

In the ORS 656.248 Medical Fee Dispute of

Philip G. Howard, Claimant

Contested Case No: 09-065H

PROPOSED & FINAL ORDER

December 16, 2009

INTRACTABLE PAIN CENTER, 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. Brookings Harbor School District #17C and its insurer Liberty Northwest Ins. Corp. are represented by attorney Darren W. Lee. The documentary record consists of Exhibits 1 through 12, as identified in the Division's May 12, 2009 exhibit list. The record closed on November 18, 2009, the date of hearing.

ISSUES

Issues are: (1) procedure (motion to postpone); and (2) whether Liberty Northwest (Liberty) is liable for special report fees and medical services related to a June 17, 2006 date of service, rendered by Intractable Pain Centers (Intractable Pain).

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/Intractable Pain if she had more notice. (*Id.*).

Facts Relevant to Underlying Dispute

Claimant sustained a compensable injury to his cervical spine on November 17, 1997. (Ex. 6-1). On June 17, 2006 claimant was treated by Dr. Purtzer at Intractable Pain; and Intractable Pain billed Liberty \$155.00, using CPT® code 99214. (Ex. 2). When it did not receive timely payment Intractable Pain added a \$50.00 rebilling fee. (Ex. 3-1).

A payment voucher issued by Liberty on March 13, 2009 shows payment to Intractable Pain Centers in the amount of \$149.11 for the June 17, 2006 treatment. (Ex. 6-4). A letter accompanying the voucher indicates that the original billing had been received by Liberty on July 13, 2006; but that due to an administrative error the bill had not been timely paid. (Ex. 6-1). Liberty refused to pay the rebilling fee; and Dr. Purtzer requested review by the director.

On April 9, 2009 the Medical Reviewer issued an Administrative Order on behalf of the Workers' Compensation Division, which read in relevant part as follows:

“The director concludes that Intractable Pain was appropriately reimbursed for services rendered on June 17, 2006, and there is no additional payment due.” (Ex. 10-3).

“There are no provisions for rebilling charges under the Workers' Compensation chapters of the Oregon Revised Statutes and Oregon Administrative Rules. Since these services are not billable, they are not due and payable by any party.” (*Id.*).

“OAR 436-009-0015(1) provides the five exceptions, in which a medical provider may collect payment from an injured worker. * * * The director finds that none of these exceptions apply to this dispute.” (*Id.*).

“The director concludes that Liberty Northwest or Mr. Howard is not liable (*sic*) for any additional payment for charges related to medical services provided by Intractable Pain Center on June 17, 2006.” (Ex. 10-4).

Dr. Purtzer requested a hearing. (Ex. 11).

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)¹ and OAR 436-009-0008 for resolution of a dispute over payment of fees for medical services, including “rebilling fees.” (Ex. 10). The

¹ Although the director characterizes the initial dispute as arising under ORS 656.245 (requiring a determination of whether medical services for an accepted condition qualify as compensable medical services), I view the remaining issue as a medical fee/billing dispute, covered under ORS 656.248(12).

hearing is conducted under OAR 436-01.² Scope of ALJ review for this medical fee dispute is *de novo*. OAR 436-001-0225(1).

Alleged Non-Payment For June 17, 2006 Date of Service

At issue is whether Intractable Pain was appropriately reimbursed for claimant's June 17, 2006 treatment in accordance with the relevant CPT® code. (Ex. 10-2). Dr. Purtzer bears the burden of proving that he was not properly reimbursed. ORS 40.105; ORS 656.283(7); OAR 436-001-0170(1).

Dr. Purtzer does not contest the amount of reimbursement for the June 17, 2006 treatment; but argues that the disputed charges were not timely paid, and that it is unreasonable to have to wait until 2009 for payment of a 2006 date of service. He does not argue that the CPT® code used for payment was incorrect, or that payment for the treatment itself was improperly calculated; only that payment was untimely.

Employer urges me to affirm the administrative order: Liberty paid the amount required under the rules and in accordance with CPT® codes; and there is no evidence that the calculation is incorrect.

Under OAR 436-009-0030(3) insurers are required to pay properly submitted bills within 45 days. Although OAR 436-009-0030 (7) allows medical providers to charge a reasonable monthly service charge for bills not paid in a timely manner, there is no evidence that Intractable Pain did so here. Instead, it billed the insurer a flat "rebilling fee," in the amount of \$50.00. (Ex. 3-1, and -2). This will be discussed below.

I find that Intractable Pain was reimbursed in accordance with the relevant CPT® code in the amount of \$149.11 for claimant's June 17, 2006 treatment.

Provider's Entitlement to Rebilling Fees

At issue is whether Dr. Purtzer is entitled to charge and collect a rebilling fee of \$50.00 for the June 17, 2006 date of service. (Ex. 10-2). 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."

Dr. Purtzer argues that his "rebilling fee" is an authorized charge.

² See OAR 436-009-0008(6).

Employer responds that the statute and administrative rules simply do not authorize a flat rebilling fee; and contends that the director properly found that Liberty was not responsible to pay this charge. 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. 7-3, 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. 11-6). This version of the office policy does not include mention of a "finance charge."

There is no 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 "rebilling fee," 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 9, 2009 is affirmed in its entirety.