

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

JENNIFER ACOSTA, *Applicant*

vs.

**PLANNED PARENTHOOD;
CYPRUS INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ9985543
Oxnard District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Lien claimant RMS Medical Group seeks reconsideration of the Supplemental Findings and Order (SF&O) of January 31, 2024, wherein the workers' compensation judge (WCJ) found that lien claimant served an updated bill on June 23, 2022 and that defendant paid the reasonable value of medical treatment charges to lien claimant on July 19, 2022; and that no penalties or interest were due; and ordered the lien dismissed.

Lien claimant contends defendant owes it penalties and interest beginning on the date that bills were first served on defendant.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny lien claimant's Petition for Reconsideration.

FACTS

Applicant sustained industrial injury to her right elbow and right wrist, and claimed industrial injury to her back, while working as a medical assistant for defendant on October 23, 2013. The case was settled by way of a Compromise and Release (C&R) agreement of April 6, 2016, with an Order Approving Compromise and Release (OACR) issuing on the same date. Lien claimant filed its lien on October 20, 2021.

The case proceeded to trial on the lien from RMS Medical Group on April 6, 2022. At the conclusion of the trial, the WCJ found in relevant part that none of the charges of lien claimant RMS Medical Group represented valid medical-legal expenses; that the charge for the April 28, 2016 date of service was incurred after the case was settled by way of C&R; that applicant properly procured medical treatment outside defendant's medical provider network (MPN); that all medical treatment services provided by lien claimant other than the April 28, 2016 date of service were reasonably required to cure or relieve from the effects of the industrial injury herein; that there is no substantial evidence regarding the reasonable value of lien claimant's reasonable medical treatment services; and that the issue of penalty and interest is not ripe for adjudication. (5/19/22 Findings and Order (F&O), p. 2.) The WCJ ordered that the April 28, 2016 date of service billed by lien claimant was disallowed; that the parties develop the record regarding the reasonable value of the remainder of lien claimant's charges; and that the issue of penalty and interest be deferred with jurisdiction reserved. (5/19/22 F&O, p. 2.)

The case came back for trial on December 22, 2023, on the issues of the value of lien claimant RMS Medical Group's charges and any penalties and interest. The WCJ found that the reasonable value of the medical treatment charges of RMS Medical Group is \$1,292.44; that lien claimant served an updated bill on defendant on June 23, 2022, as recommended by the Court in its Opinion on Decision dated May 19, 2022; that defendant paid the sum of \$1,292.44 to lien claimant on July 19, 2022; and that lien claimant did not establish entitlement to penalty and interest. (SF&O, pp.1-2.)

DISCUSSION

Labor Code¹ 4603.2(b)(2) provides in relevant part that

¹ All further statutory references are to the Labor Code unless otherwise noted.

payment for medical treatment provided or prescribed by the treating physician selected by the employee or designated by the employer shall be made at reasonable maximum amounts in the official medical fee schedule, pursuant to Section 5307.1, in effect on the date of service. Payments shall be made by the employer with an explanation of review pursuant to Section 4603.3 within 45 days after receipt of each separate itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician. If the itemization or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in the explanation of review, that the itemization is contested, denied, or considered incomplete, within 30 days after receipt of the itemization by the employer. An explanation of review that states an itemization is incomplete shall also state all additional information required to make a decision. A *properly documented list of services* provided and not paid at the rates then in effect under Section 5307.1 within the 45-day period shall be paid at the rates then in effect and increased by 15 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization . . .

(Lab. Code, § 4603.2(b)(2), italics added.)

Lien claimant contends that it should receive penalties and interest based on the date that it first submitted its bills to defendant. However, at the initial trial in April 2022, the earlier bills were admitted into evidence and considered by the WCJ. The WCJ found that there was no substantial evidence regarding the reasonable value of lien claimant's reasonable medical treatment services. (5/19/22 F&O, Finding of Fact no. 7, p. 2.) Thus, since the WCJ found that he was unable to determine the amount owed to lien claimant based on those earlier bills, we cannot base any penalties and interest for defendant's failure to pay the amounts on the earlier bills.

Lien claimant served the corrected bill on June 23, 2022, and there is no dispute that defendant paid that bill within 45 days. (12/6/23 Minutes of Hearing, p. 2.) Since the bill served June 23, 2022, was reviewed, and paid timely on July 19, 2022, the lien claimant did not establish an entitlement to penalties and interest. Thus, the SF&O dismissing the lien was supported by the evidence and findings of fact.

Accordingly, we deny lien claimant's Petition for Reconsideration of the Supplemental Findings and Order of January 31, 2024.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Supplemental Findings and Order of January 31, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 22, 2024

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

**RMS MEDICAL GROUP
MULLEN & FILIPPI, LLP**

JMR/ara

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

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