

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FAIRPAY SOLUTIONS, BROADSPIRE)	
SERVICES, INC., and CRUM)	
SERVICES,)	
)	
Petitioners,)	
)	
vs.)	Case No. 06-1463
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent,)	
)	
and)	
)	
MIAMI BEACH HEALTHCARE GROUP,)	
LTD., d/b/a AVENTURA HOSPITAL)	
AND MEDICAL CENTER.,)	
)	
Intervenor.)	
<hr style="width: 40%; margin-left: 0;"/>)	

ORDER CLOSING FILE

This case is before the undersigned on Aventura Hospital's Motion to Relinquish Jurisdiction to Agency For Health Care Administration for Entry of a Final Order, filed June 30, 2006. Petitioners filed a response in opposition to the motion on July 7, 2006. The Agency supports the motion. A hearing was held on the motion on July 17, 2006.

Section 120.57(1)(i), Florida Statutes, provides that "[a]n order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists." The movant has the burden to demonstrate that there are no disputed issues of material fact, and all reasonable doubt as to the existence of a factual dispute must be resolved in favor of the non-movant.

This case involves a reimbursement dispute under Section 440.13(7), Florida Statutes. The case was referred to the Division of Administrative Hearings based upon the Petition for Administrative Hearing filed by Petitioners in response to the Determination issued by the Agency on March 13, 2006, which states in pertinent part:

[I]t is not permissible for adjustments to be made to reimbursement on criteria other than those specified in the applicable [reimbursement manual].

Inasmuch as the carrier has waived all objections to the petition, the Agency finds that the [explanation of bill review form] filed with the petition does not provide a valid reason for the carrier's adjustment of reimbursement.

Based upon the [reimbursement manual] and the above analysis, it is hereby determined that the carrier improperly adjusted payment. The [provider] billed \$10,068.00. The correct reimbursement is \$7,551.00 (75% of \$10,068.00).

Section 440.13(7), Florida Statutes, provides in pertinent part:

(a) Any health care provider . . . who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 30 days after receipt of notice of disallowance or adjustment of payment, petition the agency to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the agency results in dismissal of the petition.

(b) The carrier must submit to the agency within 10 days after receipt of the petition

all documentation substantiating the carrier's disallowance or adjustment. Failure of the carrier to timely submit the requested documentation to the agency within 10 days constitutes a waiver of all objections to the petition.

(c) Within 60 days after receipt of all documentation, the agency must provide to the petitioner, the carrier, and the affected parties a written determination of whether the carrier properly adjusted or disallowed payment. The agency must be guided by standards and policies set forth in this chapter, including all applicable reimbursement schedules, practice parameters, and protocols of treatment, in rendering its determination.

* * *

§ 440.13(7), Fla. Stat. (emphasis supplied).

The parties did not cite any judicial decisions construing Section 440.13(7)(b), Florida Statutes. That provision was not implicated in any of the administrative decisions provided at the motion hearing because, in each of those cases,¹ the carrier responded to the petition filed by the provider. The undersigned's research did not locate any judicial or administrative decisions in which Section 440.13(7)(b), Florida Statutes, was implicated. Thus, the issue framed by the motion appears to be one of first impression.

It is undisputed that the provider, Aventura Hospital, filed a petition with the Agency and properly served the petition in accordance with Section 440.13(7)(a), Florida Statutes. It is also undisputed that no response to the petition was filed by the employer/carrier or anyone on its behalf pursuant to Section 440.13(7)(b), Florida Statutes. See Affidavit of Lori Intravichit, at ¶ 9 (filed July 10, 2006).

Petitioners contend that there are disputed issues of material fact regarding whether the Determination issued by the Agency on Aventura Hospital's petition is consistent with the "standards and policies set forth in [Chapter 440, Florida Statutes], including all applicable reimbursement schedules, practice parameters, and protocols of treatment" as required by

Section 440.13(7)(c), Florida Statutes. However, Petitioners do not have standing to raise the issue in this proceeding because they "waive[d] all objections to the petition" by not filing a response to the petition with the Agency.² See § 440.13(7)(b), Fla. Stat. Therefore, it is

ORDERED that:

1. The final hearing scheduled for August 17-18, 2006, is hereby cancelled.

2. The file of the Division of Administrative Hearings in this case is closed, and jurisdiction is hereby relinquished to the Agency for entry of a final order consistent with its March 13, 2006 Determination.

DONE AND ORDERED this 18th day of July, 2006, in Tallahassee, Leon County, Florida.



T. KENT WETHERELL, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of July, 2006.

ENDNOTES

1/ Specialty Risk Services v. Agency for Health Care Admin., 25 FALR 3973 (AHCA 2003); CNA Insurance Cos. v. Agency for Health Care Admin., 24 FALR 1304 (AHCA 2003); Wyatt Bros. Construction v. Dept. of Labor & Employment Security, DOAH Case No. 00-2572, Agency Case No. 01-025-DWC (Partial Recommended Order Dec. 13, 2000; Recommended Order May 10, 2001; Final Order June 11, 2001).

2/ In light of this ruling, it is not necessary to determine whether Fairpay and Broadspire are proper parties in this proceeding. But cf. Furtick v. William Shults Contractor, 664 So. 2d 288, 290 (Fla. 1st DCA 1995) ("[T]he health care provider (or facility) and the employer/carrier are the parties with the legal interest affected by utilization review."). It is also unnecessary to determine whether the Agency satisfied its obligations under Section 440.13(7)(c), Florida Statutes, by simply reviewing the bills submitted by the provider against the reimbursement manual (as Aventura Hospital and the Agency contend is appropriate) or whether the Agency must undertake a more comprehensive evaluation even if the carrier failed to do so (as Petitioners contend is required).

COPIES FURNISHED:

Joanna Daniels, Esquire
Agency for Health Care Administration
Workers' Compensation Medical Services
200 East Gaines Street
Tallahassee, Florida 32399-4229

Tamela I. Perdue, Esquire
Stiles, Taylor & Grace, P.A.
Post Office Box 1140
Tallahassee, Florida 32301

Richard M. Ellis, Esquire
Rutledge, Ecenia, Purnell &
Hoffman, P.A.
215 South Monroe Street, Suite 420
Post Office Box 551
Tallahassee, Florida 32304-0551

Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

William Roberts, General Counsel
Agency for Health Care Administration
Fort Knox Building, Suite 3431
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308