond." (Ex. 12-3).

The record at hearing likewise does not include documentation to support the disputed charges.

CONCLUSIONS OF LAW AND OPINION

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. 12). The hearing is conducted under OAR 436-001.¹ 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

The director found that Liberty had already paid the January 6, 2009 and February 9, 2009 bills, and did not address them further. Intractable Pain agrees that the only dates of service that remain unpaid are: November 12, 2008, December 9, 2008, December 15, 2008, December 16, 2008, January 7, 2009, January 8, 2009, and February 6, 2009.

These charges are all for billings using CPT® code 99080, and for Special Report Fees (SRF), or “rebilling fees.” For the reasons that follow, I agree with the director that Liberty and claimant are not liable for these charges. (Ex. 12-1, and -2).

Charges Billed Under CPT® Code 99080

At issue is whether Dr. Purtzer properly charged medical fees under CPT® code 99080 for disputed dates of service identified in the Administrative Order. (Ex. 12-1, and -2). Dr. Purtzer bears the burden of proving that he is entitled to charge these fees. ORS 40.105.

Dr. Purtzer contends that Liberty had been demanding off work slips, treatment plans, and prior authorizations for medications, etc.; and that it is appropriate for Intractable Pain to use the CPT® code 99080 to charge the insurer for having to respond to these requests for information.

Liberty responds that Intractable Pain improperly used the 99080 code here; and that Liberty is not liable for the charges. I agree with Liberty.

CPT® code 99080 is to be used for, “Special reports such as insurance forms, more than the information conveyed in the usual medical communications or standard reporting form.”² There is no evidence in this record to suggest that Dr. Purtzer submitted any “special report(s)”

¹ See OAR 436-009-0008(6).

² Taken from **Medscape Today**, from **WebMD** website (01/11/2010); Posted: 04/13/2005; Family Practice Management. 2005;12(3):27-28. © 2005 American Academy of Family Physicians.

with the HCFA forms for which he billed using CPT® code 99080 on any of the disputed dates of service here. On the contrary, the November 12, 2008 (Ex. 1-17), and December 15, 2008 (Ex. 1-13) charges were apparently for confirming a treatment plan; the December 9, 2008 (Ex. 1-12), December 16, 2008 (Ex. 1-11), and January 7, 2009 (Ex. 1-8) charges were for providing chart notes; the January 8, 2009 charge (Ex. 1-7, and -8) was for providing chart notes and a work release; and the February 6, 2009 (Ex. 1-3) charge was for providing a work release. Under OAR 436-009-0015(2) through (4), however, medical providers may not charge separately for such things as chart notes, written treatment plans, progress notes, and work releases. Accordingly, I agree with the director, and find that Liberty is not liable for code 99080 charges billed for the dates in question.

Provider's Entitlement to "Special Report" (Rebilling) Fees

At issue is whether Dr. Purtzer is entitled to charge and collect rebilling fees of \$50 each for dates of service identified in the Administrative Order. (Ex. 12-1, and -2). Dr. Purtzer bears the burden of proving that he is entitled to charge these fees. ORS 40.105.

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), and reads as follows:

“(7) 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.”

Dr. Purtzer argues that he billed only reasonable and customary charges in this case; and that under OAR 436-009-0030(3), and 436-009-0030(7) he is entitled to levy a monthly service charge for any bill that is not paid within 45 days. Dr. Purtzer argues that his \$50 “rebilling fee” constitutes a reasonable monthly service charge.

Employer responds that Dr. Purtzer's “rebilling” fees are not the same as the reasonable monthly service charge authorized by administrative rules; and that Liberty is not liable to pay them. Again, I agree with employer.

I find that Dr. Purtzer's \$50 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. In any event, whether the \$50 rebilling fee is levied on a one-time basis, or on a monthly basis, I find that the flat-rate charge, apparently levied without regard to the underlying amount due, is unreasonable on its face. Accordingly, I find that the “rebilling fee” charged here by Intractable Pain is not authorized under administrative rules. Neither Liberty nor claimant are liable to pay these disputed charges.

Refund Issue

Finally, the director found that Liberty had paid special rebilling fees of \$50 each that were not owing for the January 14, 2009 and January 26, 2009 dates of service. (Ex. 12-4). Reasoning that Liberty's response to the Resolution Team's inquiries regarding the disputed charges constituted a request for a refund under OAR 436-009-0008(2), the director found that Liberty was therefore entitled to a refund in the amount of \$100. (*Id.*).

Liberty argues that since it paid the rebilling fees for January 14, 2009 and January 26, 2009 it is entitled to the refund; and that this part of the director's "order" should also be upheld. I disagree.

Under OAR 436-009-0008(2)(c),

"An insurer may request a refund from a provider for any amount it determines was overpaid for a compensable medical service. The insurer must make the request within 180 days of the payment date. If the provider does not respond to the request, or disagrees that a service was overpaid, the insurer may request director review within 90 days of requesting the refund."

The insurer must submit its request for administrative review in the form and format prescribed by the director; and must simultaneously notify all interested parties, including detailed information regarding the issue in dispute and the relief sought. OAR 436-009-0008(3).

This is not what happened here. In its May 26, 2009 response to the Resolution Team's Notice of Required Action on a Medical Dispute, Liberty described the two January charges it had paid, pointing out that the charges were improper due to the fact that the services provided were "part of the doctor's ongoing obligation to the worker." (Ex. 7-1). The insurer then stated, "Liberty paid \$50 for each of these services and we feel we should receive our money back." (*Id.*).

This is what the director characterizes as Liberty's request for a refund. As the foregoing administrative rule provides, however, the refund request is to be made *to the provider*. The obvious purpose of this rule is to allow the provider to review the charge, and decide whether to voluntarily refund the payment. Further, if the provider refuses to pay the refund, the insurer is required to follow the steps detailed in the administrative rules in order to seek review. None of this happened here. Accordingly, I disagree with the director's conclusion that Dr. Purtzer or Intractable Pain owes Liberty a refund.

In any event, since the refund issue is neither listed as one of the issues under review (Ex. 12-1), nor included in the order portion of the Administrative Order (Ex. 12-4), I consider the director's discussion of the matter as *dicta*; and I decline to adopt it.

Conclusion

In sum, I find that neither Liberty nor claimant is liable for the disputed code 99080 charges, special report fees, rebilling fees, or any other payment or charges related to the disputed dates of service. In affirming the director's Administrative Order, however, I take specific exception to the director's "finding" that Intractable Pain owes Liberty a refund in the amount of \$100.

ORDER

IT IS THEREFORE ORDERED that, except for the refund, the director's Administrative Order dated July 2, 2009 is affirmed in its entirety.