

OPINION ENTERED: June 12, 2012

CLAIM NO. 201087602

TRANSIT AUTHORITY OF RIVER CITY

PETITIONER

VS. **APPEAL FROM HON. ALLISON EMERSON JONES,
ADMINISTRATIVE LAW JUDGE**

ALBERT FLORENCE,
HON. LAWRENCE F. SMITH,
and HON. ALLISON EMERSON JONES,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Transit Authority of River City ("TARC") seeks review of the opinion and award rendered November 25, 2011 by Hon. Lawrence F. Smith, Administrative Law Judge ("ALJ") awarding Albert L. Florence ("Florence"), temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits for work-

related injuries to his low back and left knee stemming from a motor vehicle accident occurring May 21, 2010, and exacerbated by a second motor vehicle accident occurring September 3, 2010. TARC also appeals from the order denying its petition for reconsideration entered January 23, 2012, by Hon. Allison E. Jones, Administrative Law Judge.

On appeal, TARC argues the ALJ's decision finding it responsible for the payment of bills from Associated Chiropractic and Rehab ("Associated") is not in conformity with the provisions of KRS 342, and therefore must be reversed. We affirm.

Florence, a bus driver for TARC, testified by deposition on December 7, 2010, and at the hearing held September 26, 2011. On May 21, 2010, Florence was driving a bus when a pick-up truck in front of him spun out of control and collided with his bus. The collision caused him to twist his back and strike his left knee against the steering column. He sought medical treatment a few days later at Sts. Mary and Elizabeth Hospital. He was off work for more than two weeks, and then returned to light duty. At TARC's direction, Florence followed up with Occupational Physician Services which referred him to physical therapy. He initially received physical therapy at Progressive

Medical, and then switched to the Metro Pain Relief Center located on Dixie Highway. He eventually returned to work as a bus driver.

On September 3, 2010, Florence was involved in another motor vehicle accident. He had stopped his bus at a railroad crossing to check for oncoming trains when it was rear-ended by an SUV. As a result of that incident, Florence had an exacerbation of his back pain. He subsequently sought treatment at Associated. He later learned this provider was not on TARC's approved list and he returned to Metro Pain Relief for treatment. No evidence was introduced that Florence was ever provided a Form 113 physician designation form, or a list of approved providers pursuant to TARC's managed care plan. Likewise, TARC's managed care plan was not submitted as evidence. Florence continues to work as a driver for TARC, earning an equal or greater wage than he was earning at the time of the accident.

Since the only issue on appeal pertains to the compensability of treatment from Associated, we will not engage in a detailed review of the medical evidence.

In an opinion, award and order rendered November 25, 2011, the ALJ awarded TTD benefits, PPD benefits based upon the 7% impairment rating assessed by Dr. Jules

Barefoot, and medical benefits. Pertaining to the issue on appeal, the ALJ found as follows:

3. Has there been a failure to pay medical expenses? The plaintiff argues that the defendant failed to pay Associated Chiropractic for medical expenses related to the treatment of his back. He states that he has an outstanding bill for \$3,775.00. The defendant argues that the chiropractic bills were submitted more than 45 days after care was provided. The defendant argues that the parties agree that these chiropractic bills are not compensable.

KRS 342.020 requires the employer to pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease.

The ALJ finds that the time limits relied upon by the defendant apply to bills for medical care provided after a claim has been adjudicated. I therefore find that the defendant is responsible for bills from Associated Chiropractic for the care of the plaintiff's work injury.

In its petition for reconsideration filed December 5, 2011, TARC argued as follows:

The ALJ found that the Defendant is responsible for the bills from Associated Chiropractic stating that

the time limit of 45 days to submit bills does not apply until after a claim has been adjudicated. KRS 342.020(1) states specifically that "the provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated." The statute does not differentiate between pre and post award enforcement of this requirement. Defendant first received the Associated "bill" dated January 25, 2011 in June 2011 when it was filed by Plaintiff's counsel. The medical expenses are not compensable as they were not submitted to the carrier within 45 days. The Defendant never received a "statement for services" as required by 803 KAR 25:096 Section 6. The medical expenses from Associated Chiropractic was a "listing" or chart of the dates of service and applicable charges that is not sufficient to comply with the definition of a statement for services defined in 803 KAR 25:096 Section 1(5)(a) as a completed Form HCFA 1500. Further, the **Plaintiff did not file a Form 113 indicating that he was treating with Associated Chiropractic and this provider is not within the Defendant's managed care system.**

Thus, Defendant respectfully requests that the ALJ make additional findings of fact concerning the compensability of the medical expenses from Associated and address the issues outlined above. **Defendant further requests the ALJ consider the finding that the medical expenses from Associated Chiropractic are compensable as they were not submitted timely, they [sic] did not provide a statement for services, there was no designation of Associated on a Form 113 and they [sic]**

are not a provider within the Defendant's managed care network.

(Emphasis added).

ALJ Jones, in an order entered January 23, 2012, denied TARC's petition for reconsideration.

On appeal, TARC argues the following:

The ALJ found that TARC is responsible for the bills from Associated stating that the time limit of 45 days to submit bills does not apply until after a claim has been adjudicated. KRS 342.020(1) states specifically that "the provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated." The statute does not differentiate between pre and post award enforcement of this requirement. TARC first received the Associated "bill" totaling \$3,775.00 dated January 25, 2011 when it was submitted into evidence in June 2011, seven months after the treatment ended. 803 KAR 25:096 Section 6 states that "if the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable." Florence simply chose to go to a different provided[sic] after his second MVA without a referral or inquiring as to whether Associated was within TARC's managed care. Florence's claim was never denied thus there was no reasonable ground for the delay in submitting the "bill." It is uncontradicted that the Associated "bill" was not submitted within 45 days of the treatment nor was there any evidence of reasonable grounds for the

delay and thus they should be deemed non-compensable.

Associated never tendered a "statement for services" as required by 803 KAR 342.010(1) and KRS 25:096 Section 6. The medical expenses from Associated was a "listing" or chart of the dates of service and applicable charges that is not sufficient to comply with the definition of a statement for services defined in 803 KAR 25:096 Section 1(5)(a) as "a completed Form HCFA 1500." The form Florence filled out on his initial visit to Associated indicates that the insurance is "State Farm." Nowhere does it appear that this was a work related injury, only a MVA. The printout from Associated indicates it was mailed to Florence and lists the attorney as Jeremy Winton (not his workers' compensation attorney). Florence explained that Mr. Winton's office is upstairs in the chiropractor's office and he signed up with them[sic] after the insurance company contacted him. (T.H., pp. 42-44). It appears that the "insurance company" is the insurer for the woman who hit the bus. Petitioner suspects that as[sic] happens in many auto accidents that the provider contacted Florence to treat there after the second MVA. It appears that they[sic] were unaware that the MVA was a work related injury believing State Farm was responsible thus they[sic] failed to submit the bills to the appropriate obligor.

Mr. Goode, senior claims adjuster that handles workers' compensation for TARC, testified that Associated is not in the managed care program and that he did not receive any medical bills or records from Associated. (T.H., pp.50-

51). Further, Florence did not file a Form 113 indicating that he was treating with Associated pursuant to 803 KAR 25:096 Section 3(1). Petitioner requests that any bills from Associated be deemed non-compensable as (1) the provider is not in the approved managed care network; (2) Associated never filed a "statement for services" and Associated failed to submit the bills for payment within 45 days of treatment pursuant to KRS 342.020(1).

We will first address TARC's argument the ALJ erred by finding it liable for medical bills submitted more than forty-five (45) days after service was rendered pursuant to KRS 342.020(1). This Board has held on numerous occasions the 45-day rule for submission of statements for services in KRS 342.020(1) has no application in a pre-award situation. The Kentucky Supreme Court in R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky. 1993) pointed out the requirement in KRS 342.020(1) for the payment of bills within 30 days of receipt of the statement for services "applies to medical statements received by an employer after an ALJ has determined that said bills are owed by the employer." In other words, it does not apply pre-award. We held in Brown Pallet v. David Jones, Claim No. 2003-69633, (entered September 20, 2007) the reasoning of the Supreme Court in R.J. Corman, supra, concerning the 30 day provision for

payment of medical benefits should also apply to the 45 day rule for submission of medical bills. The Court in R.J. Corman stated "until an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits, are justiciable." Despite its argument the ALJ erred in finding the medical bills compensable although they were not tendered within 45 days, we find it significant that TARC did not file a medical dispute subsequent to Florence tendering billing information from Associated on June 10, 2011.

In this instance, the ALJ correctly found the 45-day rule was inapplicable to pre-award medical bills. Likewise, he adequately set forth the reasoning for his determination. On this issue, we affirm.

Secondly, to a lesser extent, TARC argues it should not be responsible for the Associated bills because it is not a provider subject to TARC's managed care plan, and because Florence did not submit a Form 113 physician designation form. There is no evidence a Form 113 was ever provided by TARC to Florence. 803 KAR 25:096(2) specifically provides as follows:

Within then (10) days following receipt of notice of a work injury or occupational disease causing lost work

time or necessitating treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. **Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.**

(Emphasis added).

In this instance, no evidence has been submitted establishing Florence was ever provided the designation form. Florence testified he attempted to obtain billing information from the medical payment obligor in order to ensure Associated could properly submit bills, but he was advised no information could be provided to him because he was represented by counsel. No evidence was introduced demonstrating the information sought was ever provided to Florence's attorney. Since TARC failed to establish its medical payment obligor provided a Form 113 to Florence, its argument he failed to provide the form rings hollow.

Likewise, we find no merit in TARC's argument it should not be responsible for the Associated bills because it is not an approved provider pursuant to its managed care plan. 803 KAR 25:110 establishes procedures and standards for managed care programs. 803 KAR 25:110(4)(11) specifically provides the following:

The plan shall demonstrate effective methods of informing employees, employers, and medical providers of the services provided by the plan and requirements imposed by the plan, including a twenty-four (24) hour toll free phone number by which information may be obtained concerning plan operations, after-office-hours care, and twenty-four (24) hour access to emergency care.

TARC's managed care plan was not introduced into evidence. Likewise, no evidence was submitted establishing Florence knew of the plan or that he was provided the required information. After he learned Associated was not on TARC's list, he stopped treating there, and returned to Metro Pain Relief which apparently was an approved provider. We do not believe the ALJ erred in finding compensable the bills from Associated, and we therefore affirm.

Accordingly, the decision by Hon. Lawrence F. Smith, Administrative Law Judge, rendered November 25, 2011, as well as the order ruling on the petition for reconsideration rendered by Hon. Allison E. Jones, Administrative Law Judge, dated January 23, 2012, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

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