

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FFVA MUTUAL INSURANCE COMPANY,)
)
Petitioner,)
)
vs.) Case No. 12-1065
)
DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF WORKERS')
COMPENSATION,)
)
Respondent,)
)
and)
)
OKEECHOBEE HOSPITAL, INC.,)
d/b/a RAULERSON HOSPITAL,)
)
Intervenor.)
_____)

RECOMMENDED ORDER

On May 15, 2012, an administrative hearing in this case was held by video teleconference in Orlando and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Julie Lewis Hauf, Esquire
Law Office of Julie Lewis Hauf, P.L.
15880 Summerlin Road, Suite 300
PMB 315
Fort Myers, Florida 33908

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

For Intervenor: Richard M. Ellis, Esquire
Rutledge, Ecenia and Purnell, P.A.
119 South Monroe Street, Suite 202
Post Office Box 551
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this case is whether the Petitioner should be required to pay \$300 as workers' compensation reimbursement for medical services provided to a patient.

PRELIMINARY STATEMENT

On January 20, 2012, the Department of Financial Services, Division of Workers' Compensation (Department), issued a Reimbursement Dispute Determination directing FFVA Mutual Insurance Company (Petitioner) to pay a \$300 reimbursement claim submitted by Okeechobee Hospital, Inc., d/b/a Raulerson Hospital (Raulerson), for services provided to Patient C.D. (Patient). The Petitioner, having previously declined to pay the claim, filed a Petition for Administrative Hearing (Petition) to challenge the Department's determination. On March 21, 2012, the Department forwarded the Petition to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

Raulerson filed a Petition to Intervene on April 13, 2012, that was granted on April 19, 2012.

At the hearing, a Motion for Taking Official Recognition filed by Raulerson on May 10, 2012, was granted. Joint Exhibits 1 through 8 were admitted into evidence. The Petitioner presented the testimony of one witness. The Department presented no witnesses. Raulerson presented the testimony of three witnesses and had Exhibit 11 admitted into evidence.

A Transcript of the hearing was filed on June 25, 2012. Proposed recommended orders were due on July 5, 2012. The Department and Raulerson filed a Joint Proposed Recommended Order on that date. The Petitioner submitted a Proposed Recommended Order after normal business hours on July 5, 2012, and it was docketed as filed at 8:00 a.m. on July 6, 2012, pursuant to Florida Administrative Code Rule 28-106.104(3).

On July 9, 2012, Raulerson filed a Motion to Strike the Petitioner's Proposed Recommended Order on grounds that it was not timely filed. In response, the Petitioner filed a Motion for Acceptance of Filing on July 10, 2012. Upon review of the motions, the Motion to Strike is hereby denied. Both proposed recommended orders have been considered in the preparation of this Recommended Order.

Prior to the hearing, the parties filed a Joint Pre-hearing Stipulation containing a statement of admitted facts that have been adopted and are incorporated herein as necessary.

FINDINGS OF FACT

1. Raulerson is an acute care hospital in Okeechobee, Florida, owned by Okeechobee Hospital, Inc.

2. Raulerson's licensed premises includes the acute care hospital building and an additional building that contains a physical therapy department and an outpatient clinic identified as "Company Care."

3. Company Care provides occupational health and workers' compensation services to employees working for participating employers. The clinic operates as a department of the hospital and is staffed by salaried employees of the hospital. The ambulatory care services provided at the clinic are hospital services pursuant to Florida Administrative Code Rules 59A-3.065(4) and 59A-3.2085(7).

4. The Patient suffered a compensable injury on August 4, 2011, and was treated on that date at the Raulerson emergency room.

5. On August 8 and 15, 2011, the Patient went to the Raulerson outpatient clinic for evaluation and to have a non-surgical wound dressing changed or removed.

6. Using a standard hospital billing form known as a UB-04, Raulerson submitted a single \$400 bill to the Petitioner. The bill contained a separate \$200 charge for each of the two outpatient service dates.

7. The Florida workers' compensation program refers to the UB-04 form as a DFS-F5-DWC-90 form.

8. Although the Petitioner attempted to assert at the hearing that the outpatient services had not been fully authorized, the stipulation filed by the parties prior to the hearing clearly stated that the services were authorized by the Petitioner and that there are no issues of medical necessity presented in this case.

9. The Petitioner declined to pay the bill for the outpatient visits and issued an Explanation of Benefits Review (EOBR) form that provided the following coded explanation for its decision:

64-PAYMENT DISALLOWED: BILLING ERROR: SERVICE
"NOT COVERED" UNDER APPLICABLE WORKERS'
COMPENSATION REIMBURSEMENT MANUAL.

* * *

5218-FACILITY CHARGE FOR TREATMENT ROOM OR
CLINIC VISIT HAS BEEN IMPROPERLY BILLED
PURSUANT TO NATIONAL UNIFORM BILLING MANUAL
GUIDELINES. PROFESSIONAL SERVICES RENDERED
FOR FACILITY BASED PHYSICIAN ARE TO BE BILLED
ON APPROPRIATE FORM. NO ADDITIONAL
REIMBURSEMENT GRANTED FOR FACILITY FEE.

10. The standard billing form used by health care professionals to file for reimbursement of medical claims is a CMS-1500 form (identified as the DFS-F5-DWC-9 form by the Florida workers' compensation program).

11. Essentially, the Petitioner has asserted that Raulerson should have submitted bills for the outpatient services on a professional services billing form rather than on a hospital billing form.

12. The apparent effect of submitting the charges on the hospital billing form rather than the professional services billing form was to increase the reimbursement rate paid for the services.

13. There was no credible evidence that Raulerson's use of the hospital billing form violated any applicable requirements of the Florida workers' compensation program.

14. The Petitioner has previously paid similar claims that were submitted on the UB-04 hospital billing form.

15. Florida Administrative Code Rule 69L-7.501 incorporates by reference, the Florida Workers' Compensation Manual for Hospitals (2006 Edition), which, states, in relevant part, as follows:

Section X: Outpatient Reimbursement

A. Reimbursement Amount

Except as otherwise provided in this Section, hospital charges for services and supplies provided on an outpatient basis shall be reimbursed at seventy-five percent (75%) of usual and customary charges for medically necessary services and supplies, and shall be subject to verification and adjustment in accordance with Sections XI and XII of this manual.

* * *

Section XI: Disallowed, Denied and Disputed Charges

* * *

B. Physician Services

The insurer shall not reimburse a hospital for physician services when billed by the hospital on the hospital billing form. Proper billing and reimbursement of physician services rendered in any location, including inside a hospital, shall be in accordance with the requirements of rules 69L-7.602 and 69L-7.020.

16. Rule 69L-7.602 is the Florida Workers' Compensation Medical Services Billing, Filing and Reporting Rule.

17. Rule 69L-7.602(4)(c) requires that hospitals submit bills using Form DFS-F5-DWC-90 (the hospital billing form).

18. Rule 69L-7.602(4)(b)4.b. states as follows:

Outpatient billing--Hospitals shall in addition to filing a Form DFS-F5-DWC-90:

I. Enter the CPT[®], HCPCS or workers' compensation unique code and the applicable CPT[®] or HCPCS modifier code in Form Locator 44 on the Form DFS-F5-DWC-90, when required pursuant to the UB-04 Manual; and

II. Make written entry "scheduled" or "non-scheduled" in Form Locator 80 of Form revision 2006--'Remarks' on the DFS-F5-DWC-90, when billing outpatient surgery or outpatient surgical services; and

III. Attach an itemized statement with charges based on the facility's Charge Master; and

IV. Submit all applicable documentation required pursuant to Rule 69L-7.501, F.A.C.;

V. Bill professional services provided by a physician or recognized practitioner on the Form DFS-F5-DWC-9, regardless of employment arrangement. (emphasis supplied).

19. Rule 69L-7.602(1)(nn) sets forth the following relevant definition:

"Recognized Practitioner" means a non-physician health care provider licensed by the Department of Health who works under the protocol of a physician or who, upon referral from a physician, can render direct billable services that are within the scope of their license, independent of the supervision of a physician.

20. The services in this case were provided by an advanced registered nurse practitioner (ARNP), a recognized practitioner as defined by the rule. The coding on the bill submitted to the Petitioner by Raulerson indicated that the services were provided in a clinical setting (Revenue Code 510) by a recognized practitioner (CPT Code 99211).

21. Review of the bill by the Department indicated that the charge for services attributed to "Revenue Code 510" was a "facility fee" rather than a professional services fee.

22. Raulerson did not submit a bill for the professional services provided to the patient on August 8 and 15, 2011, by the ARNP. No specific charges for physician services were included on the bill at issue in this proceeding.

23. Whether rendered on an inpatient or outpatient basis, the provision of hospital-based services routinely entails the services of medical professionals.

24. The evidence failed to establish that Raulerson was legally required to submit a bill for professional services or that the bill at issue in this case should have been submitted on a professional services billing form.

CONCLUSIONS OF LAW

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

26. The Department is the state agency charged with the responsibility for resolving disputes related to utilization and reimbursement in the Florida workers' compensation program. § 440.13(7), Fla. Stat. In this case, the Department determined that the Petitioner's refusal to reimburse Raulerson was improper.

27. Section 440.13 does not address which party bears the burden of proof in this proceeding. 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). Accordingly, Raulerson, as the party asserting that it is owed money, bears the burden of establishing entitlement to the payment by a preponderance of the evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); also see § 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. . . ."). 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. Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942); Gross v. Lyons, 763 So. 2d 276, 280 n.1. (Fla. 2000). Raulerson has established, by a preponderance of the evidence, that it is entitled to be reimbursed for seventy-five percent (75%) of usual and customary charges for medically necessary services and supplies pursuant to Section X, Subsection A, of the Florida Workers' Compensation

Manual for Hospitals (2006 Edition), which, in this case, is \$300.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services, Division of Workers' Compensation, enter a final order affirming the Reimbursement Dispute Determination dated January 20, 2012, wherein the Department directed FFVA Mutual Insurance Company to pay a \$300 reimbursement claim filed by Raulerson Hospital.

DONE AND ENTERED this 25th day of July, 2012, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of July, 2012.

COPIES FURNISHED:

Julie Jones, CP, FRP, Agency Clerk
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

Julie Lewis Hauf, Esquire
Law Office of Julie Lewis Hauf, P.L.
15880 Summerlin Road, Suite 300
PMB 315
Fort Myers, Florida 33908

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

Richard M. Ellis, Esquire
Rutledge, Ecenia and Purnell, P.A.
119 South Monroe Street, Suite 202
Post Office Box 551
Tallahassee, Florida 32301

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.