

In the ORS 656.248 Medical Fee Dispute of

Intractable Pain Center

Contested Case No: 10-056H

PROPOSED & FINAL ORDER

October 12, 2010

THOMAS A. PURTZER MD, INTRACTABLE PAIN CENTER, Petitioner
SPECIALTY RISK SERVICES, Respondent

Before Bruce D. Smith, Administrative Law Judge

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the provider's appeal of the Workers' Compensation Division's Amended Administrative Order dated April 8, 2010. Hearing convened on July 6, 2010, and was continued for the taking of additional evidence, and for closing argument. Claimant was not present, and is not represented. Authorized representative Regina Purtzer was present on behalf of medical service provider Dr. Purtzer, and Intractable Pain Centers (IPC). Specialty Risk Services (SRS) is represented by attorney Matthew M. Fisher. The documentary record consists of Exhibits 1 through 18, as identified in the Division's May 5, 2010 exhibit list; plus Exhibits A, B, D, F, G, H, and J, offered by IPC; and Exhibit 19, offered by SRS.

The following Exhibits (offered by IPC) were excluded: Exhibits C, E, I, K, L, M, N, and O.¹

The following Exhibits (offered by SRS) were excluded: Exhibits 20 through 23.

The record closed on September 1, 2010, the date of closing argument; then was reopened September 30, 2010 for the purpose of making written inquiry of the division in accordance with OAR 436-001-0170(9). The record re-closed on October 8, 2010, the day of receipt of the division's response.

ISSUES

The only issue is whether the insurer correctly reduced payment for medical services provided by Dr. Purtzer/Intractable Pain Center (IPC) on December 23, 2009.²

¹ There is potential for confusion regarding which exhibits were rejected, due to the fact that some of the post-hearing exhibits offered by IPC had exhibit numbers/letters matching those offered at hearing, including some which are duplicates of exhibits offered at hearing. In addition, the potential for confusion was exacerbated by IPC's failure to include a supplemental index of proposed exhibits, as required by OAR 436-001-0240(2). The exhibits which are excluded are separated and clearly identified in the exhibit packet.

² The dates of service September 7, 2009 and January 19, 2010 are no longer at issue, as the carrier agreed to pay them. See Amended Administrative Order dated April 8, 2010. (Ex. 18-3). In addition, although IPC requested in a letter dated April 5, 2010 that it be allowed to charge late payment fees for dates of service September 7, 2009, December 23, 2009 and January 19, 2010 (Ex. 17-1), these claims had not been presented for resolution to the director prior to issuance of the March 24, 2010 Administrative Order. (Ex. 16). The only date of service for which the issue of late or improper service charge had been raised was the September 30, 2009 service (Ex. 11-2); and the director dealt with that issue in the Amended Administrative Order of April 8, 2010. (Ex. 18-5). At the outset of the

FINDINGS OF FACT

Claimant sustained a compensable back injury on July 7, 2005, and SRS accepted a nondisabling low back strain. (Ex. 1). Claimant eventually came under the care of Dr. Purtzer, who conducts his medical practice as IPC.

On December 23, 2009 claimant was seen by Dr. Purtzer, who ordered a 12-panel drug screen. (Ex. 3-7). The purpose of testing is to check the patient for street drugs, plus barbiturates, benzodiazepines, methadone, etc. (Testimony of Regina Purtzer). The physician needs to make sure the patient is taking (rather than diverting) what the physician himself has prescribed; and needs to know if the patient is taking illicit drugs, or drugs prescribed by other providers. (*Id.*).

Many varieties of drug testing products (Ex. B) are approved for billing under CPT® code 80101.³ (Testimony of Regina Purtzer). Some are these single-drug tests, some are specimen cups with strips, some are dipsticks with multiple tests; supplies vary, but all are billed with the same CPT® code. (*Id.*). IPC has used a number of these products, including 12-panel specimen cups. (*Id.*).

In the drug screen conducted on claimant on December 23, 2009 Dr. Purtzer used a single, regular specimen cup; and 12 individual drugs were tested by individually dipping 12 plastic dipsticks into the specimen cup, then waiting two to five minutes to determine whether each test was positive or negative. (Testimony of Regina Purtzer). Claimant was tested for amphetamines, barbiturates, benzodiazepines, methadone, methamphetamine, opiates, oxycodone, phencyclidine (PCP), cannabinoids (THC), cocaine, propoxyphene, and tricyclic antidepressants. (Ex. 3-9). Each drug tested represents a separate class of drugs. (Testimony of Regina Purtzer). Out of the 12 drugs tested claimant was found to be positive for two; and the test results are recorded in the treatment record. (Ex. 3-9).

The plastic dipsticks are individually packaged; and for the December 23, 2009 testing here IPC used test materials distributed by American Screening Corporation. (Testimony of Regina Purtzer). IPC billed separately under CPT® code 80101 for each of the 12 drug tests, at the rate of \$60.00 apiece, for a total of \$720.00. (Ex. 5-5). SRS did not reimburse the provider, indicating that the charges would have to be resubmitted with a more appropriate CPT® code. (Ex. 4-12).

IPC also billed SRS \$50.00 for the specimen cup under CPT® code 99070 (Ex. 5-5); and SRS likewise refused to pay. (Ex. 4-12).

hearing on the instant matter IPC conceded that it was not pursuing that issue. The medical provider's claims for late payment fees on the September 7, 2009, December 23, 2009 and January 19, 2010 dates of service, however, were not presented to the carrier for payment until April 5, 2010 (Ex. 17-9 through -11); and I do not have jurisdiction to address them here. OAR 436-009-0008(2)(b)(B).

³ *Physician's Current Procedural Terminology* is a copyrighted publication of the American Medical Association. CPT® is a registered trademark of the American Medical Association.

On February 17, 2010 IPC filed a Request for Dispute Resolution. (Ex. 11).

On April 8, 2010 the director issued an Amended Administrative Order, finding that SRS was responsible for a single payment of \$60.00 for the 12-panel drug test. (Ex. 18-5). Finding that the drug screen was reimbursable a single test for 12 drugs, rather than 12 separate procedures, the director found the insurer was not liable for the remaining 11 charges of \$60.00 each. (*Id.*). Further, the director found that SRS was not responsible for the disputed \$50.00 charge for the specimen cup, because it was not a supply provided “over and above” what is usually included in the service. (Ex. 18-4, and -5).

CONCLUSIONS OF LAW AND OPINION

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. The hearing is conducted under OAR 436-001.⁴ Scope of ALJ review for this medical fee dispute is *de novo*. OAR 436-001-0225(1).

Two matters are at issue with regard to the December 23, 2009 service: (1) whether IPC is entitled to charge \$60.00 apiece under CPT® code 80101 for each of 12 separate drug screens (Ex. 18-5); and (2) whether IPC is entitled to charge separately under CPT® code 99070 for the drug screen urine specimen cup. (Ex. 18-4). IPC bears the burden of proving that it is entitled to additional reimbursement. ORS 40.105; ORS 656.283(6); OAR 436-001-0170(1).

ANALYSIS

CPT® Code 80101 Issue

The director found: “The documentation provided by Intractable Pain Center indicates a urine sample was *placed in a 12 panel cup* and the results *read off the cup* to complete the check-the-box result on the documentation.” (Ex. 18-5). (Emphasis added). Consistent with that finding, the director found that this is a single test to screen urine, and a single report of the results; and held that SRS was liable for only a single unit, in the total amount of \$60.00. (Ex. 18-5).

IPC denies that it used a 12-panel cup, and argues that under CPT® Code 80101 the provider is entitled to separate reimbursement for each “single drug tested.” According to IPC, where the provider is individually testing for 12 drug classes he is entitled to separate reimbursement for each test. IPC seeks additional reimbursement in the amount of \$660.00, representing \$60.00 each for the unpaid 11 drug screen tests.

Insurer argues that the director properly found that there were not 12 separate tests here; there was a single drug test, providing information regarding 12 separate drugs, with no quantitative analysis. The director considered this a single drug test; and this is what the CPT® code allows. According to insurer the case at bar is virtually identical to *Tim A. Becker*, 15

⁴ See OAR 436-009-0008(6).

CCHR 111 (2010): a single specimen cup was used with individual dip sticks; and a single report was generated. Insurer argues that *Becker* is controlling, and urges me to affirm the director. For the reasons that follow, I disagree with insurer.

I find *Becker* distinguishable on the facts. There is no basis in the record for the director's finding that the urine specimen here was tested by means of a 12-panel cup. According to the un rebutted testimony of Ms. Purtzer, the specimen at issue was placed in a standard urine cup, and was tested for 12 separate drugs (each representing a different drug class), by means of 12 individually-wrapped plastic rapid, dip-format devices, each of which tested the sample for a different drug/class. Although a similar question regarding charges under CPT® Code 80101 was addressed in *Becker*, conflicting testimony and arguably inconsistent findings of fact there, regarding whether a 12-panel specimen cup had been used, limits its value as precedent. In any event, I rely here upon the director's response to my request for specific interpretation of the administrative rule at issue, as discussed below.

On September 30, 2010 the undersigned wrote to the director,⁵ asking for the director's interpretation of the CPT® code provisions incorporated by *former* OAR 436-009-0004(3),⁶ which is at issue here. In particular, the director was asked whether a provider who individually tests 12 drugs/classes from a single specimen cup, and produces a single report with individual qualitative results for each drug/class, is entitled to separate reimbursement for each of the 12 tests.

In his October 6, 2010 response WCD Medical Section Manager Kevin Willingham, writing on behalf of the director, indicated that under the version of CPT® code 80101 that was in effect prior to July 1, 2010 (which includes the date of the treatment at issue here) each of the individual tests would be considered separately reimbursable. Accordingly, I find that SRS is liable for additional payment with regard to the drug screen test/reporting.

Insurer notes that the advertisements for the American Screening Corporation products that IPC uses demonstrate that the average reimbursement rate for a 12-panel cup is \$20.83 (Ex. 19-6); and argues that there is no justification for IPC to use the individual tests, rather than the more cost-effective 12-panel cup. Insurer points out that under ORS 656.248 the reasonableness of markup rates is one of the factors to be considered in determining reimbursement; and contends that the American Screening Corporation product literature is the only evidence that addresses this statutory language. Finally, insurer contends that even if IPC is entitled to separate reimbursement for each test, according to American Screening Corporation the average reimbursement rate shown for the individual test materials used by IPC here is \$19.72. (Ex. 19-11, -16, -18, -22, -25, -28). SRS contends that \$19.72 is a reasonable reimbursement, rather than the \$60.00 billed by IPC.

⁵ See OAR 436-001-0170(9), which authorizes the ALJ to submit written questions regarding the division's interpretation of applicable statutes or rules.

⁶ Amended 5/21/09 as WCD Admin. Order 09-050, eff. 7-1-09.

IPC argues that the relevant administrative rules require the payor to reimburse the provider his regular fee; and contends that IPC's regular \$60.00 charge is reasonable. For the reasons that follow, I agree with IPC that it is entitled to \$60.00 reimbursement for each test.

The statute cited by insurer vests the director, not the board and its hearings division, with responsibility for developing and publishing fees schedules for medical services. ORS 656.248(1). Here the director found that the \$60.00 charged by IPC was an appropriate fee for a single unit (Ex. 18-5); and I defer to the director's finding. *See Mershon v. Liberty Northwest Ins. Corp.*, 96 Or App 223, *rev den* 308 Or 315 (1989) (director's interpretation of administrative rules within agency's special expertise is generally entitled to deference). Accordingly, I find that the insurer is liable for an additional 11 units at \$60.00 apiece, or \$660.00.

CPT® Code 99070 Issue

The director found that SRS is not liable for separate payment for the specimen cup, finding that it "is not a supply provided 'over and above' what is usually included in the service." (Ex. 18-4, and -5).

IPC contends that under CPT® code 99070 it is entitled to bill for the urine specimen cup used in the drug screen. IPC notes that the specimen cup is a single supply not intended to be used by more than one person, and is reimbursable as under OAR 436-009-0080(4) at the provider's usual rate. IPC's usual rate for the specimen cup is \$50.00.

SRS agrees with the director that the drug test cannot be administered without the specimen cup, and it is not something the provider furnishes "over and above" what is usually included in a drug screen test; so the provider cannot charge extra for it. I agree with insurer.

I find that the urine specimen cup is an integral part of the drug screen service, and is not furnished "over and above" what is usually included in the service. In making this finding I note that the director is entitled to deference with regard to the director's interpretation of Division rules. *Mershon v. Liberty Northwest Ins. Corp.*, *supra*. Accordingly, I find that SRS is not liable for payment with regard to the drug screen specimen cup.

ORDER

IT IS THEREFORE ORDERED that the director's Amended Administrative Order dated April 8, 2010 is modified. That part of the director's order that held that insurer is not liable for payment of the additional \$660.00 in fees levied by IPC with regard to the 11 unreimbursed drug screen procedures under CPT® code 80101 is reversed; and the insurer is ordered to reimburse IPC for these charges, in the amount of \$660.00. That part of the director's order that held that insurer is not liable for payment of the \$50.00 fee levied by IPC with regard to the drug screen specimen cup under CPT® code 99070 is affirmed.