

SELF-INSURING EMPLOYERS EVALUATION BOARD

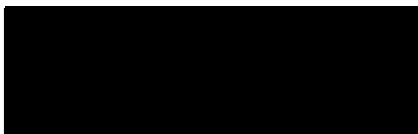
Karen L. Gillmor, Ph.D., *Chairman*
Carol A. Wilson, *Member*
Tommie Jo Brode, *Member*

Mike DeWine, *Governor*

IN THE MATTER OF:

**Children's Hospital of Cincinnati (Employer), Risk No. 20003154
and**

Complaint No. 1001156192



Children's Hospital Medical Center Cincinnati
3333 Burnet Avenue, #9008
Cincinnati, OH 45229-3026

Brent Martini
119 E. Court Street, Suite 102
Cincinnati, OH 45202-1203

Frost, Brown, Todd, LLC
301 E. 4th Street, Suite 3300
Cincinnati, OH 45202-4257

CareWorks
550 Glendon Court, Suite 300
Dublin, OH 43016-3246

Complaint

In a complaint dated May 4, 2019, the Injured Worker alleged that although the Employer was aware the Injured Worker was represented, it did not copy the representative on correspondence denying medical bills, the denial correspondence did not specifically state the reason for non-payment, and the denial correspondence did not indicate that the Injured Worker had the right to request a hearing. The Injured Worker filed four separate complaint forms to address separate bill denials. The four complaints were combined into Complaint 100156192.

Attached to the complaint forms were Explanation of Benefits forms dated August 9, 2017, August 16, 2017, September 14, 2017, and November 17, 2017. Each form was directed to the provider, noted the bill was being denied, provided the date of service, provided a basis for the denial, and copied the Injured Worker. Each form also noted, "The injured worker may pursue the denial via Industrial Commission or ADR, whichever is appropriate."

The August 9, 2017 denial decision was for a bill with a date of service July 10, 2017 provided by UC Physicians for \$129. The stated reason for denial was, "These services are being denied as unauthorized." The August 16, 2017 denial decision was for a bill with a date of service of July 25, 2017 provided by Bethesda Healthcare for \$152. The stated reason for denial was, "Insufficient documentation." The September 14, 2017 denial decision was for a bill with a date of service of July 10, 2017 provided by University of Cincinnati for \$4,941.15. The stated reason for denial was, "Bill denied per POR." The November 17, 2017 form was for a bill with a date of service of October 20, 2017 provided by [REDACTED] for \$130. The stated reason for denial was, "Diagnosis code(s) listed is not for the allowed conditions in the claim."

Relevant History

The Bureau of Workers' Compensation (BWC) Self-Insured Department sent the complaint to the Employer on May 24, 2019.

Julie Bruns of Frost, Brown, Todd, representing the Employer, responded to the complaint in a letter dated June 12, 2019. Ms. Bruns asserted the Employer met the requirements of Ohio Adm.Code 4123-19-03(K)(5). The Employer contested the bills listed in the complaint within 30 days of receipt. The reasons for denial of the bills were listed on the denial notices. The denial notices were sent jointly to the provider and the employee. The denial notices plainly stated, "The injured worker may pursue the denial via the Industrial Commission or ADR, whichever is appropriate." Ms. Bruns further asserted that the rule does not require the denial notices be sent to the Injured Worker's representative.

In a letter dated June 28, 2019, Self-Insured Auditor [REDACTED] found the complaint invalid. [REDACTED] noted that Ohio Adm.Code 4123-19-05(K)(5) only requires the Employer to notify the Injured Worker. [REDACTED] also noted that the Explanation of Benefits forms were copied to the Injured Worker, provided the reason for the denial, and indicated the Injured Worker could pursue the denial to the Industrial Commission. The Board notes that [REDACTED] cited the incorrect Ohio Administrative Code provision. In her letter, [REDACTED] referenced Ohio Adm.Code 4123-19-05. The applicable provision would be Ohio Adm.Code 4123-19-03.

In a letter dated July 11, 2019, the Injured Worker's representative, Brent Martini requested that the complaint be found valid. Mr. Martini asserted that the explanation for denial of services in the August 9, 2017 and September 14, 2017 forms were inadequate in that they only stated the bills were being denied as unauthorized or per the employer of record. Ohio Adm.Code 4123-19-03(K)(5) requires the Employer to state specifically the reason for denial of the bills and the reasons listed on the Explanation of Benefits forms were not specific. Mr. Martini also asserted the forms did not state the Injured Worker had the right to request an Industrial Commission hearing.

In a letter dated September 11, 2019, Karen Thrapp, the Administrator's Designee, found Ohio Adm.Code 4123-19-03(K)(5) does not require the Employer to notify the Injured Worker's counsel of a bill denial and that the Employer did advise the Injured Worker of her right to appeal the denial. Ms. Thrapp also found that the rule does not require the Employer to phrase its response denying payment of medical treatment in a particular form. Ms. Thrapp cited to *State ex rel. Sierra v. Metrohealth Sys.*, 10th Dist. Franklin Nc. 03AP-676, 2004 WL 1445716, wherein a self-insuring employer's simple statement that "treatment was not authorized" was determined to be sufficient to meet the requirements of Ohio Adm.Code 4123-19-03(K)(5). Ms. Thrapp found that the Employer's reasons for denial provided in the Explanation of Benefits forms, although perhaps vague, met the rule requirements. Ms. Thrapp upheld the finding the complaint was invalid.

In a letter dated September 26, 2019, Mr. Martini requested review by the Self-Insuring Employers Evaluation Board. Mr. Martini noted that no argument was being made that the Employer's failure to notify Mr. Martini of its decision to deny payment of the bills was a violation of Ohio Adm.Code 4123-19-03(K)(5). Instead, Mr. Martini asserted the *Sierra* case cited by Ms. Thrapp addressed pre-authorization and not retroactive payment of medical bills and therefore was not applicable. Mr. Martini again asserted the rule requires the Employer to state specifically the reason for nonpayment of medical bills. Mr. Martini further asserted that the language in the denial decisions indicating the Injured Worker could further pursue the denial with the Industrial Commission might have been relevant had he been copied with the denial decision. Mr. Martini also asserted that the word "hearing" appeared nowhere in the denial decisions and the "right to additional review" did not necessarily equate to a right to request a hearing.

Complaint No. 1001156912 came before the Self-Insuring Employers Evaluation Board on November 13, 2019.

Determination

The Injured Worker alleges the Employer violated Ohio Adm.Code 4123-19-03(K)(5). Ohio Adm.Code 4123-19-03(K)(5) provides in pertinent part:

Within thirty days after receipt of a hospital, medical, nursing, or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the commission...

As conceded by Mr. Martini in his letter dated September 26, 2019, the Board finds the Employer's failure to notify Mr. Martini of its decision to deny payment of the medical bills identified in the complaint was not a violation of Ohio Adm.Code 4123-19-03(K)(5). The Board finds the rule contains no mandate that requires the Employer to notify the Injured Worker's representative of the denial of a medical bill.

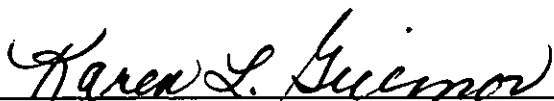
The complaint next asserts the Employer failed to provide a specific reason for denial of the bills as required by the rule. The Board agrees Ohio Adm.Code 4123-19-03(K)(5) requires employers to specifically state the reason for nonpayment of a bill. The Franklin County Court of Appeals addressed what constitutes a sufficiently stated reason for denial. In *State ex rel. Sierra v. Metrohealth Sys.*, 10th Dist. Franklin No. 03AP-676, 2004 WL 1445716, the Injured Worker sought treatment without prior authorization and the provider then submitted a bill for payment. The employer responded denying payment for the reason, "Treatment not authorized." The Court held that the Ohio Administrative Code does not require the employer to phrase its response denying the pre-authorization of requested treatment in some particular form and found the Employer's letter containing denial of payment because treatment was not authorized was an adequate response that met the requirements of Ohio Adm.Code 4123-19-03(K)(5). In the denial notices at issue in this complaint, the Employer explained the reasons for denial as, "These services are being denied as unauthorized;" "Insufficient documentation;" "Bill denied per POR;" and "Diagnosis code(s) listed is not for the allowed conditions in the claim." The Board finds the cited reasons for denial adequately fulfilled the requirements of Ohio Adm.Code 4123-19-03(K)(5).

The last allegation in the complaint is that the denial correspondence did not indicate the Injured Worker had the right to request a hearing as required by the rule. Each denial correspondence stated, "The Injured Worker may pursue the denial via Industrial Commission or ADR, whichever is appropriate." The Board finds that although the language did not include the word "hearing," the language sufficiently met the requirement the Employer notify the Injured Worker of her right to request a hearing before the Industrial Commission.

Based upon the above-cited findings, the Board affirms the findings of the Administrator's Designee contained in the decision issued September 11, 2019 and finds Complaint No. 1001156192 invalid.

This action is based upon a motion by Ms. Brode, seconded by Ms. Wilson, and voted on as follows.

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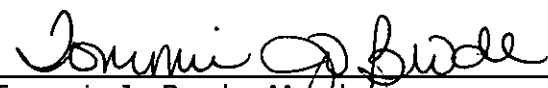
Karen L. Gillmor, Chairman

YES



Carol A. Wilson, Member

YES



Tommie Jo Brode, Member

YES

DATE MAILED: 12/23/19 **DAY OF** December 23rd, 2019