

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HIALEAH HOSPITAL,)
)
Petitioner,)
)
vs.)
)
DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF WORKERS')
COMPENSATION,) Case No. 12-2583
)
Respondent,)
)
and)
)
ASSOCIATED INDUSTRIES INSURANCE)
COMPANY,)
)
Intervenor.)
)
_____)

RECOMMENDED ORDER

On January 22, 2013, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

Petitioner: Lorne S. Cabinsky, Esquire
The Law Offices of Lorne S. Cabinsky, P.A.
3020 Northeast 32nd Avenue, Suite 201B
Fort Lauderdale, Florida 33308

Respondent: Mari McCully, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4229

Intervenor: James T. Armstrong, Esquire
Nathan Stravers, Esquire
Walton Lantaff Schroeder & Carson LLP
200 South Orange Avenue, Suite 1575
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue is whether Respondent properly dismissed Petitioner's Petition for Resolution of Workers' Compensation Reimbursement Dispute, pursuant to section 440.13(7), Florida Statutes.

PRELIMINARY STATEMENT

On June 8, 2012, Petitioner filed with Respondent a Petition for Resolution of Reimbursement Dispute (Petition). Petitioner allegedly provided services to an injured employee from March 2-8, 2012, pursuant to an unscheduled emergency room admission, for which it filed a claim for reimbursement of \$21,611.20. On May 29, 2012, Petitioner allegedly received from Intervenor an Explanation of Bill Review (EOBR) that denied the claim for reimbursement. The Petition objects to the denial on the cited ground of a lack of authorization because authorization allegedly was not required for an unscheduled emergency room admission, under Florida Administrative Code Rule 69L-7.602.

By Workers' Compensation Medical Services Reimbursement Dispute Dismissal dated June 14, 2012 (Dismissal), Respondent

dismissed the Petition on the cited ground that Petitioner had not submitted an EOBR. Petitioner timely requested a formal hearing.

At the hearing, Petitioner called five witnesses and offered into evidence four exhibits: Petitioner Exhibits 1, 3, 8, and 9. Respondent called no witnesses and offered into evidence one exhibit: Respondent Exhibit D, which consisted of the envelope and UB-04 from what was originally filed as Petitioner Exhibit 2. Intervenor called no witnesses and offered into evidence two exhibits: Intervenor Exhibits 1 and 2, which were originally filed as Petitioner Exhibits 8 and 9. The parties jointly offered two exhibits: Joint Exhibits A and B. All exhibits were admitted.

The parties did not order a transcript. Respondent and Intervenor filed proposed recommended orders on February 22, 2013, and Petitioner filed a proposed recommended order on February 25, 2013. The Administrative Law Judge has treated Petitioner's proposed recommended order as timely filed.

FINDINGS OF FACT

1. At all material times, C. G. was employed by Solo Printing, Inc., which had workers' compensation coverage through Intervenor.

2. On March 2, 2012, C. G. was injured at work as a result of falling onto his knee during a fight with a coworker. C. G.

was transported from the worksite by ambulance to Petitioner's hospital, where he was admitted. Later the same day, C. G. underwent emergency surgery to his knee. He was discharged from the hospital on March 8, 2012.

3. On April 2, 2012, Petitioner billed Intervenor for services rendered to C. G. during his hospitalization. On May 11, 2012, Intervenor issued a Notice of Denial. On June 8, 2012, Petitioner filed with Respondent the Petition. On June 14, 2012, Respondent issued the Dismissal.

4. Intervenor's Notice of Denial cites three grounds for denying payment for the bill: section 440.09(3), which prohibits compensation for injuries to an employee "occasioned primarily" by his willfully trying to injure another person; lack of authorization for services; and any other defense that may become available. The Dismissal cites one ground for dismissing the Petition: Petitioner's failure to submit an EOBR with its Petition.

5. The only ground cited in the preceding paragraph that is relevant is the first cited by Intervenor. This ground raises the issue of compensability by disclosing that Intervenor has not conceded that C. G.'s injuries are compensable. Nor has a Judge of Compensation Claims (JCC) ever entered an order determining that C. G.'s injuries are compensable. In fact, C. G. has never filed a claim for benefits.

6. At the time in question, C. G. had health insurance, but his insurer reportedly denied coverage on the ground that it insured's injuries were covered by workers' compensation. It does not appear that Petitioner has commenced a legal action against C. G. for payment for the services that it rendered to him in March 2012.

CONCLUSIONS OF LAW

7. Respondent transmitted this file to the Division of Administrative Hearings, pursuant to section 440.13(7), Florida Statutes. Under this subsection, a health care provider may file a petition with Respondent for the resolution of a dispute concerning a bill for which a carrier has "disallow[ed]" or "adjust[ed]" payment. § 440.13(7)(a). If there are disputed issues of material fact, a party whose substantial interests are affected by the ensuing proposed action may then request a formal hearing with an Administrative Law Judge (ALJ), pursuant to sections 120.569 and 120.75(a).

8. However, this case does not involve the "disallowance" of a payment. (Clearly, Intervenor did not adjust the payment, so this alternative is not further addressed in this Recommended Order.) This case involves the "denial" of a payment. Although an ALJ has jurisdiction over reimbursement disputes following a

disallowance, an ALJ lacks jurisdiction over reimbursement disputes following a denial.

9. In a disallowance case, the injuries are compensable, but the claim for reimbursement is rejected on the ground of medical necessity, insufficient documentation, lack of authorization, or billing error. Fla. Admin. Code R. 69L-7.602(o). In a denial case (or a case involving a disallowance and a denial), the problem with the claim for reimbursement is more basic: the injuries have not been determined to be compensable. Fla. Admin. Code R. 69L-7.602(m).

10. Here, Intervenor used the proper term, "denial," in its Notice of Denial due to the first ground cited for its refusal to approve payment of the reimbursement claim: noncompensability. Strictly speaking, the second ground cited-- a lack of authorization--should result in a "disallowance," but this ground is irrelevant to the present case anyway.

11. "Compensability" may be established by only two means: the concession of a carrier or determination by a JCC. § 440.13(1)(e), Fla. Stat. As noted in the Findings of Fact, neither Intervenor nor a JCC has determined that C. G.'s injuries are compensable.

12. As the ALJ discussed during the hearing, sometimes it is necessary for an ALJ to make legal determinations concerning

matters over which he obviously has no jurisdiction, such as legal title to real property or the meaning of a contract, in the exercise of the jurisdiction that has been assigned to the ALJ, such as factual dispute concerning environmental permitting or professional discipline. In such cases, the determination of the ALJ does not adjudicate the parties' rights to land or under a contract, but constitutes a finding of fact or conclusion of law subordinate to the permitting or disciplinary matter properly at issue.

13. Here, though, a compensability determination by an ALJ would not constitute a finding of fact or conclusion of law subordinate to a matter over which the ALJ properly has jurisdiction. Instead, a compensability determination would serve the sole purpose of bringing this dispute within chapter 440 because, only if C. G.'s injuries are compensable, may Intervenor be liable to Petitioner--subject to other issues, such as whether authorization was required in this case or whether Petitioner was obligated to file a copy of the Explanation of Benefit Review with its Petition. To varying degrees, the parties have obscured the determinative issue in this case by focusing on these disallowance issues, but the key fact is that C. G.'s injuries have not been determined to be compensable, and the key conclusion of law is that the ALJ lacks

the jurisdiction to make this determination to proceed to the disallowance issues.

RECOMMENDATION

It is RECOMMENDED that the Department of Financial Services enter a Final Order dismissing the Petition.

DONE AND ENTERED this 25th day of February, 2013, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of February, 2013.

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.