

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
 D. T.) OAH No. 10-0577-PER
) Agency No. PHR2010-1029
 _____)

FINAL DECISION

I. INTRODUCTION

Mr. T. is a participant in the Alaska Care Retiree Health Plan (Health Plan). He submitted a claim for medical services in the amount of \$1,224.20. The Health Plan, through its Claims Administrator (Wells Fargo) issued an explanation of benefits which indicated that only \$527 of that claim was covered, and the Health Plan paid 100% of that amount.¹

Mr. T. appealed, arguing that the full amount should be covered. On July 23, 2010, the Plan Administrator upheld Wells Fargo’s determination and denied Mr. T.’s appeal.² Mr. T. appealed that decision to the Office of Administrative Hearings.³ At the OAH hearing, counsel for the Plan Administrator stated that the Health Plan should pay \$898 of the \$1,224.20 claim. Thus, the amount in dispute is \$326.20.

After an initial proposed decision was issued, the parties had an opportunity to submit comments and recommended changes pursuant to AS 44.64.060. This final decision has been modified based on those comments.⁴

Based on the evidence in the record, the testimony at the hearing and the contractual provisions of the Health Plan, Mr. T. is entitled to full reimbursement for the \$1,224.20 claim.

II. FACTS

Mr. T.’s medical records reveal that he suffered from internal hemorrhoids. The recommended treatment was to have the hemorrhoids removed in the operating room under light

¹ Record at 58.

² Record at 29 – 30.

³ Record at 1. Mr. T. was initially told that he had no right to a further appeal. At the hearing, a witness for the Plan Administrator indicated that at the time Mr. T. was told this, the Plan Administrator was obtaining legal advice as to whether there was a right to appeal. The Plan Administrator should have told him they was waiting for this advice rather than tell him there was no appeal. Had Mr. T. not followed up with another letter, he might never have learned of his right to appeal.

⁴ The reasons for accepting or rejecting various suggested charges are set out in a separate document entitled Rulings on Proposals for Action.

sedation rather than in his physician's office.⁵ He subsequently had three hemorrhoids removed through rubber band ligation.⁶

The hospital's charge for this procedure was \$4,627.90, which was fully paid by the Health Plan.⁷ As stated above, the physician's separate bill was only partially paid. Mr. T. testified that the physician works for Peace Health in No Name City, and that Peace Health is the only provider for this type of service. To obtain this service from a different provider at a lower cost would require paying for airfare and other travel costs to a different city.⁸

III. DISCUSSION

Mr. T. raised several issues on appeal. Most of those issues need not be addressed, however, because he is entitled to full reimbursement for his physician's bill under the plain language of the Health Plan. The terms of the Health Plan are set out in the Retiree Insurance Information Booklet (Information Booklet). Exhibit 1 is an excerpt of the Information Booklet.⁹

Sheri Gray is the Benefits Supervisor for the Division of Retirement and Benefits. She testified that the Information Booklet describes the obligations of the plan and the member with respect to health insurance payments. As there is no other document setting out the contractual obligations of the Plan, this Information Booklet is the insurance contract for Plan members.¹⁰ Insurance contracts are considered contracts of adhesion that must be construed to provide the coverage "a layperson would have reasonably expected from a lay interpretation of the policy terms."¹¹ In addition, coverage provisions are interpreted broadly, while exclusions are viewed narrowly.¹² The doctrine of interpretation in favor of an insured's reasonable expectations is not dependent on there being any ambiguity in the contract language.¹³ If, however, the language is ambiguous and susceptible to more than one interpretation, the interpretation that favors the insured is followed.¹⁴

⁵ Record at 16 – 17.

⁶ Record at 18 – 19. The technique is described in Exhibit 6.

⁷ Record at 21.

⁸ No Name City is on an island in Southeast Alaska. Larger cities are all at least one hour away by jet.

⁹ Exhibit 1 is three pages long. Page 1 is the cover. Page 2 consists of pages 12 and 13 of the booklet. Page 3 consists of pages 14 and 15 of the booklet. The full document is available on the Division of Retirement and Benefits web page.

¹⁰ *In re D.M.*, OAH No. 08-0153-PER (2008), page 2.

¹¹ *Whispering Creek Condominium Owner Association v. Alaska National Insurance Company*, 774 P.2d 176, 177 – 178 (Alaska 1989).

¹² *Whispering Creek*, 774 P.2d at 178.

¹³ *Bering Strait School District v. RLI Insurance Company*, 373 P.2d 1292, 1295 (Alaska 1994).

¹⁴ *Id.*

Pursuant to the language in the Information Booklet, payments made by the plan for medical services are based on the Recognized Charge.¹⁵ There are four different ways of calculating the Recognized Charge. First, if Wells Fargo has an agreement with the health care provider, then the agreed upon amount is the Recognized Charge.

When there is no agreed on charge, the Recognized Charge is the lowest of:

- The provider’s usual charge for furnishing the service.
- The charge the claims administrator determines to be appropriate based on factors such as the cost for providing the same or similar service or supply and the manner in which charges for the service or supply are made.
- The charge the claims administrator determines to be the recognized charge percentage made for that service or supply.^[16]

In this case, the “charge the claims administrator determines to be appropriate” was not applied, and there was no evidence introduced as to how it could be applied. Instead, Wells Fargo used the last of these methods, and calculated the *recognized charge percentage*. Since that amount was lower than the physician’s usual charge, the Plan’s payment was based on the recognized charge percentage.

The Insurance Information Booklet describes in detail how the *recognized charge percentage* is determined:

The recognized charge percentage is the charge determined by the claims administrator on a semi-annual basis to be in the 90th percentage of the charges made for a service or supply by providers in the geographic area where it is furnished. The recognized charge is determined by collecting the claims submitted for each procedure, defined by the procedure code, in a specific geographic area. The highest and lowest charges are ignored and the charge that allows 90% of all the claims to be paid in full is set as the recognized charge for that procedure. The geographic area is determined by where the procedure is performed. For example, most procedures in Juneau are based on charges submitted from all Southeast Alaska. Some types of procedures, such as surgery, are based on statewide claims data to ensure sufficient information to establish a recognized charge.^[17]

The reasonable expectation of a layperson reading this language would be, first, that the *recognized charge percentage* for each procedure is determined every six months. This prevents stale data from more than six months in the past from influencing the amount to be paid on a claim. Next, the claims submitted are organized by geographic area. Finally, the *recognized*

¹⁵ Exhibit 1, page 2
¹⁶ Exhibit 1, pages 2 – 3.
¹⁷ Exhibit 1, page 3.

charge percentage would be the dollar amount that would be sufficient to pay 90% of the submitted claims in that geographical area after ignoring the high and low claim values.

The Information Booklet has an example to describe how geographic areas are determined. It says that the geographic area for Juneau would be “all of Southeast Alaska.”¹⁸ No Name City is also in Southeast Alaska, and based on this example, the geographic area would also be Southeast Alaska. When, however, there is insufficient information to establish a *recognized charge percentage* for Southeast Alaska, the claims administrator can look at statewide claims.¹⁹

The testimony and exhibits in the record establish that the claims administrator used a different method of calculating the *recognized charge percentage*.

In addition to the testimony from Ms. Gray, Dawn Ossont testified about the method used to calculate the reimbursement for Mr. T.’s claim. Ms. Ossont is a consultant to Maximus, which is under contract with the Health Plan to review medical claim payment decisions. Ms. Ossont has experience and training in medical coding and health information management. She testified that Maximus looks at reports generated by Ingenix, which is a company that gathers health claim data from around the country. When she wants to know what the proper reimbursement rate for a claim is, she enters the CPT code, the zip code for where the procedure occurred, and the date of service. Ingenix can then provide two different types of report based on that input.

If there are sufficient claims for the geographic area, a PHCS report is issued that shows the dollar amount that would be enough to pay 90% of the claims in the Ingenix database for that geographical area.²⁰ If there are insufficient claims to calculate that dollar amount, Ingenix generates an MDR report by using a formula that compares similar services and the relative value of those services to estimate a derived dollar amount that would pay 90% of the claims.²¹

This second type of report was not used to calculate Mr. T.’s reimbursement rate. Although Ms. Gray testified that there was no provision in the Information Booklet allowing this derived dollar amount method, it might be permissible under the second method of calculating the reasonable charge listed in the Information Booklet.²² Because this method was not used in

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *E.g.*, Exhibit 7, page 3.

²¹ *E.g.*, Exhibit 7, page 1. Also explained in Exhibit 8.

²² Exhibit 1, page 2.

this matter, no ruling is made on whether the MDR report could be used to calculate a reimbursement amount in a different matter.

The PHCS report is not an allowable method of computing the *recognized charge percentage* because Ingenix uses a different method for calculating the *recognized charge percentage* from the method required by the plan. Those differences are summarized in the following chart:

Requirements	Information Booklet Method	Ingenix Method
Calculate on Semi Annual basis?	Yes	No, calculates on 12 month running average
Collect claims by specific geographic areas	Yes	Yes, but there is an issue with the geographic areas used
Include Southeast Alaska as a geographic area?	Yes	No
Include all of Alaska as a geographic area?	Yes	No

Ms. Ossont testified that Ingenix calculates its reimbursement rates using the prior twelve months of data.²³ The language used in the Information Booklet says that the charges will be determined on a semi-annual basis. This implies the use of six months worth of data rather than nine months, 12 months, or 18 months. To the extent the Information Booklet is ambiguous, it must be interpreted in favor of Mr. T. In times of rising health care costs, use of six months worth of data would be more favorable to Mr. T. than using a longer period of time for calculating the costs.²⁴

The most important difference, however, is that the PHCS report divides Alaska into geographic areas in a way that is different than what the Information Booklet specifies. The Information Booklet states that a claim from Juneau would be based on charges submitted from Southeast Alaska, and that if there were insufficient claims, Wells Fargo would look at statewide data. Based on this description, a claim from No Name City would be based on Southeast

²³ See also, Exhibit 8, page 1.

²⁴ As discussed in the Rulings on Proposals for Action, the supplemental information submitted by the Administrator directly states that the Claims Administrator will use six months of claims data, rather than 12 months.

Alaska data or, if there was insufficient data from Southeast, it would be based on statewide data.²⁵

Ingenix, however, has divided Alaska into three different areas by zip code. The first area is all zip codes that start with 999. This is generally the southern portion of Southeast Alaska, including No Name City.²⁶ The next area is all zip codes that start with 996 or 998. This includes the remaining portion of Southeast plus diverse communities such as Kodiak, Kenai, Kwethluk, McGrath, Naknek, Wasilla, Dutch Harbor, Pilot Station, and Saint Paul Island. The third area is all zip codes that start with 995 or 997. This encompasses Anchorage and Fairbanks, but also includes Bethel, Cordova, Cold Bay, Adak, Barrow, Nome, Tok, and Diomede.

In using the Ingenix data, it is possible to look at any one of the three *different* geographic areas, but it is not possible to look at *expanded* areas. When it was determined that there was insufficient data for the No Name City area,²⁷ it was not possible to expand the scope of the area to all of Southeast Alaska because Ingenix arbitrarily divides Southeast in half, and includes the northern half with portions of other Alaska regions. It is also not possible to look at statewide data. Looking at statewide data, however, is exactly what a layperson would expect from the language in the Information Booklet when the data from a smaller region was not sufficient to calculate the *recognized charge percentage*.

Using Ingenix data to determine the *recognized charge percentage* for an insurance claim may be a reasonable method. It is not, however, the method promised in the Information Booklet. The Information Booklet describes geographic areas that are logical in relation to Alaska geography. The Ingenix method does not appear to have been based on either Alaska geography or logical travel patterns.²⁸ There are several differences between what the Information Booklet promises and what Ingenix is able to provide. The most significant of these is that Ingenix is not capable of determining a *recognized charge percentage* for either Southeast

²⁵ As discussed in the Rulings on Proposals for Action, the supplemental information submitted by the Administrator supports this interpretation as well.

²⁶ See Attachment A. The parties were given an opportunity to object to official notice of the zip codes listed in this attachment through the proposal for action process. 2 AAC 64.300(a).

²⁷ Although Ms. Ossont testified there was insufficient data for No Name City, the exhibits suggest there may have been an error in accessing the Ingenix system. The PHCS report for Fairbanks and Anchorage shows the names of those cities and the zip code prefixes 995 and 997 under the Description category. The report shows a Release date, and shows the procedure code 46221. Exhibit 7, page 3. The PHCS report that show insufficient data for No Name City has no city or zip code listed under the description, no release date, and no procedure code. Exhibit 3, page 5. It appears that no data was reported because no parameters for that data were entered.

²⁸ For example, someone in Kodiak would be unlikely to travel to Juneau for medical care. Thus, it makes little sense to combine these two cities in one geographic area.

Alaska or the state as a whole, both of which are specifically identified as potentially relevant in the Information Booklet.²⁹ The two methods cannot be regarded as equivalent.³⁰

Because the Health Plan did not properly calculate the *recognized charge percentage*, it is necessary to use one of the other methods of determining the Recognized Charge. Wells Fargo has not determined an “appropriate” charge for this service, as it might have done under the third method of calculating a Recognized Charge. There is no agreement between the Health Plan and this provider that would establish a Recognized Charge under the first method of calculating that amount. The only relevant benchmark for reimbursement that the record establishes is what the physician’s actual charge was.³¹ Absent some evidence to the contrary, it is reasonable to infer that this is also his usual charge for performing a hemorrhoidectomy by rubber band ligation.

IV. CONCLUSION

The Health Plan did not properly calculate the *recognized charge percentage* for a hemorrhoidectomy by rubber band ligation. In addition, the Health Plan does not currently have the ability to calculate the *recognized charge percentage* in accordance with the method set out in the Retiree Insurance Information Booklet. Accordingly, the only remaining method for determining the proper reimbursement in this particular matter is by basing the payment amount on the physician’s actual charges. Mr. T. is entitled to be reimbursed for this claim based on the \$1,224.20 charged by his physician.

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²⁹ The Information Booklet creates a reasonable expectation that the calculation of the *recognized charge percentage* will always include the geographic area in which the Plan Member lives. The calculation must first look at the location where the service was provided, and expand out from that area if there is insufficient data. Expanding out will always include the original location. Ingenix is not capable of generating a report that expands out. It has created three geographic areas for Alaska, and can only look at those areas individually.

³⁰ As discussed in the Rulings on Proposals for Action, the supplemental information submitted by the Administrator describes different geographic areas than used by Ingenix and that treats Southeast Alaska as one unified geographic area.

³¹ Record at 58.

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Final Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 6th day of June, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]