

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Vincent Sansone,
Employee/Claimant,

OJCC Case No. 15-000982MAD

vs.

Accident date: 1/14/2015

Frank Crum/Frank Winston Crum
Insurance, Inc.,
Employer/Carrier/Servicing Agent.

Judge: Mary A. D'Ambrosio

ORDER DENYING ENTITLEMENT TO ATTORNEY'S FEES

AFTER PROPER NOTICE TO ALL PARTIES, an Attorney Fee Amount hearing was held on October 8, 2015. Present for the hearing were Martha Fornaris, Esq., counsel for the Claimant and Paul Luger, Esq., counsel for the Employer/Carrier.

The subject of the hearing was Claimant's Interim Verified Petition for Attorney's Fees filed on April 16, 2015. The Employer/Carrier's Response was filed on May 8, 2015.

Claimant's counsel filed a Supplemental Verified Petition on October 5, 2015 (additional attorney fee for proving entitlement). The Employer/Carrier objected as untimely for the Fee Hearing. Jurisdiction is reserved on the Supplemental Verified Petition to allow the Employer/Carrier the requisite 30 days to respond.

EXHIBITS

1. Pretrial Stipulation – Judge's Exhibit #1;
2. Claimant's Interim Verified Petition for Attorney's Fees filed 4/16/15-Claimant's Exhibit #1;
3. Deposition of Misty Rish taken 9/21/15 (D#41) – Claimant's Exhibit #2;
4. Copy of Docket (D#45) – Claimant's Exhibit #3;
5. Service List/Notice List (D#44) – Claimant's Exhibit #4;
6. Verified Petition for Attorney's Fees (Supplemental)(D#38) – Claimant's Exhibit

#5 (for identification only);

7. Letter from Broadspire to Delray Medical Center 1/15/15 - Employer/Carrier's Exhibit #1;
8. Envelope from Tenet Boca Raton Medical Insurance Center to Broadspire – Employer/Carrier's Exhibit #2;
9. USPS Tracking - Employer/Carrier's Exhibit #3;
10. Payout Sheet - Employer/Carrier's Exhibit #4;
11. Response to Petition for Benefits - Employer/Carrier's Exhibit #5;
12. Employer/Carrier's Verified Response filed May 8, 2015 (D#20) - Employer/Carrier's Exhibit #6;
13. Employer/Carrier's Objection to Claimant's Supplemental Verified Petition (D#46) – Employer/Carrier's Exhibit "A" for identification.

I considered testimony from Martha Fornaris, Paul Luger, and brief telephone testimony from Misty Rush. I considered the Memoranda of Law filed by counsel as argument.

STIPULATIONS

Counsel stipulated that the adjuster, Misty Rish, mailed out the Response to Petition for Benefits on March 9, 2015.

FINDINGS OF FACT

1. The Claimant suffered an accident on January 14, 2015. A Notice of Injury was received by the Carrier on January 15, 2015 and adjuster, Misty Rish was assigned the case. Ms. Rish left a voicemail for Delray Medical Center on January 15, 2015 in order to obtain medical records and provide contact information to the hospital. On January 15, 2015 a letter was sent by Ms. Rish to Delray Medical Center outlining the address where the medical bills and records should be sent (in Kentucky).

2. After an initial positive drug test, the claim was denied on January 19, 2015 in a Notice of Denial.

3. The Claimant retained Martha Fornaris, Esq. who filed a Petition for Benefits on February 10, 2015, seeking, among other things, "Payment to Delray Medical Center,

compensability for hospitalization and treatment received due to his injury sustained on January 14, 2015.” This PFB was received by the Employer, Frank Crum on February 10, 2015, and by the Carrier, Broadspire, on February 12, 2015.

4. On February 18, 2015, Broadspire in Kentucky received the bills from Delray Medical Center for review. On February 18, 2015 the bill was processed through Broadspire’s fee scheduling department and validated on February 19, 2015 to be paid by the adjuster. The approved bill was placed in the adjuster’s “CEP” electronic folder for her to request issuance of a check for payment.

5. Unaware of the fact that the hospital bill from Delray Medical Center had been received by Broadspire’s bill review department in Kentucky on February 18, 2015, Misty Rish filed a Response to Claimant’s PFB on March 9, 2015 which **rescinded the January 19, 2015 Notice of Denial**, and indicated, that upon receipt and review, the bills will be “processed and paid in an (sic) accordance with Florida WC Fee Schedule.” On March 13, 2015 the adjuster approved the bill for payment. On March 27, 2015, a check for payment in the amount of \$201,388.14 was mailed by Broadspire to Delray Medical Center.

6. Counsel for the Claimant, Martha Fornaris, filed an Interim Verified Petition for Attorney’s Fees on April 16, 2015 alleging entitlement to a statutory attorney’s fee for obtaining payment of the hospital bill to Delray Medical Center in the amount of \$201,388.14.

The Claimant argues entitlement to an attorney’s fee under section **440.34(3)(b)** Florida Statutes (applicable when Claimant has employed an attorney in the successful prosecution of a petition) because the Carrier filed a Notice of Denial of compensability of the claim on January 19, 2015, thus forcing the Claimant to hire an attorney and file a Petition for Benefits on

February 10, 2015. Alternatively, Claimant argues that payment of the bills should have been made within 14 days of the February 10, 2015 Petition for Benefits pursuant to section **440.192(8)(2013)** Florida Statutes, and the Carrier's failure to file a Response to the Petition for Benefits within **14 days** operates as a denial, relying on McDonald's Restaurant #7160 v. Montes, 736 So. 2d 768 (Fla. 1st DCA 1999).

As to the jurisdictional issue raised by the Employer/Carrier, the Claimant argues the Employer/Carrier has waived its jurisdictional argument by not raising it within 30 days of receipt of the Petition for Benefits. They acknowledge that if this was a compensable case, and a Petition was filed for payment of the bills, jurisdiction would lie with AHCA; however, in the instant case, the Carrier had denied compensability and entitlement to benefits, thereby placing compensability in issue (clearly within the jurisdiction of the JCC).

7. The Employer/Carrier filed a Verified Response to Claimant's Verified Petition for Attorneys Fees on May 8, 2015, asserting that the Judge of Compensation Claims lacked jurisdiction to award any fees as the issue of payment of the bills of a provider falls squarely within the jurisdiction of AHCA, and that no entitlement to fees or costs was present as the Employer/Carrier timely processed payment of the bill at issue. They argue jurisdictional issues can be raised at any time pursuant to **Fla. R. Civ. P. 1.140(b)**, and that the 30 day time limitation argued by Claimant applied only to a dismissal for lack of specificity under section 440.192(5).

The Employer/Carrier rely upon section **440.20(6)(b)**, Florida Statutes which considers medical bills timely paid if paid within 45 calendar days after the Carrier's receipt of the bill and section **440.20(2)(b)**, Florida Statutes which requires the Carrier to "pay, disallow, or deny all medical, dental, pharmacy and hospital bills submitted to the Carrier no later than 45 calendar

days after the Carrier's receipt of the bill".

The Employer/Carrier argue that section 440.20(2)(b) and Administrative Rule 69L-7.602(5)(k) should be read *in pari materia* with section 440.34(3), Florida Statutes, which states "Regardless of the date benefits were initially requested, attorney's fees shall not attach under this subsection until 30 days after the date the Carrier receives the petition".

CONCLUSIONS OF LAW

1. I reject the Claimant's argument that the jurisdictional issue is waived if not raised within 30 days. I find that I have jurisdiction over the claim for attorney's fees on the basis that the Petition for Benefits requested compensability of the accident and "compensability for hospitalization and treatment received", and not just for payment of the hospital bill. I find that the medical necessity of the hospitalization and treatment was placed at issue in the Petition for Benefits.

2. I find that the Carrier timely paid the Delray Medical Center hospital bill within 45 days of its' receipt of the bill pursuant to sections 440.20(2)(b) and 440.20(6)(b), Florida Statutes. The bill was received on February 18, 2015 and paid on March 27, 2015, within 45 days (45 days ran on April 4, 2015).

3. I find that the Carrier rescinded their January 19, 2015 Denial in their March 9, 2015 Response to Petition for Benefits which is within 30 days of their receipt of the February 10, 2015 Petition for Benefits (30 days ran on March 12, 2015). As of March 9, 2015, there was no responsibility of the Claimant for the payment of the hospital bills (as the Carrier agreed to pay them upon receipt of the proper billing forms). I find it irrelevant that the Carrier's Kentucky office was already in receipt of the bills when Misty Rish responded on March 9, 2015

that bills would be paid *once received*. The relevant inquiry is whether the bills *were* paid within 45 days of the Carrier's receipt, and I find that they were.

4. I reject the Claimant's argument that attorney fee entitlement attaches because the Carrier's failure to respond to the Petition within 14 days under section 440.192(8) operates as a denial. This argument ignores the language of section 440.34(3) which states "attorney's fees shall not attach under this subsection until 30 days after the date the carrier receives the petition".

5. I reject the Claimant's argument that the status of the case on January 19, 2015 (total controvert) takes the facts of the case out of the 45 day statutory time frame for payment of bills. I find that the Carrier rescinded the denial timely upon receipt of the Petition for Benefits and paid the bills within 45 days of their receipt. I find that the Claimant was not successful in the prosecution of the petition under section 440.34(3)(b)(2013), because the carrier did not *file a response to the petition denying* benefits, but rather, filed a response to the petition *accepting* benefits.

WHEREFORE, it is

ORDERED AND ADJUDGED:

1. The claim for payment of an Employer/Carrier paid attorney's fee is denied.
2. The Verified Petition for Attorney's Fees is denied and dismissed.

DONE AND ORDERED this 28 day of October, 2015, in West Palm Beach, Palm Beach County, Florida.



Mary A. D'Ambrosio
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
West Palm Beach District Office
One Clearlake Centre, 250 S. Australian Avenue, Suite 200

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West Palm Beach, Florida 33401
(561)650-1040
www.fljcc.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been electronically furnished to counsel for the parties on this²⁸ day of October, 2015.



Secretary to Judge of Compensation Claims

Martha D. Fornaris, Esquire
fornaris@fornaris.com, vvalle@fornaris.com

Paul L. Luger, Esquire
pluger@hrmcw.com, ahathcock@hrmcw.com