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IN THE
COURT OF APPEALS OF INDIANA

ONWARD FIRE DEPARTMENT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-0811-EX-1007
	)	
CLARIAN HEALTH PARTNERS,	)	
(Robert Dillon, Employee),	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULL WORKER'S COMPENSATION BOARD OF INDIANA
The Honorable Linda P. Hamilton, Chairman Worker's Compensation Board of Indiana
Cause No. P-176372

June 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Onward Fire Department ("Onward") appeals a decision of the Worker's Compensation Board ("the Board") awarding to Clarian Health Partners ("Clarian") the full amount of Clarian's medical bills for treatment to an employee of Onward. We affirm.

Issues

The restated issues before us are:

I. whether the Board properly placed the burden on Onward to prove that Clarian's billed charges exceeded the maximum permissible under the Indiana Worker's Compensation Act ("the Act"); and

II. whether the Board properly awarded Clarian the full amount of its billed charges.

Facts

On February 6, 2004, Robert Dillon was injured during the course and scope of his employment with Onward. On several dates in 2004 and 2005, Clarian provided medical services to Dillon related to his workplace injury. Clarian submitted bills for treatment to Dillon totaling $217,432.58. Onward's worker's compensation insurer, Indiana Public Employers Plan ("IPEP"), hired FairPay Solutions, Inc. ("FairPay") to review Clarian's bills. FairPay is a "billing review service" under the terms of the Act, and IPEP asked it

to determine whether Clarian'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. FairPay recommended payment of only $91,575.32, and IPEP paid Clarian that amount.

On August 9, 2005, Clarian filed an application for adjustment of claim with the Board, seeking recovery of the remaining $125,857.26 on its billed charges. In proceedings before the Board, FairPay was unable to produce any of the data that it used in its original calculation of the amount it believed Clarian was entitled to be paid. FairPay purported to justify its reduction of payment to Clarian based on other data; in fact, after performing additional reviews FairPay stated Clarian was entitled to an additional payment of $88,956.11. Apparently, IPEP has not paid Clarian this additional amount.

On June 10, 2008, a Single Hearing Member of the Board ordered Onward to pay Clarian the remaining $125,857.26 left unpaid on its bills. On October 14, 2008, the full Board affirmed this ruling. It determined that Onward, through FairPay, bore the burden of producing evidence explaining how Onward's pecuniary liability to Clarian of only $91,575.32 had originally been calculated. Because Onward and FairPay failed to produce any such evidence, it concluded Onward was required to pay the full amount of Clarian's submitted bills. A majority of the board, however, declined to impose further civil penalties against Onward or FairPay. Onward 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 Onward to prove how FairPay reached its determination of Onward's pecuniary liability and to prove that Clarian's billed charges exceeded the maximum amount permissible under the Act. We also conclude the Board did not err in awarding Clarian the full amount of its medical bills for Dillon's treatment, particularly in the absence of any evidence as to how FairPay purported to calculate Onward's pecuniary liability. We affirm.

Affirmed.

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