

In the ORS 656.248 Medical Fee Dispute of

Melena K. Kotsios, Claimant

Contested Case No: 09-122H

PROPOSED & FINAL ORDER

February 16, 2010

THOMAS J. PURTZER MD , Petitioner

CRAWFORD & COMPANY, 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 16, 2009. Hearing convened on November 17, 2009, and the record was closed; but the record was reopened upon the ALJ's motion, and was continued for the taking of additional evidence and closing argument on January 19, 2010. Claimant was not present, and is not represented. Regina Purtzer appeared on behalf of medical service provider Dr. Purtzer. Cinemark USA Inc. and its insurer Crawford & Company are represented by attorney Linda Attridge. The documentary record consists of Exhibits 1 through 18. The record closed on January 19, 2010.

ISSUES

The only remaining issue is Dr. Purtzer's rebilling fees for the April 8, 2008 date of service.

FINDINGS OF FACT

Claimant suffered a compensable injury on December 7, 2000; and thereafter came under the care of Dr. Purtzer and Intractable Pain Centers (Intractable Pain). (Ex. 16-1). When a dispute arose over medical billings, including charges and payments related to claimant's April 8, 2008 date of service (*Id.*), Intractable Pain sought dispute resolution from the Workers' Compensation Division (division). (Ex. 4).

On July 16, 2009 the medical reviewer, acting under director's authority, found that Broadspire had issued payment in accordance with the fee schedule for, *inter alia*, the office visit of April 8, 2008. (Ex. 16-2).

Further, the medical reviewer held that there is no provision in the statute or rules for charging the insurer a rebilling fee; and concluded that Broadspire is not liable for the rebilling fees charged by Dr. Purtzer for, *inter alia*, the April 8, 2008 date of service. (*Id.*).

On July 29, 2009 Intractable Pain timely requested a hearing. (Ex. 15-2).

Regina Purtzer is the office manager for Intractable Pain, and handles medical billing for the office. (Testimony of Regina Purtzer). She agreed that the only remaining dispute is over billing and payment related to the April 8, 2008 date of service. (*Id.*). According to Ms. Purtzer the carrier paid the April 8, 2008 bill incorrectly: on May 14, 2008 the carrier paid \$135.60 (Ex.

17-4); but then waited 13 months, until July 11, 2009, to pay the remaining \$28.31 (Ex. 17-6) that was due under the Oregon medical fee schedule.

Ms. Purtzer testified that the office policy on late payment falls under OAR 436-060-0030, and was implemented on January 1, 2008. (Testimony of Regina Purtzer). Under the policy Intractable Pain charges \$50 per month for all late payments; and the policy applies to all patients of the office. (*Id.*).

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, including "rebilling fees." (Ex. 16). 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).

At issue is whether Dr. Purtzer is entitled to charge and collect rebilling fees of \$50 per month for each month the carrier delayed in paying the proper amount for the April 8, 2008 date of service. 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).

Dr. Purtzer concedes that the only date of service at issue is April 8, 2008: the initial payment of \$135.60 was timely paid; but the carrier waited until July 11, 2009 to pay the remaining \$28.31 that was due. Since the residual payment was 13 months late, Dr. Purtzer argues that Intractable Pain is entitled to charge and collect \$650 (13 months x \$50) in monthly service fees.

The carrier responds that the \$50 per month rebilling fee is not a reasonable monthly service charge, but a special report fee (SRF); and there is no provision in the statute or rule for a SRF (or a rebilling fee). The carrier notes that in its Worksheet (Ex. 4-3) Intractable Pain characterizes the \$50 supplemental charge for the April 8, 2008 date of service as "SRF."

The carrier argues further that in the request for review Dr. Purtzer did not allege entitlement to a service charge; and that, in any event, there is no written service charge policy in the record. Further, the carrier notes that while a reasonable monthly service charge is allowed by the administrative rules, such a charge is not collectible for withholding of disputed payment pending review, as discussed in the Administrative Order. (Ex. 16-2). The carrier urges me to affirm the director. I agree with the carrier.

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:

¹ See OAR 436-009-0008(6).

“(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.”

I find that Dr. Purtzer’s \$50 per month “rebilling fee,” special report fee, or service charge, however it is characterized, is not the equivalent of the “reasonable monthly service charge” allowed by OAR 436-009-0030(7). A “reasonable monthly service charge” has to bear some relation to the amount due. Here, Dr. Purtzer’s attempt to charge and collect a \$650 fee over the carrier’s failure to pay a disputed charge of \$28.31 for 13 months is manifestly unreasonable.

I find that Intractable Pain has failed to carry its burden of proof.

ORDER

IT IS THEREFORE ORDERED that the director’s Administrative Order dated July 16, 2009 is affirmed in its entirety.