

FINAL AWARD
(Affirming Award on Medical Fee Dispute)

Injury No.: 05-141804
Medical Fee Dispute No.: 05-01661

Employee: Jerry Ehrhardt, Jr.
Employer: Jayhawk Fire Sprinkler Company
Insurer: Twin City Fire Insurance Company
Health Care Provider: St. Luke's Hospital

Preliminaries

Pursuant to the provisions of § 287.140 RSMo and 8 CSR 50-2.030, the above-captioned award on medical fee dispute is submitted to the Labor and Industrial Relations Commission (Commission) for review under § 287.480 RSMo. By its Application for Review, employer/insurer alleges it did not receive notice of the hearing of this matter.

Having reviewed the evidence and considered the whole record, we find that the award on medical fee dispute is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge dated May 20, 2009, as supplemented herein.

Findings

On April 18, 2008, the health care provider filed an Application for Payment of Additional Reimbursement of Medical Fees. On May 7, 2008, employer/insurer, through insurer's in-house counsel, filed an Answer to the Application for Payment of Additional Reimbursement of Medical Fees on behalf of employer/insurer. The health care provider filed an amended Application for Payment of Additional Reimbursement of Medical Fees, dated September 24, 2008.

The records of the Division of Workers' Compensation show that on February 9, 2009, a Notice of Evidentiary Hearing was mailed to insurer's in-house counsel. On or about April 1, 2009, Kevin Rapp filed an Answer to the Application for Payment of Additional Reimbursement of Medical Fees on behalf of employer/insurer. No counsel appeared at the evidentiary hearing and the administrative law judge issued his award adverse to employer/insurer. Employer/insurer, through Mr. Rapp, filed an Application for Review of the award.

In August 2009, Mr. Rapp wrote to the Commission to advise that employer/insurer and the health care provider had reached a settlement of this matter. We suspended briefing. By September 19, 2011, we had still received no settlement so we reset the briefing schedule.

On October 31, 2011, Mr. Rapp wrote to the Commission again asserting that this matter had been settled. Employer/insurer requested an additional 30 days to submit

Employee: Jerry Ehrhardt, Jr.

- 2 -

settlement documents. Four months have passed and we have received no settlement documents. Nor have we received a brief from employer/insurer.

Conclusions

Based upon the record before us, we find that on February 9, 2009, the Division mailed the Notice of Evidentiary Hearing upon employer/insurer's attorney of record. Employer/insurer failed to appear at the evidentiary hearing. The administrative law judge issued his award based upon the evidence presented by the health care provider. We find no failure of due process on these facts.

Award

We affirm the award of the administrative law judge, as supplemented. The award and decision of Administrative Law Judge R. Carl Mueller, Jr. is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 15th day of March 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr. Member

Attest:

Secretary

**AWARD ON MEDICAL FEE DISPUTE HEARING
FINDINGS OF FACT and RULINGS OF LAW:**

HEALTH CARE PROVIDER: St. Luke's Hospital
EMPLOYER: Jayhawk Fire Sprinkler Company
INSURER: Twin City Fire Insurance Company
MEDICAL FEE DISPUTE NO: 05-01661
INJURY NO: 05-141804
EMPLOYEE: Jerry Ehrhardt Jr.
HEARING DATE: April 10, 2009

An evidentiary hearing was held on April 10, 2009 in Kansas City on this medical fee dispute. St. Luke's Hospital ("Health Care Provider") appeared by corporate representative, Nancy Farrar and by counsel Alan B. Gallas. Employer and Insurer, although duly notified of the hearing, did not appear.

FINDINGS OF FACT

Nancy Farrar, St. Luke's Hospital's corporate representative and billing supervisor, testified that the treatment provided to the employee, Mr. Jerry Ehrhardt Jr. was related to Mr. Ehrhardt's April 5, 2005 work place injury. In addition, Ms. Farrar testified that the Health Care Provider's charges for such treatment were fair and reasonable. The Health Care Provider presented the following exhibits, all of which were admitted into evidence without objection:

- 1 - Medical Records
- 2 - Medical Bills
- 3 - Explanation of Benefits
- 4 - Reconsideration
- 5 - Request for Case Status [Division form WC-194 (08-06)]
- 6 - Application For Payment of Additional Reimbursement of Medical Fees [Division form WC-MD-02 (11-06)]
- 7 - Notice of Evidentiary Hearing [Division for WC-160 (01-08)]

Based on the testimony of Ms. Farrar and the evidence presented, I make the following findings:

1. St. Luke's Hospital rendered certain services to the injured employee, Jerry Ehrhardt Jr. due to injuries he received in the work-related accident of April 5, 2005. Emergency room services were rendered on July 25, 2007. Insurer was billed for these services in a timely fashion with an itemized bill. *See*, HCP Exhibit 2.
2. The total charges billed were \$20,450.20, of which, \$9,330.14 was paid by the Insurer. *Id.* The amount not yet paid by Insurer totals \$11,120.06 and is the subject of Health Care Provider's Amended Application For Payment of Additional Reimbursements of Medical Fees, which was filed with the Division of Workers' Compensation on September 24, 2008. *See*, HCP Exhibit 6.
3. On December 17, 2008 Health Care Provider filed with the Missouri Division of Workers' Compensation, a request for evidentiary hearing in this medical fee dispute proceeding. *See*, Missouri Division of Workers' Compensation Automated Integrated Claims System, MFD Status History. On February 9, 2009, Employer and Insurer were mailed notice by the Missouri Division of Workers' Compensation of the evidentiary hearing herein scheduled for April 10, 2009. *See*, HCP Exhibit 7.
4. The treatment St. Luke's provided to Mr. Jerry Ehrhardt Jr. was related to his work place injury. *See*, HCP Exhibit 1. In addition, I find that the Health Care Provider's charges for such treatment were fair and reasonable.

RULINGS OF LAW

Health Care Provider has the burden of proof regarding the reasonableness of the medical charges. *Esquivel v. Days Inn*, 959 S.W. 2d 486 (Mo. App. S.D. 1998) has held that a health care provider in a "reasonableness" medical fee dispute procedure, such as this, satisfies its burden of proof by presenting into evidence its itemized billing statement, through its billing supervisor, and by presenting into evidence its certified medical records of the medical services provided to the employee and for which the employer and insurer were billed. *Esquivel* further provides that once the health care provider establishes the reasonableness of the charges in this manner, the burden of proof shifts to the employer and insurer to establish the unreasonableness of the charges. Health Care Provider in this case followed the procedure outlined in *Esquivel*, thus establishing the reasonableness of the charges.

Therefore, I find Health Care provider's charges of \$20,450.20, to be fair and reasonable. I find that Insurer has paid \$9,330.14 toward those charges, leaving the amount of \$11,120.06 unpaid. As the charges are fair and reasonable, and finding no other factual or legal basis for denying the charges, Jayhawk Fire Sprinkler Company (Employer) and Twin City Fire Insurance Company (Insurer) are ordered to pay St. Luke's Hospital the sum of \$11,120.06.

Date: _____

Made by: _____

Carl Mueller

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson

Division of Workers' Compensation