

In the ORS 656.248 Medical Fee Dispute of

**Anna M. Durbin, Claimant**

Contested Case No: 10-094H

**PROPOSED & FINAL ORDER**

January 21, 2011

OREGON NONPROFIT EMPLOYERS TRUST, Petitioner

ANNA M. DURBIN, Respondent

Before Nicholas M. Sencer, Administrative Law Judge

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Pursuant to notice, the hearing was scheduled to convene on September 8, 2010 in Portland, Oregon before Administrative Law Judge Nicholas M. Sencer. By agreement of the parties, the case was submitted for decision based on the admitted exhibits and written closing arguments. Scott M. McNutt, Sr. represents claimant. David P. Levine represents the employer, Eastco Diversified, its insurer, Oregon Nonprofit Employers Trust, and its processing agent, Empire Pacific Risk Management Inc. Exhibits 1 through 23 are admitted into the record. The record closed on January 3, 2011, following unrecorded telephonic continued closing arguments.

**ISSUES**

The employer requested a hearing to challenge the May 19, 2010 Order of the Resolution Team, Medical Section, Worker's Compensation Division (WCD). The issue concerns whether the employer is liable for medical services provided on May 2 and 3, 2007 by Providence St. Vincent Medical Center and Portland Adventist Medical Center.

**STANDARD OF REVIEW**

The Administrative Order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues shall be admitted. ORS 656.327(2).

**STATEMENT OF FACTS**

The following facts are not in dispute and are taken from the Administrative Order. Claimant sustained a compensable injury on May 2, 2007. On May 2 and 3, 2007, claimant sought medical treatment at Portland Adventist Medical Center. (Ex 1). On May 3, 2007, claimant sought medical treatment at Providence St. Vincent Medical Center. (Ex 11). Both institutions sent their billing statements to claimant's private health insurer, Kaiser Health Plan of the Northwest (Kaiser), which paid for the services.

On April 15, 2009, Portland Adventist prepared an invoice for the subject services that Empire Pacific received on April 20, 2009. (Ex 1) This invoice was titled "rebill" and reflects charges of \$5,645.09, payments of \$4,798.33, adjustments of \$846.76 and a balance due of zero. On April 23, 2009, Providence St. Vincent prepared an invoice that Empire Pacific received on April 30, 2009. (Ex 2). This invoice documents services rendered in the amount of \$714.10.

On May 1, 2009, Oregon Health Systems, on behalf of Empire Pacific, advised Providence that its bill in the amount of \$714.10 for services rendered on May 3, 2007, was not payable pursuant to OAR 436-009-0010(5)(c), because it was rendered over twelve months after the date of service. (Ex 10).

On May 13, 2009, Healthcare Recoveries, on behalf of Kaiser, wrote to Empire Pacific and demanded reimbursement in the amount of \$5,699.65 for the subject medical services. (Ex 11). On March 18, 2010, claimant requested administrative review based on Empire Pacific's refusal to pay the Adventist bill in the amount of \$5,645.09. (Ex 15).

On May 19, 2010, the WCD issued an administrative order that provides,

"The director orders the Oregon Nonprofit Employers Trust is liable for the May 3, 2007, medical services Providence St. Vincent Medical Center and Portland Adventist Medical Center provided."  
(Ex 21, p 3).

The WCD's medical reviewer based her decision on the following factual finding, "Based on the record submitted for review, it is reasonable that initially Providence and Adventist were not aware of the responsible insurer and became aware of the responsible insurer in May 2009 when it billed Empire." (Ex 21, p 3)

### CONCLUSIONS OF LAW AND OPINION

Pursuant to OAR 436-009-0003(1), the administrative rules governing medical fee payments "apply to all services rendered on or after the effective date of these rules." Since the medical services at issue were rendered on May 2 and May 3, 2007, the applicable rule is OAR 436-009-0010(5), (Order Number 06-052, effective April 1, 2006), which provides:

"Medical providers must send billings for medical services within 60 days of the date of service. Late billings may be discounted by the insurer up to 10 percent of the remaining balance if the medical provider has received notice or knowledge of the responsible worker's compensation insurer or processing agent. The discount may be taken every 30 days for late billings." (Emphasis added).

As I understand the WCD's order, the medical reviewer concluded that the Providence and Adventist billings, although presented to Empire Pacific well beyond 60 days of the dates of service, are not subject to being discounted because there is no evidence in the record that Providence or Adventist received notice or had knowledge of the responsible workers' compensation insurer or processing agent prior to April 2009.

The employer argues that the medical reviewer's conclusion is not supported by substantial evidence. It asserts that Kaiser, the insurer which initially paid for the subject services, must have had notice of the "appropriate claims administrator" because claimant's "treatment at Providence St. Vincent was actually through Kaiser Occupational Health." I understand this argument to be that Kaiser was the actual provider, and because it had timely

notice of the workers' compensation insurer or processing agent, it is subject to the discounting rule.

I have found no evidence in the record that Kaiser had knowledge or notice of the existence of a workers' compensation insurer or processing agent in May 2007. However, even if there were such evidence, it would not support the employer's argument. The rule is clear; it is the medical provider, not a medical insurer, which must present its bill within 60 days of notice or knowledge of the workers' compensation insurer. Since the medical providers at issue are Providence and Adventist, the facts on which the medical reviewer based her conclusion are supported by substantial evidence. Moreover, applying these facts to the applicable rule, I conclude that the medical reviewer's conclusion does not reflect an error of law. Accordingly, the administrative order will be affirmed.

### **Attorney Fee**

Claimant is entitled to an assessed attorney fee pursuant to ORS 656.385(1). That statute provides that the attorney fee must be based on all work the claimant's attorney has done relative to the proceeding at all levels before the department, that it must be proportionate to the benefit to the injured worker, and that primary consideration be given to the results achieved and to the time devoted to the case. Moreover, the assessed attorney fee may not exceed \$3,000 absent a showing of extraordinary circumstances.

Claimant's attorney asserts that he devoted three hours to this case and that his associate devoted 13.2 hours. Having considered the applicable factors, I award claimant's attorney \$3,000.

### **ORDER**

IT IS HEREBY ORDERED that the May 19, 2010 Administrative Order MF 10-0480 is affirmed.

IT IS FURTHER ORDERED that pursuant to ORS 656.385, the employer and its processing agent are assessed an attorney fee in the amount of \$3,000, to be paid directly to claimant's attorney.