Nelson, Kimberly

DEPARTMENT

Authority to adjudicate claim after closure – medical bills

After claim closure, the Department retains authority to pay and review payment of medical bills related to treatment rendered before claim closure. **….*In re Kimberly Nelson*, BIIA Dec., 00 18243 (2001)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: KIMBERLY A. NELSON	)	**DOCKET NO. 00 18243**
	)	
CLAIM NO. T-778816	)	**ORDER VACATING PROPOSED DECISION**
	)	**AND ORDER AND REMANDING THE APPEAL**
	)	**FOR FURTHER PROCEEDINGS**

APPEARANCES:

Claimant, Kimberly A. Nelson, Pro Se

Self-Insured Employer, Cowlitz County School District #122, by
VavRosky, MacColl, Olson & Pfeifer, PC, per
Stephen L. Pfeifer

Department of Labor and Industries, by
The Office of the Attorney General, per
Michael K. Davis-Hall, Assistant

The self-insured employer, Cowlitz County School District #122, filed an appeal with the Board of Industrial Insurance Appeals on July 31, 2000, from an order of the Department of Labor and Industries dated July 21, 2000, that stated that the Department order of May 8, 2000, was cancelled; directed the self-insured employer to pay medical bills for services rendered by the attending physician, Lance D. Brigman, M.D., up to the date of claim closure on March 25, 1998, and further that the self-insured employer was not responsible for payment of additional bills for services that did not comply with the medical aid rules. **APPEAL REMANDED FOR FURTHER PROCEEDINGS.**

PRELIMINARY MATTERS

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the Department to a Proposed Decision and Order issued on April 6, 2001, in which the order of the Department dated July 21, 2000, was reversed and remanded to the Department with direction to issue a new order setting aside and holding for naught its order of July 21, 2000.

DECISION

The issue presented on cross summary judgment motions in this case is whether, after claim closure becomes final, the Department may order payment of medical bills incurred while the claim was open.

The Department petitioned from the Proposed Decision and Order that held that once the order closing the claim was final, all matters involving that claim, including payment of medical bills,

are deemed terminated, precluding the Department from ordering payment of bills it finds should have been paid while the claim was open. This would also prevent any further litigation of the issue of whether the bills were otherwise proper. The Department advanced a number of arguments which included the assertion that preventing the Department from ordering payment of outstanding medical bills otherwise properly incurred during claim administration is contrary to medical aid rules and the terms and policies of the Industrial Insurance Act, and further that the holding incorrectly applies the principles of res judicata.

The facts are presented in the cross motions for Summary Judgment, the attachments and other materials submitted therewith. Ms. Nelson was injured while working for Cowlitz County School District in September 1994. A claim was allowed and Ms. Nelson received treatment from a number of medical providers, one of whom was Dr. Lance Brigman, M.D. Since this was a self-insured claim, the employer's claims administrator, not the Department, processed the medical bills. In March 1998, the Department closed the claim by order that set forth, in part, the standard language regarding payment for **future** medical services, ". . . [T]he self insured employer cannot pay for medical services or treatment rendered **after the date of closure**." (Emphasis supplied.) Ms. Nelson, through her attorney, protested the closing, and mentioned in the protest letter that certain medical bills were outstanding. This recitation did not include any bills from Dr. Brigman, which are the bills at issue here. In July 1998, the employer wrote the Department denying responsibility for the identified bills, but it also did not mention Dr. Brigman's bills. These outstanding bills were therefore not before the Department at the time of claim closure, and it appears that the claimant may not have been aware of them, as well. Even if they were, however, it is immaterial because the **propriety** of the medical services for which they were incurred was never brought before the Department.

After the protest, on August 19, 1998, the Department affirmed the closing order, without addressing any issues about bills. In the August order, Dr. Brigman was no longer listed as the attending physician, and he has apparently never received a copy of that order. The claimant filed an appeal from the claim closure which, aside from the primary issue of closure, also mentioned some outstanding bills. The appeal was voluntarily dismissed after mediation in March 1999. The exact relief sought at that time is not specified in any of the transcripts, but it can be reasonably inferred that the bills referred to in the appeal were those addressed in the protest. Regardless, it is undisputed that the Department was unaware of the fact that Dr. Brigman's bills were unpaid until June 1999, when Dr. Brigman wrote the Department for help in requiring the employer to pay him

for treatment he provided to the claimant while the claim was open. In May 2000, the Department ordered the employer to pay Dr. Brigman's bills as well as other outstanding bills, but after the employer's protest, the Department modified its order to require that only Dr. Brigman's bills be paid.

The employer appealed, and argued at hearing on Summary Judgment, that after claim closure the Department is without general authority to order payment of bills incurred during the life of the claim. The employer argues further that, even if that general authority exists, the Board's dismissal of the claimant's appeal (upon her request) from the closing order in this case, precludes the Department from ordering payment of Dr. Brigman's bills.

We find that the Department may order payment of bills submitted according to statutes and regulations pertaining to the payment of medical bills. We do not agree that claim closure precludes the Department from ordering any payment for bills incurred during the period that the claim was open. By the latter analysis, any bills not submitted within 60 days of a closing order are barred from payment. The payment of bills is a ministerial bookkeeping function until an issue of whether or not the treatment the payment represents was necessary and proper is raised. **It is not normally adjudicative.** If the billing procedures and diagnostic codes are proper, the bill is paid. *In re Gary Manley*, BIIA Dec., 66,115 (1986). The medical aid rules dictate billing procedures and provide that bills must be submitted within one year (WAC 296-20-125). The statutes provide that the Department or self-insured employer shall pay the bill within 60 days after submission, but, if either fails to pay within the 60 days, interest shall accrue. (RCW 51.36.080 and .085). The Department must pay, or order payment, of any bill it deems within the claim's purview. The argument that if the bill is not also actually **paid** before the expiration of the 60-day window from closing, then it is too late, contravenes the statutes and rules that provide additional time to bill and to pay. It adds an entirely new requirement that is nowhere to be found in the statutes or rules. A closing order is often issued well before the one-year billing period has passed. Furthermore, adhering to this inherent contradiction with the billing rules and statutes leads to a situation that shifts an administrative burden to a claimant who may not be aware of what is going on with medical bills that are being processed according to the regulatory timelines, and who correctly assumes that bills for treatment properly received while the claim was open will be paid.

We also do not believe that our dismissal of the claimant's appeal (upon her request) from the prior closing order precludes the Department from ordering payment of Dr. Brigman's bills. These particular bills were not before the Department at the time the closing order was issued, and

could not have been contemplated by that order. *In re Janet D. Lord*, BIIA Dec., 93 6147 (1996). As indicated above, the only mention of bills in the closing order was the statement that bills for services rendered **after** the date of closure would not be paid. By implication, bills for services rendered during the pendency of the claim would be paid. Even if the Department claims adjudicator were aware of these bills, however, this would not preclude him or her from ordering their payment. Just because the claimant mentioned in her appeal that some medical bills were outstanding did not raise the issue of whether the treatment they represented was necessary and proper, but simply that there was incomplete claim administration. Now that Dr. Brigman's bills are at issue, if the employer asserts that they were for improper or unnecessary treatment, then hearings on that issue should go forward. Litigating that point now does not damage or prejudice the employer in any way.

We note, as did the industrial appeals judge, that *In re William Shumate*, Dckt. No. 91 4962 (November 30, 1992) applies to the facts of this appeal. Here, as in *Shumate*, the sole issue on appeal is the propriety of payment of a medical care provider for treatment previously provided. Under these circumstances joinder of the health care provider must occur under the provisions of CR 19(a) and WAC 263-12-045(2)(h). Our review of this record reveals that Dr. Brigman has had no notice of any proceedings in this appeal and was afforded no opportunity to participate. On remand, we direct the industrial appeals judge to take the necessary steps to join Dr. Brigman as a party to this appeal pursuant to CR 19(a).

To summarize, we determine that the Department has the authority to pay or require payment of medical bills related to treatment rendered prior to closure after claim closure becomes final if the bills and treatment are in conformity with the medical aid rules. In this case, there remain questions of fact whether the subject bills were submitted within one year of the date of service and whether treatment was otherwise in conformity with the medical aid rules.

The Proposed Decision and Order of April 6, 2001, is vacated, and this matter is remanded to the industrial appeals judge for hearing on this issue of whether Dr. Brigman's bills were incurred for treatment which was necessary and proper. In addition, this appeal is remanded to the hearings process, pursuant to WAC 263-12-145(4), for further proceedings as indicated by this order. The parties are advised that this order is not a final decision and order of the Board within the meaning of RCW 51.52.110. At the conclusion of the further proceedings the industrial appeals judge shall, unless the matter is dismissed or resolved by an order on agreement of parties, enter a proposed decision and order containing findings and conclusions as to each contested issue of fact and law,

based upon the entire record, and consistent with this order. Any party aggrieved by such proposed decision and order may petition the Board for review of such further proposed decision and order, pursuant to RCW 51.52.104.

It is so **ORDERED.**

Dated this 6th day of November, 2001.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
THOMAS E. EGAN Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
JUDITH E. SCHURKE Member