

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

NOEL R. AGCAOILI,)
)
Employee,) FINAL DECISION AND ORDER
and)
) AWCB Case No. 200616303
PROVIDENCE ALASKA MEDICAL)
CENTER,) AWCB Decision No. 13-0127
)
Provider,) Filed with AWCB Anchorage, Alaska
Claimant,) on October 16, 2013
)
v.)
)
H&R INVESTMENTS, INC., and)
AMERICAN INTERSTATE INSURANCE)
CO.,)
)
Insurer,)
Defendants.)
_____)

H&R Investments, Inc.'s (Employer) November 1, 2012 petition was heard on September 24, 2013, in Anchorage, Alaska, a date selected on August 30, 2013. There was no appearance for Noel R Agcaoili (Employee) or Providence Alaska Medical Center (Providence). Attorney Michael Budzinski appeared and represented Employer and its workers' compensation insurer. There were no witnesses. The record closed at the hearing's conclusion on September 24, 2013.

Agcaoili v. H&R Investments, Inc., AWCB Decision No. 13-0092 (August 2, 2013) (*Agcaoili I*), memorialized the oral order continuing a July 31, 2013 hearing because a necessary party, Providence, was not given notice and was not present at the scheduled hearing. *Agcaoili I* also

gave Providence official “notice of joinder.” As no party objected the Providence’s joinder in this case, the hearing was rescheduled for September 24, 2013.

As a preliminary matter at the September 24, 2013 hearing, Employer stated Providence had complied with *Agcaoili I*’s direction for Providence to provide its unpaid medical bills in this case to Employer for processing and payment. Employer also noted it appeared Providence may have ceased its collection efforts against Employee, though it was unclear. Employer requested a decision and order advising Providence about its right to file a claim under the Alaska Workers’ Compensation Act, and the statutory prohibition against attempting to collect a fee or charge for medical treatment or service provided under this chapter from Employee.

ISSUE

Employer and the panel on their own motion raised the question of whether Providence had ceased collection efforts against Employee, and should be informed of its rights and obligations under the Act in respect to attempting to collect or collecting a fee or charge for medical treatment or services provided under the Act from Employee. Employer contended such direction might assist Providence in quickly having its medical bills in workers’ compensation cases more promptly processed and paid. As neither Employee nor Providence appeared at hearing, their positions on this issue are unknown. It is unknown whether or not Providence has ceased its collection efforts against Employee through its collection agency.

Can Providence attempt to collect or collect a fee or charge from Employee for medical treatment or services provided under the Alaska Workers’ Compensation Act?

FINDINGS OF FACT

The following facts and factual conclusions are found by a preponderance of the evidence:

- 1) On September 30, 2006, Employee was involved in an automobile accident on the job for Employer (Report of Occupational Injury or Illness, October 2, 2006).
- 2) On December 29, 2010, Employee and Employer settled. Employer agreed to “process outstanding medical bills . . . for payment under the terms, conditions and limitations provided under the Alaska Workers’ Compensation Act” for Employee’s work-related medical care from

certain listed providers prior to December 1, 2009. Providence was included in the list (Compromise and Release Agreement, December 29, 2010, at 3).

3) On November 2, 2012, Employer filed a petition seeking an order: 1) joining Providence as a necessary party to this case; 2) denying payment for Providence's specified medical costs for Employee; and 3) directing Providence and its agents to cease and desist from all collection efforts against Employee (Petition, November 1, 2012).

4) On July 31, 2013, the designated chair continued a hearing on Employer's petition, because not all necessary parties had been properly joined or noticed. This oral order was memorialized in *Agcaoili I* (*Agcaoili I*).

5) *Agcaoili I* directed Providence to provide necessary medical documentation and itemized billing statements to Employer's representatives or direct its collection agency do so, so Providence's bills could be promptly processed and paid, as agreed between Employee and Employer. It also provided a "notice to join" to Providence in the event the bills were not amicably resolved among the parties and a further hearing was necessary (*Agcaoili I*, at 8).

6) On August 30, 2013, another hearing was scheduled for September 24, 2013, on Employer's pending petition (division's database).

7) On September 24, 2013, Employer through counsel advised the hearing panel that Providence had complied with the direction from *Agcaoili I* and provided the required documentation. Employer also stated it appeared Providence was ceasing its collection effort against Employee, for the bills in question, though it was unclear. Employer withdrew its November 1, 2012 petition at hearing (Employer's hearing statements).

8) It remains unclear whether or not Providence told its collection agency to cease trying to collect its bills from Employee (judgment).

9) There was no appearance at the September 24, 2013 hearing from Employee or Providence (record).

10) Medical providers regularly file claims with the Alaska Workers' Compensation Board to collect their medical bills and services from employers and their workers' compensation insurers (experience, observations).

11) The division's website has easy to use forms, including: claims, petitions, and medical summaries on which medical providers may attach, file, and serve their medical bills and records, and an "affidavit of readiness" for hearing used to request a hearing (*id.*).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) This chapter be interpreted . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

AS 23.30.005. Alaska Workers' Compensation Board.

. . .

(h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

The board may base its decision not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

AS 23.30.097. Fees for medical treatment and services. a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. . . .

. . .

(d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.

. . .

(f) An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter. . . .

Medical benefits including continuing care are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The term “compensation” as used the Alaska Workers’ Compensation Act includes medical benefits. *Childs v. Copper Valley Electric Association*, 860 P.2d 1184, 1192 (Alaska 1993).

AS 23.30.135. Procedure before the board. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

AS 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .

8 AAC 45.040. Parties. (a) Except for a deceased employee’s dependent or a rehabilitation specialist appointed by the administrator or chosen by an employee in accordance with AS 23.30.041, a person other than the employee filing a claim shall join the injured employee as a party.

(b) Except for a rehabilitation specialist appointed by the administrator or chosen by the employee in accordance with AS 23.30.041, a person who files a claim must first prove a compensable injury to be eligible for benefits, or the opposing party must stipulate to or admit facts from which the board can find the employee’s injury is compensable.

(c) Any person who may have a right to relief in respect to or arising out of the same transaction or series of transactions should be joined as a party.

(d) Any person against whom a right to relief may exist should be joined as a party.

. . .

(f) Proceedings to join a person are begun by

(1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties; or

(2) the board or designee serving a notice to join on all parties and the person to be joined.

(g) A petition or a notice to join must state the person will be joined as a party unless, within 20 days after service of the petition or notice, the person or a party files an objection with the board and serves the objection on all parties. If the petition or notice to join does not conform to this section, the person will not be joined.

8 AAC 45.050. Pleadings. (a) A person may start a proceeding before the board by filing a written claim or petition.

(b) Claims and petitions.

(1) A claim is a written request for benefits, including compensation . . . including . . . medical benefits under the Act. T . . The board has a form that may be used to file a claim. In this chapter, an application is a written claim.
. . .

(4) Within 10 days after receiving a claim that is complete in accordance with this paragraph, the board or its designee will notify the employer or other person who may be an interested party that a claim has been filed. The board will give notice by serving a copy of the claim by certified mail, return receipt requested, upon the employer or other person. The board or its designee will return to the claimant, and will not serve, an incomplete claim. A claim must

(A) state the names and addresses of all parties, the date of injury, and the general nature of the dispute between the parties; and

(B) be signed by the claimant or a representative.

(5) A separate claim must be filed for each injury for which benefits are claimed, regardless of whether the employer is the same in each case. . . .
. . .

(c) Answers.

(1) An answer to a claim for benefits must be filed within 20 days after the date of service of the claim and must be served upon all parties. A default will not be entered for failure to answer, but, unless an answer is timely filed, statements made in the claim will be deemed admitted. The failure of a party to deny a fact alleged in a claim does not preclude the board from requiring proof of the fact.

(2) An answer to a petition must be filed within 20 days after the date of service of the petition and must be served upon all parties.

(3) An answer must be simple in form and language. An answer must state briefly and clearly the admitted claims and the disputed claims so that a lay person knows what proof will be required at the hearing. . . .

8 AAC 45.070. Hearings. (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

(b) Except as provided in this section and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing. . . .

ANALYSIS

Can Providence attempt to collect or collect a fee or charge from Employee for medical treatment or services provided under the Alaska Workers' Compensation Act?

Medical services are considered "compensation" under the law. *Childs*. Properly documented charges for medical services to injured workers will be paid promptly and directly to the party entitled to the payments, including medical providers. AS 23.30.155(a). If the right to these benefits is controverted by an employer or its workers' compensation insurer, interested parties including medical providers may file an administrative claim. 8 AAC 45.040; 050. The division provides a website with easy to use forms for this purpose. Occasionally, an injured worker's interests and his medical providers' interests may diverge. Thus, in some instances it may be to a medical provider's best interest to file its own claim for benefits against the worker's employer or insurer to obtain payment of the provider's medical bills related to an injured worker's case. Statutes and regulations make this administrative procedure relatively easy, and medical providers frequently file their own claims. AS 23.30.001; 005(h); 135.

However, it is unlawful for a medical provider in a workers' compensation case to require an injured worker to pay a fee or charge for medical treatment or services provided under the Act. AS 23.30.097(f). By referring medical bills incurred as the result of a work-related injury covered under the Act to a collection agency, a medical provider violates the law because the collection agency will exert pressure and will "require" the employee to pay these bills. As mentioned above, the law provides an administrative remedy for medical providers who give care to injured workers in workers' compensation cases to obtain payment for their services.

Providence is commended for consistently providing workers in Alaska necessary and needed medical care. Providence is directed to not seek payment of work-related medical bills from Employee in this case, either directly or through a collecting agency or service. Providence is directed to follow the procedure set forth above to file a claim, if Employee has remaining, unpaid, work-related medical bills associated with this case not resolved at or before the September 24, 2013 hearing. The division has workers' compensation technicians available at 269-4980 to answer any questions Providence may have about how to file paperwork and prosecute a claim for medical benefits in this or in any other case.

CONCLUSION OF LAW

Providence cannot attempt to collect or collect a fee or charge from Employee for medical treatment or services provided under the Alaska Workers' Compensation Act.

ORDER

- 1) Providence is ordered to not attempt to collect or collect a fee or charge from Employee for medical treatment or services provided under the Alaska Workers' Compensation Act in this case, either directly or through a collection agency.
- 2) If any party requires further action in this case, they may file a claim or petition in accordance with the Act and regulations.

Dated in Anchorage, Alaska on October 16, 2013.

ALASKA WORKERS' COMPENSATION BOARD

William Soule, Designated Chair

Richard Traini, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filling a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of NOEL R AGCAOILI v. TRI-STAR DISTRIBUTING dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on October 16, 2013.

Pamela Murray, Office Assistant