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CASE NOTES

CASE LAW SUMMARY
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If you have any questions regarding Case Law Summaries, please contact W. Rogers Turner, Jr. : rturner@hrmcw.com

Turner v. Miami-Dade Co. School Board & Gallagher Bassett Services, Inc. (1ST DCA 9/28/07)

If the E/C/SA is aware of an assigned permanent impairment rating but does not pay the impairment benefits within 7 days of when they become due, then penalty and interest is owed.

The claimant was placed at MMI with an impairment rating on January 4, 2002. The E/C conferenced with the doctor and discussed the impairment rating on March 29, 2002. The impairment benefits were not paid, however, until July 23, 2002 in response to a Petition for Benefits that was filed on June 28, 2002. The carrier did not pay penalties or interest on the late payment of impairment benefits.

Section 440.20(6), Fla. Stat. (2001) states that if impairment benefits are not

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paid within 7 days after they become due, the E/C/SA "shall pay penalties unless such nonpayment results from conditions over which the E/C/SA had no control". Section 440.20(8), Fla. Stat. (2001), states that the E/SA shall pay interest from the date the benefits were due until paid.

The E/C, not the claimant, has the burden to show at trial "any relevant evidence showing that [they were] unaware, as of the date on which claimant alleged benefits were due, of facts supporting the obligation to pay those benefits." Since the E/C/SA did not present any evidence that they were unaware that they were required to pay impairment benefits, and in fact the evidence showed the E/C/SA knew of the impairment rating, the JCC should have awarded penalties and interest for late payment of impairment benefits.

ISOL Auto supply a/k/a Frank Auto & The Hartford, (Fla. 1st DCA Sept. 12, 2007)

The parties sought review of a non-final ruling that denied a fraud defense. However, after the non-final ruling occurred and before the appeal, the parties entered into a stipulation in which they agreed that all issues were resolved except the amount of attorney fees and costs. This stipulation rendered the appeal of the non-final ruling moot as there was no longer a controversy. The First District Court of Appeal noted that "Florida's appellate courts reserve the exercise of judicial power for cases involving actual controversies."

The Avalon Center & Unisource Administrators v. Hardaway, (1st DCA Sept. 21, 2007)

Absent evidence that a claimant is personally obligated to pay a medical bill, the JCC does not have jurisdiction to award payment of medical bills. Such disputes are between the healthcare provider and the carrier, and jurisdiction rest with AHCA.

The JCC had ordered the E/C to pay medical bills of the authorized treating doctor and the E/C appealed. The First District Court of Appeal reversed, finding that AHCA, not the JCC, has jurisdiction over disputes between the E/C and the doctor over payment of the bills.

The adjuster testified that she submitted the doctor's charges for over-utilization review under s. 440.13(6), Fla. Stat. (2006). If the E/C finds over-utilization or a violation of the "parameters for treatment set forth in the Workers' Compensation Act, the carrier must disallow or adjust payment for such services."

The doctor testified that he received notification that some of the bills were disallowed and that he understood that the claimant was not responsible for payment of those disallowed bills. The doctor also admitted that he knew he could challenge the carrier's decision to disallow. The doctor did not file his own petition at the "claimant's urging" and allowed the claimant to pursue the issue with the JCC.

The claimant filed a Petition for Benefits on 10/24/05 seeking reimbursement for the disallowed dates of service. The E/C filed a motion to dismiss for lack of subject matter jurisdiction. The E/C argued that AHCA has exclusive jurisdiction over disputes between an insurance carrier and a health care provider.

The E/C argued that the claimant does not have standing to petition the JCC

for reimbursement of disallowed medical bills. The First District Court of Appeal found that a JCC does not have "general" jurisdiction over payment of medical bills as the JCC does not have "general" jurisdiction at all, only what the statute specifically allows. The First District Court of Appeal agreed with the E/C's argument that s. 440.192(2)(h), Fla. Stat. (2006) does not grant jurisdiction to the JCC but merely outlines basic procedural criteria for a "facially sufficient petition for benefits". The court further found that s. 440.13(11)(c), Fla. Stat. (2006) specifically provides jurisdiction over over-utilization billing disputes to AHCA.

As the dispute between the doctor and the E/C met the definition of "reimbursement dispute" in s. 440.13(1)(r), Fla. Stat. (2006), the dispute was within the exclusive jurisdiction of AHCA.

Note: If the claimant seeks reimbursement for bills he/she paid personally or is obligated to pay, then the JCC would have jurisdiction.

Palm Beach County Sheriff's Office & USIS, (Fla. 1st DCA Sept. 21, 2007)

E/C appeals the JCC's denial of its motion to appoint an EMA. There was a dispute between the IME doctors over whether the claimant had hypertension and whether atrial fibrillation is heart disease. The JCC denied the E/C's request for an EMA, apparently finding that the presumption in s. 112.18, Fla. Stat. (2002) preempts s. 440.13(9)(c), Fla. Stat. (2002), which requires an EMA be appointed where there is a dispute between health care providers.

The court found that the presumption arises only after a finding of heart disease (among other things) and that a conflict in whether there is heart disease requires an EMA opinion. The court noted that s. 440.13(9)(c), Fla. Stat. (2002) "mandated the appointment of an expert medical advisor before applying the section 112.18 presumption."