

FINAL AWARD
(Affirming Award on Medical Fee Dispute)

Injury No.12-003925
Medical Fee Dispute No.12-01320

Employee: Deborah Rathgeber
Employer: Phelps County Regional Medical Center
Insurer: Liberty Mutual Fire Insurance Company
Health Care Provider: St. Louis Spine and Orthopedic Surgery Center

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. Having reviewed the evidence and considered the whole record, the Commission finds 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, the Commission affirms the award and decision of the administrative law judge dated December 29, 2015. The award and decision of Administrative Law Judge Robert J. Dierkes, issued December 29, 2015, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8th day of July 2016.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr. Member

Attest:

Secretary

BEFORE THE
DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS OF MISSOURI

**FINAL AWARD ON UNDISPUTED FACTS
MEDICAL FEE DISPUTE**

MEDICAL FEE DISPUTE NUMBER: 12-01320
INJURY NUMBER: 12-003925
EMPLOYEE: Deborah Rathgeber
EMPLOYER: Phelps County Regional Medical Center
INSURER: Liberty Mutual Fire Insurance Company
HEALTH CARE PROVIDER: St. Louis Spine and Orthopedic Surgery
Center

FINDINGS OF FACTS AND RULINGS OF LAW

PROCEDURAL HISTORY:

On November 24, 2014, St. Louis Spine and Orthopedic Surgery Center (Health Care Provider) and by counsel Jack Spooner filed its APPLICATION FOR PAYMENT OF ADDITIONAL REIMBURSEMENT OF MEDICAL FEES (Application) with the Division of Workers' Compensation (Division). The Application asserts that Phelps County Regional Medical Center (Employer) and Liberty Mutual Fire Insurance Company (Insurer) owes Health Care Provider an additional amount of \$5571.98 for authorized medical services rendered to the employee in the underlying worker's compensation case, to-wit: "hardware removal right fibula", such medical services having been provided on August 8, 2013. On October 20, 2015, the Employer and Insurer by counsel Beverly Figg filed a request for award on undisputed facts with the Division. Health Care Provider has raised a number of issues regarding the constitutionality of Section 287.140.4, RSMo; as an administrative law judge I lack jurisdiction to rule on these issues; see *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69 (Mo. Banc 1982).

APPLICABLE LAW:

- Section 287.140.4 RSMo states:
The division shall, by regulation, establish methods to resolve disputes concerning the reasonableness of medical charges, services, or aids. This regulation shall govern resolution of disputes between employers and medical providers over fees charged,

whether or not paid, and shall be in lieu of any other administrative procedure under this chapter. The employee shall not be a party to a dispute over medical charges, nor shall the employee's recovery in any way be jeopardized because of such dispute. Any application for payment of additional reimbursement, as such term is used in 8 CSR 50-2.030, as amended, shall be filed not later than:

(1) Two years from the date the first notice of dispute of the medical charge was received by the health care provider if such services were rendered before July 1, 2013; and

(2) One year from the date the first notice of dispute of the medical charge was received by the health care provider if such services were rendered after July 1, 2013. Notice shall be presumed to occur no later than five business days after transmission by certified United States mail.

- 8 CSR 50-2.030(2)(P)1 states that “An application for payment of additional reimbursement of medical fees may be denied in full by an administrative law judge without an evidentiary hearing by issuing an award on undisputed facts in accordance with the following procedures. The employer or insurer may file a request for an award on undisputed facts in regard to the application for payment of additional reimbursement of medical fees on the ground that same was not filed within the limitation period set forth in section 287.140.4, RSMo, or on the ground that the charges have been paid in full, or on any ground which would fully negate any liability for further payment, and upon which ground the facts are not in dispute. The request for an award on undisputed facts shall be filed on the approved division form. The request for an award on undisputed facts shall state with particularity each material fact as to which the employer or insurer claims there is no genuine issue, with specific references to the contents of the application for payment of additional reimbursement of medical fees, deposition testimony, affidavits, and documents that demonstrate the lack of a genuine issue as to such facts. Each request for an award on undisputed facts shall have attached thereto the affidavits, portions of deposition transcripts, and other documents relied upon in the request.”
- 8 CSR 50-2.030(2)(P)2 states that “within thirty (30) days after a request for an award on undisputed facts is filed with the division, the health care provider shall file its response on the approved division form. The response shall admit or deny each of the factual statements contained in the request. A denial may not rest upon mere allegations or general denials. Rather, the response shall support each denial with specific references to the depositions, documents or affidavits that demonstrate specific facts showing that there is a genuine issue to be decided at an evidentiary hearing. Attached to the response shall be a copy of the affidavits, deposition transcripts (or portions thereof), and other documents upon which the response relies. The response may also set forth, in detail, additional material facts that remain in dispute.”
- 8 CSR 50-2.030(2)(P)3 states “Upon timely filing of the response, the administrative law judge assigned to the case shall proceed to ruling on the request for an award on undisputed facts. If no response is filed within the thirty (30) days allotted (unless extended by written order of an administrative law judge), the facts as set forth in the request for an award on undisputed facts shall be deemed as true, and the administrative law judge assigned to the case shall proceed to ruling on the request for an award on undisputed facts. If the request for an award on undisputed facts and response show that

there is no genuine issue as to any material fact and that the application for payment of additional reimbursement of medical fees should be denied in full, the administrative law judge shall enter an award on undisputed facts denying the application for payment of additional reimbursement of medical fees in full. Such award shall be a final reviewable award in the case as to the application for payment of additional reimbursement of medical fees.”

- 8 CSR 50-2.030(2)(P)4 states “the health care provider may file an application for review with the Labor and Industrial Relations Commission within twenty (20) days from the date of the award of the administrative law judge. This review shall be subject to review and appeal in the same manner as provided for other awards in Chapter 287, RSMo.”

FINDINGS OF FACT:

Based upon the evidence, I find the following facts:

1. The date of service at issue was after July 1, 2013, being specifically August 8, 2013.
2. On or about September 10, 2013, the Explanation of Benefits (EOB), along with a check in partial payment of Health Care Provider’s medical bill, was mailed by Insurer to Health Care Provider.
3. The EOB was in writing, and contained the basis for disputing portions of the amounts charged.
4. Health Care Provider deposited the partial payment check in its bank account on September 20, 2013.
5. The EOB and partial payment check were received by Health Care Provider no later than September 20, 2013.
6. The APPLICATION FOR PAYMENT OF ADDITIONAL REIMBURSEMENT OF MEDICAL FEES was filed with the Division on November 24, 2014.

RULINGS OF LAW:

1. The EOB and partial payment check, mailed by Insurer on September 10, 2013 and received by Health Care Provider no later than September 20, 2013, constituted “the first notice of dispute of the medical charge” as such term is used in Section 287.140.4, RSMo.
2. As the medical services for which additional payments are sought were rendered after July 1, 2013, Health Care Provider’s application was required to be filed within one year of September 20, 2013.
3. As Health Care Provider’s application was filed on November 24, 2014, more than fourteen months after September 20, 2013, the application was not timely filed as required by Section 287.140.4, RSMo.
4. Health Care Provider’s APPLICATION FOR PAYMENT OF ADDITIONAL REIMBURSEMENT OF MEDICAL FEES is barred by the statute of limitations, Section 287.140.4, RSMo.

Since no genuine issue exists as to material facts and the APPLICATION FOR PAYMENT OF ADDITIONAL REIMBURSEMENT OF MEDICAL FEES is barred by the statute of limitations, I hereby deny St. Louis Spine and Orthopedic Surgery Center's APPLICATION FOR PAYMENT OF ADDITIONAL REIMBURSEMENT OF MEDICAL FEES in full.

APPEAL RIGHTS:

Pursuant to 8 CSR 50-2.030(2)(P)4, the health care provider may file an application for review with the Labor and Industrial Relations Commission within twenty (20) days from the date of the award of the administrative law judge.

Made by:



ROBERT J. DIÉRKES

*Chief Administrative Law Judge
Division of Workers' Compensation*