

Case: *George Miller Construction, Inc. and Alaska National Insurance Company vs. Harborview Medical Center and Lee L. Lawless*, Alaska Workers' Comp. App. Comm'n Dec. No. 156 (October 4, 2011)

Facts: Lee Lawless (Lawless) injured his ankle working for George Miller Construction, Inc. When he developed necrotizing fasciitis, a life-threatening complication, he was transferred to Harborview Medical Center (Harborview) for more than 76 days of hospitalization. The employer's insurer, Alaska National Insurance Company (Alaska National), and Harborview disputed how much was owed for these medical services. Under the Alaska fee schedule with a geography adjustment factor applied, the medical services would total \$637,982.52. Harborview's charge for the services Lawless received, when provided to the general public, total \$442,201.58. Under the Washington fee schedule, for workers' compensation claims arising in Washington, the Percentage of Allowable Charge (POAC) rate is applied to the bill; for Harborview the rate is 54.9 percent.

Harborview charged Alaska National \$442,201.58. Alaska National applied the Washington POAC to this amount and paid only \$242,768.67. Harborview sought the remainder of the bill and the board agreed it was owed. Alaska National appeals.

Issue: Which fee schedule applies to the medical services provided by Harborview?

Applicable law: In 2006, AS 23.30.097(a) read:

All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service may not exceed the lesser of

(1) the usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, not to exceed the fees in the fee schedule specified by the board in its published bulletin dated December 1, 2004;

(2) the fee or charge for the service when provided to the general public; or

(3) the fee or charge negotiated by the provider and the employer under (c) of this section.

8 AAC 45.082(i) stated that the fee due a medical provider is the lower of: 1) the provider's actual fee, or 2) the provider's usual, customary, and reasonable fee, as determined under the regulation.

Holding/analysis: The commission affirmed the board, concluding Harborview was owed the remainder of what it had originally billed Alaska National. Alaska National argued the Washington fee schedule applied because AS 23.30.097(a)(1) meant the usual, customary, and reasonable fees *paid for injured workers* in the community in which it is rendered *or* the Alaska fee schedule. The commission rejected Alaska National's argument because each subsection sets out one alternative, so subsection (1) provides for only one alternative; and because the argument was

contrary to the plain language of sub-subsection .097(a)(1). “Nowhere does the language in sub-subsection .097(a)(1) suggest that another fee schedule is applicable.” Dec. No. 156 at 14. The commission found no legislative intent contrary to this plain meaning. The commission rejected Alaska National’s argument that sub-subsection .097(a) should be interpreted in this way in order to help keep premiums low since one goal of the 2005 amendments was to keep premiums affordable. The commission concluded that it could not stretch the statutory language to incorporate the use of another state’s fee structure, schedule, or limitation.

Second, Alaska National argued that sub-subsection .097(a)(2) should be interpreted as differentiating between charges billed and fees received by a provider. According to this interpretation of the statute, while Harborview billed \$442,201.58 in charges, it received \$242,768.67, the permissible fee. The commission rejected a distinction between “fee” and “charge,” concluding that they were similar words meant to refer to provider payment.

Third, Alaska National argued that the regulation was invalid because it was inconsistent with the statute since it did not make the distinction between fees and charges. The commission rejected this argument since the commission did not distinguish between fees and charges. The commission also observed that the regulation was inconsistent because it left out the negotiated fee or charge alternative but that this inconsistency was not relevant to the appeal and in any event, the statute would control over any inconsistencies in a regulation.

Note: This case was appealed to the Alaska Supreme Court but the appeal was dismissed.