STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NORTHSIDE HOSPITAL AND HEART INSTITUTE,	)	
Petitioner,	)	
vs.	)	Case No. 10-10210
DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF WORKERS' COMPENSATION,	)	
Respondent,	)	
and	)	
PINELLAS COUNTY SCHOOLS,	)	
Intervenor.	)	

RECOMMENDED ORDER

Pursuant to notice, on November 7, 2011, a formal hearing in this cause was held in Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioners: Joseph William May, Esquire
Bacen and Jordan, P.A.
4801 South University Drive, Suite 3100
Davie, Florida 33328

For Respondents: Mari H. McCully, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399-4229

For Intervenor: Debi Hershner, Qualified Representative
InterCare Medical Management, Inc.
250 East Park Avenue
Lakes Wales, Florida 33853

STATEMENT OF THE ISSUE

Whether $2,557.95, in charges submitted by Petitioner for payment, were improperly disallowed by the carrier pursuant to section 440.13, Florida Statutes (2009).[1/]

PRELIMINARY STATEMENT

In May 2010, Petitioner, Northside Hospital and Heart Institute (Northside Hospital), provided services to Patient M.P. (M.P.), who sustained a compensable injury while working for her employer, Pinellas County Schools (Intervenor). Northside Hospital submitted for payment a bill in the amount of $51,829.60 for services rendered to M.P. The bill submitted by Northside Hospital was audited by Pinellas County Schools, and $2,620.39 of the total charges submitted was disallowed. By stipulation of the parties, it was agreed that some of the charges that were originally disallowed should not have been, and, accordingly, the disallowed amount, for purposes of the instant proceeding, is $2,557.95.

On August 16, 2010, Northside Hospital filed with the Department of Financial Services, Division of Workers' Compensation (Division), a Petition for Resolution of Reimbursement Protest. Subsequently, on October 5, 2010,

Northside Hospital filed with the Division a Petition for Administrative Review and/or Hearing (Petition). On November 12, 2010, the Petition was referred by the Department of Financial Services to the Division of Administrative Hearings for a disputed fact hearing and the issuance of a recommended order.

A Notice of Hearing by Video Teleconference was issued setting the case for formal hearing on February 3 and 4, 2011. On January 20, 2011, the parties filed an Agreed Motion to Continue Final Hearing, and the same was granted. This cause was then rescheduled for final hearing on April 21 and 22, 2011.

On April 13, 2011, the parties, during a case management teleconference, moved, ore tenus, that the case be placed in abeyance. The motion was granted. On May 26, 2011, the abeyance was lifted, and the matter was scheduled for final hearing on August 19, 2011.

On August 10, 2011, this cause was transferred to the undersigned. On August 12, 2011, Northside Hospital filed an Unopposed Motion for Continuance. The motion was granted, and the final hearing was rescheduled for November 7, 2011.

At the hearing, Northside Hospital presented the testimony of Mavourneen Watson. Neither the Division, nor Pinellas County Schools, offered witness testimony. Joint Exhibits A through H were admitted into evidence.

A Transcript of the proceeding was filed with the Division of Administrative Hearings on November 16, 2011. The parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The following facts, as reflected in the parties' supplemental joint pre-hearing statement and as set forth in this paragraph, are stipulated to by the parties:

(A) Petitioner is a Florida licensed hospital and is a "health care provider" within the meaning of section 440.13(1) and Florida Administrative Code Rule 69L-7.602.

(B) Petitioner billed Intervenor $51,829.60 for pre-authorized inpatient surgery rendered to an injured employee/claimant on May 13, 2010.

(C) Intervenor is a carrier within the meaning of section 440.13(1) and rule 69L-7.602(1).

(D) Petitioner's bill complies with applicable state and federal requirements, including rules 69L-7.602(4)(b) and 69L-7.100, which incorporate by reference the Florida Workers' Compensation Reimbursement Manual for Hospitals.[2/]

(E) Petitioner received payment from Intervenor in the amount of $6,768.00. Intervenor's payment was

attached to an Explanation of Bill Review (EOBR) issued by Johns Eastern Company, Inc., "on behalf of the carrier and all affected parties."

(F) As for explaining Intervenor's bases for disallowance or adjustment of payment, the EOBR advised Petitioner, as to each line item charge, as follows:

> Charge exceeds Fee Schedule allowance.
>
> Payment adjusted: payment modified pursuant to [Intervenor] charge analysis.
>
> Paid: no modification to the information provided on the medical bill: payment made pursuant to Florida Workers' Compensation Reimbursement Manual for Hospitals.
>
> Nurse Review audit of this bill brought the allowed charges below the $51,400.00 stop-loss point. This is being paid at the per diem rate for surgery per the Florida Workers' Compensation reimbursement manual for hospitals 2006, 2nd revision.

(G) Payment was also accompanied by documentation of a bill audit (also documented as a "nurse review") which was conducted by InterCare Medical Management, Inc. (InterCare). The InterCare audit determined that the Hospital's total billed charges of $51,829.60 should be reduced by $2,620.39[3/] for a number of charges which InterCare determined

were not documented in the medical records, were duplicate charges, or were not medically necessary.

(H) The most significant finding of the InterCare audit was $2,547.00 in charges for time spent in the post-anesthesia care unit (PACU), which InterCare alleged was not medically necessary. Based upon such findings, InterCare advised Johns Eastern that "total payment should be $6,768.00 as compared to $37,747.88 if you had paid that at the regular fee schedule."

(I) For its services, InterCare was paid $7,994.97.

2. On March 8, 2010, M.P. injured her back while performing work-related duties for her employer, Pinellas County Schools. Due to the severity of M.P.'s injury, surgical intervention was necessary.

3. Prior to M.P.'s surgery, her physician prepared "post-anesthesia orders" which established the general treatment parameters for her post-anesthesia recovery. The physician's post-anesthesia orders directed, in part, as follows: that M.P. should be admitted to the PACU; that the "PACU Protocol for Vital Signs" should be followed; and that prior to discharge from the PACU, the patient should "[m]eet PACU discharge criteria with Aldrete score of 8 or above."[4/]

4. On May 13, 2010, M.P. reported to Northside Hospital to have surgery performed on her fractured lumbar vertebra. Upon admission to the hospital, it was noted that M.P. had previously experienced anesthesia-related nausea and vomiting. M.P. was placed under general anesthesia and at 3:46 p.m., the surgeon commenced the operation. Upon completion of the operation, M.P.'s surgeon left the operating room at 4:09 p.m. There were no complications encountered during the surgery, and when transferred to the PACU, M.P. was in stable condition. For billing purposes, 4:09 p.m., was the start-time for the initial hour of PACU time.

5. M.P. arrived in the PACU at 4:24 p.m., and remained there until 8:00 p.m. While in the PACU, M.P. was evaluated by medical staff at regular intervals. There was no testimony offered during the final hearing by any member of the PACU medical staff that had responsibility for monitoring M.P. while she was in the PACU.

6. Upon initial PACU assessment at 4:24 p.m., it was noted that M.P. denied experiencing pain and was able to move all of her extremities with equal strength bilaterally. At 5:00 p.m., M.P. was resting quietly and napping at intervals with stable vital signs. At 5:20 p.m., M.P. complained of level 7 pain in her lower back and was administered Dilaudid, per post-anesthesia orders, to help her with pain management. At

5:30 p.m., M.P. was turned onto her left side in an attempt to make her more comfortable. At 5:55 p.m., M.P. was given additional Dilaudid in an attempt to further alleviate her pain, which by this time had decreased to a rating of level 5. At 5:55 p.m., M.P. also complained of pain radiating into her right hip and thigh. At 6:30 p.m., it was noted that M.P. had been sleeping, and according to the patient, was feeling much better. At 6:30 p.m., the following was also noted in M.P.'s chart: "have been waiting for room assignment, but there is still none available . . . both [patient and] family aware." Twenty minutes later, at 6:50 p.m., it was noted that there was no change in M.P.'s condition, and her vital signs remained stable. At 7:10 p.m., it was noted that M.P. complained of nausea, and per post-anesthesia orders, she was given Zofran. M.P. reported at this time that her low back pain had decreased to a rating of level 3 and that the pain in her right hip and thigh had completely resolved. M.P.'s family was allowed to visit her in the PACU at 7:30 p.m., because the PACU was "still waiting for a bed assignment." At a point-in-time between 7:30 p.m., and 7:39 p.m., a nursing supervisor called the PACU and advised that M.P. would be transferred out of the PACU to room 103. The final PACU assessment of M.P. was performed at 7:40 p.m., when it was noted that M.P. reported that her "nausea has subsided, but [was] not entirely gone" and that her assessment was

otherwise unchanged, her vital signs were stable, and she had only mild discomfort in the area of her back where the surgery occurred. M.P. did not vomit during the nearly four hours that she received care in the PACU.

7. While in the PACU, M.P.'s PAR score was assessed a total of 14 times in 15-minute intervals. Between 4:26 p.m. and 7:25 p.m., M.P.'s PAR score was consistently rated at level 9. At 7:40 p.m., M.P.'s PAR score increased to a level 10 as a result of her level of consciousness increasing from a rating of level 1 to a rating of level 2.

8. Petitioner's internal policy RR-P-25 (PACU policy) is the hospital's written policy statement governing the PACU. The policy provides that the purpose of the PACU is "[t]o provide intensive management of the post anesthetic patient and/or post procedure patient." Because M.P. received a higher level of skilled nursing care while in the PACU, Petitioner charged more for these nursing-related services as compared to the nursing services that M.P. received when transferred out of the PACU.

9. Petitioner's PACU policy sets forth the following criteria for discharge from the PACU:

> A. A final nursing assessment and evaluation of the patient's condition will be performed and documented. The post anesthesia nurse shall discharge the patient in accordance with the criteria and data collected through use of the nursing process.

1. The patient has regained consciousness.
2. The airway is clear and danger of vomiting and aspiration is past.
3. Circulatory and respiratory vital signs are stabilized.
4. Post anesthesia recovery score (PAR) [of] 8, 9, or 10.

B. When discharge criteria is [sic] not fully met the anesthesiologist must be notified for a direct order to discharge the patient.

10. Petitioner billed for the PACU services provided to M.P. in one-unit increments where the first unit represents one hour of service and each additional unit represents 30 minutes of service. For PACU services provided to M.P., Petitioner billed for seven units at a total cost of $7,310.00. The first unit was billed at $2,216.00 with each remaining unit billed at $849.00.

11. With respect to the billed services, the following disallowed charges are in dispute: the final three units of PACU services ($849.00 x 3 = $2,547.00); Cefax sodium 500mg ($9.95); and Hydrocodone/APAP 5/500 ($1.00).

12. The first discharge criterion of the PACU policy provides that the patient must have regained consciousness. The stipulated evidence shows that M.P. was conscious at 4:24 p.m., upon initial transfer to the PACU. Other than occasional periods of napping, M.P., at all times while in the PACU, remained conscious as reflected in her PAR scores.

13. The second element of the PACU discharge criteria requires that the patient have a clear airway and that there is no longer a danger of vomiting and aspiration. Petitioner offered no evidence which suggests that at any time during M.P.'s stay in the PACU, there was concern about her airway being obstructed. Of course, it is of general knowledge that an individual's airway can become obstructed by vomit under certain circumstances. However, in the instant case, there is nothing in the PACU notes that supports a reasonable inference that the PACU nursing staff had concerns about M.P.'s not having a clear airway.

14. As for the portion of the criteria that requires that the danger of vomiting must have passed, it is undisputed that at 7:10 p.m., M.P. complained of nausea and was treated for this complaint with Zophran. At 7:40 p.m., M.P. was still experiencing nausea, but was, nevertheless, cleared for transfer out of the PACU at 7:45 p.m., a mere five minutes later. Upon arrival at her non-PACU room, M.P. "promptly vomited and the receiving nurse placed [a] call to Dr. Nematbakhsh," M.P.'s surgeon. M.P. was neither returned to the PACU following the vomiting episode, nor was she reassessed to see if she had been prematurely discharged from the PACU. Instead, the vomit was cleaned, M.P. was placed in her newly assigned non-PACU room, and the PACU nurse that transported M.P. to her non-PACU room

transferred M.P. to the care of non-PACU staff. Accordingly, M.P.'s onset of nausea at 7:10 p.m., did not justify her remaining in the PACU for approximately another 45 minutes.

15. The third PACU discharge criterion requires that "circulatory and respiratory vital signs" be stabilized. M.P., during the entirety of her stay in the PACU, received the highest possible PAR-related scores for respiration and circulation. Clearly, M.P.'s circulatory and respiratory vital signs were stable.

16. The fourth PACU discharge criterion requires that the patient must have a PAR of level 8, 9, or 10 in order to be eligible for discharge from the PACU. As previously noted, M.P.'s PAR score never fell below a nine during the entirety of her stay in the PACU.

17. Petitioner offered the testimony of Mavourneen Watson, who currently works for Petitioner in the capacity of regional manager for revenue integrity. Petitioner did not offer any testimony regarding Ms. Watson's job duties, responsibilities, training, or experience as it relates to her current position. Although Ms. Watson indicated that she is a registered nurse, there was no testimony elicited from her detailing the nature of any specialized knowledge, skills, or experience that she possesses, or whether she has received any special training that

would otherwise qualify her to offer opinion testimony in the present case.

18. Ms. Watson reviewed M.P.'s medical records. Based upon her review of the records, Ms. Watson offered opinion testimony that it would have been medically inappropriate to discharge M.P. from the PACU at any time prior to 7:45 p.m., because prior to this time, M.P. was experiencing nausea and vomiting and her pain level was not under control. The undersigned rejects Ms. Watson's medical opinion testimony, because Petitioner failed to establish that Ms. Watson is qualified to render such an opinion.[5/]

19. Ms. Watson also offered opinion testimony regarding Petitioner's contention that the $1.00 charge for Hydrocodone/APAP 5/500 should be allowed as a part of Petitioner's claim for payment. Ms. Watson opined that the $1.00 charge should be allowed because M.P.'s medical records show where she was given "Vicodin 5/500 PO prn for pain" and "Hydrocodone is the [same as] Vicodin." It may indeed be the case that Hydrocodone is the same as Vicodin. However, because Petitioner failed to establish that Ms. Watson is qualified to offer opinion testimony regarding the pharmacological composition of Hydrocodone and Vicodin, her opinion in this regard cannot be accepted.

20. Ms. Watson also offered opinion testimony in support of Petitioner's contention that the $9.95 charge for Cefax sodium 500mg should be allowed as part of Petitioner's claim for payment. Ms. Watson testified that M.P.'s hospital records show where she was administered Cefazolin and that this drug is the same as Cefax. As with the Hydrocodone, discussed supra, Petitioner has also failed to establish that Ms. Watson is qualified to offer opinion testimony regarding the pharmacological composition of Cefax and Cefazolin. Accordingly, Ms. Watson's opinion in this regard cannot be accepted.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2011).

22. The general rule is that "the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Section 440.13, the controlling statute, is silent as which party bears the burden of proof. In the instant dispute, Northside Hospital, by alleging that it is owed money, is the party asserting the affirmative. Consequently, Northside Hospital bears the burden of establishing by a preponderance of the evidence its

entitlement to the payment which it seeks.[6/] See Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Young v. Dep't of Cmty. Aff., 625 So. 2d 831, 834 (Fla. 1993); Espinoza v. Dep't of Bus. & Prof'l Reg., 739 So. 2d 1250, 1251 (Fla. 3d DCA 1999); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); and § 120.57(1)(j)("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute . . . .").

23. A preponderance of the evidence is defined as "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1. (Fla. 2000).

24. Section 440.13(1)(t) and (6), provides as follows:

> (1)(t) "Utilization review" means the evaluation of the appropriateness of both the level and the quality of health care and health services provided to a patient, including, but not limited to, evaluation of the appropriateness of treatment, hospitalization, or office visits based on medically accepted standards. Such evaluation must be accomplished by means of a system that identifies the utilization of medical services based on practice parameters and protocols of treatment as provided for in this chapter.

* * *

> (6) Utilization review.--Carriers shall review all bills, invoices, and other claims for payment submitted by health care providers in order to identify overutilization and billing errors, including compliance with practice parameters and protocols of treatment established in accordance with this chapter, and may hire peer review consultants or conduct independent medical evaluations. Such consultants, including peer review organizations, are immune from liability in the execution of their functions under this subsection to the extent provided in s. 766.101. If a carrier finds that overutilization of medical services or a billing error has occurred, or there is a violation of the practice parameters and protocols of treatment established in accordance with this chapter, it must disallow or adjust payment for such services or error without order of a judge of compensation claims or the department, if the carrier, in making its determination, has complied with this section and rules adopted by the department.

25. Petitioner failed to offer sufficient evidence to satisfy its burden of proving that it was appropriate for M.P. to remain in the PACU from 6:30 p.m., until the time of her discharge from the PACU at 8:00 p.m. Accordingly, the three additional units of PACU charges totaling $2,547.00 were properly disallowed.

26. Petitioner also failed to offer sufficient evidence to satisfy its burden of proving the appropriateness of the $1.00

charge for Hydrocodone and the $9.95 charge for Cefax sodium 500 mg.

RECOMMENDATION

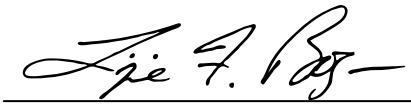
Based on the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED that Respondent, Department of Financial Services, Division of Workers' Compensation, enter a final order:

1. Finding that the $2,557.95 in charges submitted by Petitioner, Northside Hospital and Heart Institute, for payment was properly disallowed by Intervenor, Pinellas County Schools; and

2. Dismissing the Petition for Administrative Review and/or Hearing filed by Northside Hospital and Heart Institute.

DONE AND ENTERED this 13th day of December, 2011, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of December, 2011.

ENDNOTES

[1/] All references to Florida Statutes are to the 2009 edition, unless otherwise indicated.

[2/] This purported stipulation sounds more in the nature of a conclusion of law. Accordingly, it will not be treated as a stipulation of fact, but, instead, as an issue of law upon which the parties agree, as contemplated by the Order of Pre-Hearing Instructions issued herein.

[3/] The parties stipulated at the commencement of the hearing that this amount should have been amended and that the actual disallowed amount in dispute is $2,557.95.

[4/] The Aldrete score is synonymous with the post anesthesia recovery score (PAR). The PAR score is a numerical quotient derived from assessing a patient's activity, respiration, circulation, consciousness, and color. Each of these respective categories is assigned a value range of between zero and two. The scores from each category, when totaled, represent the patient's PAR score.

[5/] Section 90.702, Florida Statutes, provides as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

[6/] There is no presumption that a PACU patient remains ineligible for discharge (i.e., does not meet discharge criteria) until such time as a formal discharge assessment occurs. To allow for such a presumption would result in the ultimate burden of proof being impermissibly shifted to a party other than Northside Hospital.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.