

Manley, Gary

STANDARD OF REVIEW

Medical bills

The payment or rejection of medical bills is not discretionary with the Department. The test is whether the bills conform to the provisions of RCW 51.04.030, the applicable rules and regulations, and the practices of the director.*In re Gary Manley*, BIA Dec., 66 115 (1986)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: GARY J. MANLEY**) **DOCKET NO. 66,115**
2)
3 **CLAIM NO. H-685270**) **DECISION AND ORDER**
4

5 APPEARANCES:

6
7 Petitioner, William R. Halliday, M.D., Pro Se

8
9 Claimant, Gary J. Manley, by
10 Jerald D. Pearson, per
11 Jerald D. Pearson and Adeline J. Crinks, Legal Assistant

12
13 Employer, Skills, Inc.,
14 None

15
16 Department of Labor and Industries, by
17 The Attorney General, per
18 John Wasberg and William R. Strange, Assistants

19
20 This is an appeal filed by the petitioner on October 19, 1983 from a decision of the Department
21 of Labor and Industries dated September 1, 1983 which denied him payment for a review of records at
22 Buckner Center and a review of microfiche on May 17, 1983 and for commercial printouts from
23 microfiche on May 31, 1983, for the reason that there is "no provision for these services". **REVERSED**
24 **AND REMANDED.**

25
26
27 **DECISION**

28
29 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
30 and decision on a timely Petition for Review filed by the petitioner to a Proposed Decision and Order
31 issued on December 5, 1985 in which the decision of the Department dated September 1, 1983 was
32 reversed, and the matter remanded to the Department of Labor and Industries to evaluate petitioner's
33 request for compensation for the May 17, 1983 records review and microfiche review as well as
34 readjustment for the May 31, 1983 commercial printout of claimant's microfiche.

35
36 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
37 prejudicial error was committed and said rulings are hereby affirmed.

38
39 The issue presented by this appeal and the evidence presented by the parties are adequately
40 set forth in the Proposed Decision and Order. The result reached by the Proposed Decision and
41 Order is correct. We have granted review to clarify possible confusion on the legal question of
42 whether payment or rejection of medical bills is "discretionary" with the Department. The petitioner
43
44
45
46
47

1 challenges the statements in the Proposed Decision and Order that "the Department has discretion to
2 determine what if anything it will pay for a BR procedure" and that "the Department failed to exercise
3 its discretion by not evaluating petitioner's request for payment for services he provided claimant on
4 May 17, and May 31, 1983." (Emphasis added) According to the petitioner, the payment or rejection
5 of medical bills is not discretionary with the Department. We are constrained to agree.
6
7

8
9 The confusion apparently arises because of the term "may reject" contained in RCW 51.04.030.
10 While RCW 51.04.030 uses the language "may reject any bill or item thereof incurred in violation of the
11 principles laid down in this section or the rules and regulations promulgated under it", it also provides
12 that the director "shall approve and pay those bills which conform to the promulgated rules, regulations
13 and practices of the director."
14

15
16 It is a well recognized rule of statutory construction that all parts of a statute should be given
17 meaning if possible and harmonized to effectuate the legislative intent. Tommy P. v. the Board of
18 Commissioners 97 Wn.2d 385,391 (1982). Thus the dual requirements that the director shall pay
19 conforming bills and may reject nonconforming bills must be harmonized.
20
21

22 The word "shall" is mandatory. State v. Jones 32 Wn. App. 359,375 (1982). The director has
23 no choice but to pay those bills which meet the appropriate standards. That is, it is not within the
24 director's "discretion" to reject a conforming bill. The word "may" cannot be interpreted to bestow such
25 discretion; for the rejection of bills cannot be discretionary while the payment of bills is mandatory.
26
27 The same process must attend either--a careful review of whether the bill conforms to the promulgated
28 rules, regulations and practices of the director or, alternatively, was incurred in violation of the
29 principles laid down in RCW 51.04.030 or the rules and regulations promulgated under it. Thus, in
30 order to harmonize the mandatory term "shall approve and pay" with the language "may reject", the
31 latter must be interpreted not as discretionary but as directory, authorizing the director to reject
32 nonconforming bills.
33
34

35
36 Our interpretation of RCW 51.04.030 is supported by the realization that certain legal
37 consequences flow from the use of the word "discretion". If a Departmental decision is discretionary,
38 the scope of our review is limited solely to abuse of discretion, not a full-fledged review and a weighing
39 of all evidence on the merits. If rejection of a medical bill were discretionary, the improper rejection of
40 a bill which met the required standards would be reviewable only for abuse of discretion, i.e., it would
41 be essentially non-reviewable.
42
43
44
45
46
47

1 Furthermore, in instances under the industrial Insurance Act where the legislature has intended
2 to grant discretion, it has explicitly so stated and has not relied on the causal insertion of the word
3 "may". See RCW 51.32.095 ("sole discretion"); RCW 51.36.010 ("solely in his or her discretion").
4
5 RCW 51.04.030 contains no such explicit language. Thus neither the payment nor the rejection of
6
7 medical bills is a "discretionary", i.e., essentially non-reviewable, matter.

8
9 In rejecting Dr. Halliday's bills the Department did not consider whether they conformed to the
10 promulgated rules, regulations and practices of the director or whether they were incurred in violation
11 of the principles laid down in RCW 51.04.030 or the rules and regulations promulgated under it.
12 Instead the Department incorrectly made a threshold determination that there was "no provision" for
13 the payment of bills of this nature and went no further. Code 99199 contained in WAC 296-21-013
14 exists as a catch-all to cover services which are not explicitly listed in other WAC sections. The mere
15 fact that services billed under code 99199 are "by report" does not mean that the statutory language
16 mandatorily requiring the Department to pay conforming bills is overridden by a Departmental WAC,
17 nor is payment for "by report" services discretionary by virtue of the fact that the Department has
18 chosen not to specifically list them and has considerable flexibility in establishing and changing BR
19 procedures. The same test which applies to bills for specified procedures and services applies to bills
20 for unspecified procedures and services. The Department has been granted a broad authority to set
21 up the medical fee schedule and procedures, and has been given a great deal of flexibility to change
22 applicable procedures. However, once those procedures have been established, the Department
23 must follow its own rules.

24
25 The Proposed Decision and Order is correct in reversing the bill rejections here and in
26 remanding for an evaluation of those bills on their merits under RCW 51.04.030 and the applicable
27 WAC's. In considering whether Dr. Halliday's bills should be paid, the Department may consider
28 whether the billed services "re generally provided as an adjunct to common medical services" and
29 whether or not the "circumstances clearly warrant an additional charge over and above the usual
30 charges for the basic services". (See introductory paragraph of WAC 296-21-013). In addition, such
31 questions as the necessity of the services, whether the services are consistent with the customary
32 standard of care, whether the services violate the principles set forth in RCW 51.04.030 and the
33 accompanying WAC's, and whether the costs have already been reimbursed as part of prior fees for
34 diagnosis or treatment, may be addressed.
35
36
37
38
39
40
41
42
43
44
45
46
47

1 After consideration of the Proposed Decision and Order and the Petition for Review filed
2 thereto, and a careful review of the entire record before us, the following findings of fact and
3 conclusions of law are entered:
4

5
6 **FINDINGS OF FACT**

7 Proposed Findings Nos. 2 and 3 are adopted. Proposed Findings Nos. 1 and 4 are corrected
8 to read as follows:
9

- 10 1. On April 23, 1980, the Department received an accident report alleging an
11 injury to claimant's back on April 15, 1980, while in the course of his
12 employment with Skills, Inc. On July 29, 1980, the Department entered an
13 order closing the claim with no award for permanent partial disability.

14 On November 26, 1980, the Department reopened the claim effective
15 October 10, 1980 for authorized treatment and action as indicated. On
16 January 19, 1981, the Department reopened the claim effective
17 September 22, 1980. On March 18, 1981, the Department entered a
18 closing order declaring treatment was no longer necessary and awarding
19 no permanent partial disability.
20

21 On November 20, 1981, the Department received an aggravation
22 application dated November 17, 1981. On January 28, 1982, the
23 Department reopened the claim effective November 17, 1981 for
24 authorized treatment and action as indicated. On September 1, 1983 the
25 Department rejected bills from petitioner, Dr. William R. Halliday, for
26 services provided the claimant on May 17, and 31, 1983. On October 19,
27 1983, the Board of Industrial Insurance Appeals received petitioner's
28 notice of appeal. On November 17, 1983, the Board issued an order
29 granting the appeal, assigning it Docket No. 66,115 and ordering
30 proceedings be held on the issues raised by the appeal.

- 31 4. The Department denied payment to petitioner for the May 17 and May 31,
32 1983 services he provided without evaluating the payment requests on
33 their merits.
34

35 **CONCLUSIONS OF LAW**

36 Proposed Conclusions Nos. 1 and 2 are adopted. Proposed Conclusion No. 3 is deleted.
37 Proposed Conclusion No. 4 is deleted, and we enter Conclusion No. 3 as follows:
38

- 39 3. The decision of the Department of Labor and Industries dated September
40 1, 1983 which denied petitioner payment for a review of records at
41 Buckner Center and a review of microfiche on May 17, 1983 and for
42 commercial printouts from microfiche on May 31, 1983 for the reason that
43 there was "no provision for these services", is reversed and the matter is
44 remanded to the Department with direction to evaluate those bills under
45 code 99199 of WAC 296-21-013, the applicable medical fee WAC's, and
46
47

1 RCW 51.04.030 and to take further action as indicated based on such
2 evaluation.

3
4 It is so ORDERED.

5 Dated this 25th day of March, 1986.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS
7

8
9
10 /S/
11 GARY B. WIGGS Chairperson

12
13 /S/
14 FRANK E. FENNERTY, JR. Member

15
16
17 /S/
18 PHILLIP T. BORK Member
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47