

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

KENT SATH, *Applicant*

vs.

**LINEAGE LOGISTICS HOLDINGS;
ACE AMERICAN INSURANCE COMPANY administered by
CORVEL CORPORATION, *Defendants***

Adjudication Numbers: ADJ11637452; ADJ11681891; ADJ12252942

Riverside District Office

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Lien claimant, Riverside Community Hospital, seeks reconsideration of the December 2, 2022, Findings and Order. The workers' compensation administrative law judge (WCJ) found that lien claimant did not show that it was entitled to reimbursement in excess of the amount paid by the defendant previously. Accordingly, the WCJ ordered that the lien be disallowed, and that lien claimant take nothing.

Lien claimant contends that the WCJ should have awarded additional reimbursement because the official medical fee schedule (OMFS) is, in essence, Medicare's prospective payment system (PPS) and the PPS does not apply to emergency services. Lien claimant also contends that the current OMFS does not provide for reimbursement for emergency services and, therefore, a prior version of the OMFS should be used. Lien claimant also contends, in essence, that a lien for emergency services is outside of the OMFS and reimbursement should be at normal contract rates.

We have considered the allegations of the Petitions for Reconsideration and reviewed the record. The WCJ provided a Report and Recommendation on Petition for Reconsideration (Report). For the reasons discussed below, we will deny reconsideration.

Riverside Community Hospital provided emergency services to applicant after applicant sustained a work-related injury to multiple body parts on July 22, 2017. Lien claimant billed \$218,390.00 for those services and received \$29,993.79. The WCJ found that the reasonable value of the services provided was \$29,993,79.

Pursuant to Labor Code section 4660(a), “the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.” The OMFS “shall establish reasonable maximum fees.” (Lab. Code, §5307.1.) The OMFS was promulgated by the Administrative Director (AD) pursuant to the authority granted by the Legislature in Sections 133, 4603.5, 5307.1 and 5307.3.

Lien claimant’s argument that emergency services are excluded from the OMFS because they are excluded from the PPS depends on its assertion that “the Maximum reimbursement formula aka the OMFS is in other words Medicare’s Perspective [sic.] payment system.” (Petition, p. 3.) The AD did not adopt the PPS as the OMFS. Section 5307.1 sets forth requirements for the OMFS that would be inconsistent with adopting the PPS. While the OMFS includes sections with identical language to PPS, they are not the same.

Lien claimant’s argument that the pre-2003 OMFS should apply to this case is based on a misreading of the relevant statutes. Lien claimant states that Labor Code section 5307.1(e)(1) provides that “ ‘pursuant to this section for any treatment, facility use or service [not] covered by a Medicare payment system...shall...’ be paid pursuant to CCR 9792.1.” (Petition, p. 6.) The OMFS in effect before January 1, 2004, included section 9792.1 which excluded emergency services from the fee schedule.

This argument is misleading because it leaves out a key portion of the statute. In fact, Section 5307.1(e)(1) states:

(e)(1) Prior to the adoption by the administrative director of a medical fee schedule pursuant to this section, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, the maximum reasonable fee paid shall not exceed the fee specified in the official medical fee schedule in effect on December 31, 2003, except as otherwise provided in this subdivision.

The AD adopted a medical fee schedule in accordance with Section 5307.1 effective January 1, 2004. Therefore, subdivision (e)(1) which addresses payment for services after December 31, 2003, and before adoption of a new schedule never went into effect and does not apply to this case.

Finally, conflating sections 4903.1(b) and 5307.11, lien claimant argues that a lien for emergency medical services is somehow different from other types of liens and should be paid pursuant to contract rates rather than the OMFS. Section 5307.11 pertains to contracts between a “health care provider” and “a contracting agent, employer or carrier” that “contracts for reimbursement rates different from those in the fee schedule adopted . . . pursuant to Section 5307.1.” This section provides that where the contracted rate is different from the medical fee schedule, the medical fee schedule “shall not apply to the contracted reimbursement rate.” If lien claimant has a relevant contract, it may seek payment under that contract. However, to the extent lien claimant is arguing that it should get paid its normal contract rates rather than pursuant to the OMFS, that position is not consistent with Section 5307.11.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 17, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**RIVERSIDE COMMUNITY HOSPITAL
GRANT & WEBER
THE LAW OFFICES OF HIRSCHL MULLEN
KENT SATH**

MWH/mc

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *mc*