

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Charles Paini)	State File No. L-09007
)	
)	By: Amy Reichard
v.)	Staff Attorney
)	
)	For: Steve Janson
Twin City Subaru and)	Commissioner
CIGNA)	
)	Opinion No. 17R-99WC

RULING ON DEFENDANTS' MOTION TO RECONSIDER

Defendants, by and through their attorney, John W. Valente, Esquire, move for reconsideration of the Commissioner's April 2, 1999 Order, which awarded claimant Charles Paini costs, attorney fees, and interest on his total benefits. In reply, claimant, by and through his attorney, Scott Skinner, Esquire, submitted a written opposition to the Motion to Reconsider. Subsequently, defendants advanced a response to claimant's opposing motion.

The primary issue raised for reconsideration by the defendants pertains to the interest awarded in the challenged opinion. Since a portion of the medical bills, specifically the records from the Hitchcock Clinic, were submitted to the defendants with improper CPT coding, defendants maintain that interest should not be due and owing on those bills because the delay in payment was the fault of the medical provider, rather than the insurance carrier. In support of this Motion, defendants submitted an affidavit of the appropriate adjuster, which provides that the Hitchcock Clinic bills were returned to the medical facility on March 30, 1999 for invalid CPT codes. To date, the corrected medical documentation has not yet been forwarded to defendants.

In response to defendants' Motion, claimant concedes that defendants should not be obligated to pay interest for the period of time in which the medical provider caused the delay in payment as a result of improper coding. However, claimant further contends that interest should be due and payable from the date of the Joint Stipulation, February 1, 1999, until the date when interest on the additional medical bills was paid by defendants, April 2, 1999. In support of this contention, claimant asserts that even if the coding had been correct, the Hitchcock Clinic bills would not have been paid in advance of the other bills.

Although claimant advances a compelling rebuttal argument, the Department cannot base a ruling on presumptions. Since no evidence exists to bolster his position, claimant's theory cannot be accepted. Nevertheless, after a review of the pertinent facts and the applicable Workers' Compensation Rule 40, the Department cannot adopt defendants' position either.

Defendants insist that they should be completely relieved of the interest payments for the

Hitchcock Clinic bills. However, since defendants contributed to the delay in payment, they must be held partially accountable. Although the medical provider furnished improper CPT coding, defendants returned the bills in a dilatory manner. The workers' compensation rule pertaining to reimbursement for health care services explicitly provides that an employer/carrier shall respond, either by way of payment, denial, disagreement or return of records, to a health care provider's charges within thirty days of receipt of the bills and supporting documentation. *See Workers' Compensation Rule 40.021*. In this case, as of the date of the Joint Stipulation, February 1, 1999, defendants possessed the Hitchcock Clinic medical records. Yet, defendants did not return the improperly coded records to the health care provider until March 30, 1999. If defendants had acted in compliance with Rule 40, the documentation should have been returned to the Hitchcock Clinic by March 2, 1999. Since defendants clearly contributed to the delay in payment of these bills, an award on interest from March 2, 1999 until March 30, 1999 is appropriate.

THEREFORE, the defendants' Motion to Reconsider is GRANTED and the prior order is modified as follows:

- 1) The prior order with regard to interest on the Hitchcock Clinic bills from February 1, 1999 until the date of payment is vacated;
- 2) Defendants are ordered to pay interest at the rate of 12% per annum from March 2, 1999 until March 30, 1999.

DATED in Montpelier, Vermont, this 17th day of May 1999.

Steve Janson
Commissioner