

June 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

The City of Michigan City (“Michigan City”) appeals a decision of the Worker’s Compensation Board (“the Board”) awarding to Memorial Hospital of South Bend (“Memorial Hospital”) the full amount of Memorial Hospital’s medical bills for treatment to an employee of Michigan City. We affirm.

Issues

The restated issues before us are:

- I. whether the Board properly placed the burden on Michigan City to prove that Memorial Hospital’s billed charges exceeded the maximum permissible under the Indiana Worker’s Compensation Act (“the Act”); and
- II. whether the Board properly awarded Memorial Hospital the full amount of its billed charges.

Facts

In 2005, 2006, and 2007, Memorial Hospital provided medical services to Craig Bowen for injuries he suffered during the course and scope of his employment with Michigan City. Memorial Hospital submitted bills for \$35,864.23 for medical services to Michigan City’s worker’s compensation insurer, Indiana Public Employers Plan (“IPEP”). IPEP in turn hired Mednet, a “billing review service” under the terms of the

Act, to determine whether Memorial Hospital's bill fell at or below the 80th percentile for charges by medical providers within the same community for similar services. The 80th percentile standard is the maximum amount of an employer's "pecuniary liability" for medical services under the Act. Mednet reviewed Memorial Hospital's billed charges and recommended payment of only \$13,441.99. IPEP paid Memorial Hospital that amount.

On June 25, 2007, Memorial Hospital filed an application for adjustment of claim with the Board, seeking recovery of the remaining \$22,422.24 on its original billed charges of \$35,684.23. In proceedings before the Board, Mednet was unable to produce any of the data that it used in its calculation of the amount Memorial Hospital was entitled to be paid. Michigan City apparently did attempt to partially recreate some of that data, but using a different medical billing coding system than Memorial Hospital had used.

On April 9, 2008, a Single Hearing Member of the Board ordered Michigan City to pay Memorial Hospital the remaining \$22,422.24 left unpaid on the original billed charges. On September 17, 2008, the full Board affirmed this ruling. It determined that Michigan City, through Mednet, bore the burden of producing evidence explaining how Michigan City's pecuniary liability to Memorial Hospital of only \$13,441.99 had been calculated. Because Michigan City and Mednet failed to produce any such evidence, the Board concluded Michigan City was required to pay the full amount of Memorial

Hospital's billed charges. A majority of the board, however, declined to impose further civil penalties against Michigan City or Mednet. Michigan City now appeals.

Analysis

The material facts in this case and the issues we must decide are identical to those we address today in Washington Township Fire Department v. Beltway Surgery Center, No. 93A02-0811-EX-1006 (Ind. Ct. App. 24, 2009). The relevant statutes are Indiana Code Sections 22-3-3-5, 22-3-3-5.2, and 22-3-6-1(j). The central issue in Washington Township and this case is, in the event a billing review service claims that a medical service provider's bill has exceeded the 80th percentile standard and recommends payment of less than the billed amount, and the medical service provider decides to challenge that determination before the Board, who bears the burden of proof on whether the bill exceeds the 80th percentile standard—the medical service provider or the employer of the injured employee (or the employer's insurance company)?

We held in Washington Township that if an employer or its insurer refuses to pay the full amount of a medical service provider's bill, the employer is seeking an affirmative determination by the Board that its pecuniary liability to the provider is less than the billed charges and the employer should bear the burden of proof on that question. Washington Twp., slip op. at p. 14. We further held that where the employer fails to present evidence as to how a billing review service purported to calculate whether a health care provider's bill exceeded the 80th percentile standard, the Board may order the employer to pay the full amount of the provider's submitted bill and is not limited by the

\$100 to \$1000 civil penalty provision of Indiana Code Section 22-3-3-5.2(c). Id. at pp. 16-17. Both of these holdings apply with equal force to the present case.

Conclusion

The Board did not err in requiring Michigan City to prove how Mednet reached its determination of Michigan City's pecuniary liability and to prove that Memorial Hospital's billed charges exceeded the maximum amount permissible under the Act. We also conclude the Board did not err in awarding Memorial Hospital the full amount of its medical bills for Bowen's treatment, particularly in the absence of any evidence as to how Mednet purported to calculate Michigan City's pecuniary liability. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.