

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



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OSAH

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K. Westray

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MEDICAL CENTER OF)
CENTRAL GEORGIA,)
Petitioner,)
v.)
PEACH STATE HEALTH PLAN,)
Respondent.)

DOCKET NO.: OSAH-CMO-P_DEN-
1227794-60-Schroer

I.D. No.: 111912239881

FINAL DECISION

I. INTRODUCTION

Petitioner Medical Center of Central Georgia (“MCCG”) appealed the decision by Respondent Peach State Health Plan (“Peach State”) to deny its claim for reimbursement for medical services. Pursuant to O.C.G.A. § 49-4-153(e)(1), a hearing was held on June 4, 2012, before the Office of State Administrative Hearings (“OSAH”), a court of administrative law in Atlanta, Georgia. MCCG’s representatives participated in the hearing by telephone. MCCG was represented by Ken Banks, General Counsel for MCCG.¹ Peach State was represented by Martin Wilson, Esq. and Erin Graham, Esq. of Troutman Sanders LLP. The record remained open until July 20, 2012, in order for the parties to file post-hearing briefs and other pleadings.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of evidence, the Court makes the following findings of fact, conclusions of law, and decision.

II. FINDINGS OF FACT

1.

The Georgia Department of Community Health (“DCH”) is the state agency that oversees the Medicaid program in Georgia. In 2006, DCH implemented Georgia Families, a managed

¹ After the hearing, Sarah Kay Wheeler, Esq. entered an appearance on behalf of MCCG.

care program that delivers health care services to Medicaid members through private Care Management Organizations (CMOs). Peach State is a CMO that has entered into a contract with DCH to provide health care services to Medicaid members in Georgia. (Testimony of White; Ex. R-1) See also O.C.G.A. §§ 49-4-142, 33-21A-2(1).

2.

Under Peach State's contract with DCH, Peach State is responsible for developing a network of health care providers, including hospitals, to provide covered services to Medicaid members. Effective June 1, 2006, Peach State and Central Georgia Health Network, L.L.C. ("Central Georgia") entered into a Physician Hospital Organization Agreement,² whereby Central Georgia agreed to provide medical services to Peach State's members (the "Agreement"). (Testimony of White; Exs. R-1, R-6)

3.

MCCG is one of the hospitals in the Central Georgia network. On or about May 23, 2006, MCCG agreed to provide health care services to Peach State members in accordance with the terms of the Agreement. Under the Agreement, MCCG is obligated to comply with Peach State's Participating Health Care Provider Manual ("Provider Manual"), which is incorporated by reference in the Agreement. MCCG is also obligated to comply with the terms of the contract between Peach State and DCH, DCH's Part II Policies and Procedures for Hospital Services Manual ("DCH Policy Manual"), and all applicable federal and state laws. (Testimony of White; Exs. R-1, R-5, R-6)

² At the administrative hearing, Peach State tendered excerpts from the Agreement, which were admitted as Exhibit R-6. On June 12, 2012, Peach State filed a copy of the complete Agreement, which the Court has marked as Exhibit R-6 and substituted for the excerpted version in the record.

A. The Agreement

4.

The Agreement provides that Peach State will pay MCCG for hospital services pursuant to standard Medicaid reimbursement policies established by DCH. In general, reimbursement under such policies is based on a system of classification referred to as Diagnosis Related Groups or “DRGs.” The DRG system classifies inpatient hospital services into groups based on a number of factors, including principal diagnosis, secondary diagnosis, age, and presence of complications. Each hospital service or group is identified by a DRG code, which has an associated payment amount established by DCH. MCCG uses the DRG codes to bill for its services, and Peach State uses the DRG codes submitted by MCCG to determine the appropriate reimbursement amount. (Exs. R-5, R-6, at Ex. 2, p.46)

5.

At issue in this case are two different payment calculations based on the DRG system – “inlier” DRG claims and “outlier” DRG claims. First, a hospital provider must submit an inlier DRG claim for reimbursement to Peach State. Peach State then calculates the inlier payment due the provider based on the DRG codes. When Peach State makes a payment on an inlier DRG claim, it issues an explanation of payment (“EOP”) along with the payment. The EOP includes, among other information, the total charges for the admission. (Testimony of Ms. Touart)

6.

If the inpatient services associated with a particular admission are “unusually expensive,” the hospital provider may file an additional claim, called an outlier DRG claim, seeking a supplemental payment based on the total cost for that admission. Payment on an inlier claim is a prerequisite to filing an outlier claim. (Testimony of Ms. Touart; Ex. R-5, p.L-1)

7.

Both the DCH Policy Manual and the Provider Manual state that in order to obtain additional reimbursement for an outlier claim, the hospital must submit a written request to Peach State with the required documentation. Both manuals also tie the deadline for the submission of an outlier claim to the date the inlier claim is paid; however, each manual defines the specific deadline a little differently.³ (Ex. R-5, Appendix L, p.L-1; Ex. R-3, p.93)

8.

Specifically, the DCH Policy Manual provides that in order to obtain additional reimbursement for an outlier claim, “the request and all required documentation [must be] received within three (3) months from the month in which [Peach State] reimburses the case rate, [or the request for] outlier payment will be denied.”⁴ (Ex. R-5, Appendix L, p. L-1) (emphasis added). In contrast, the Provider Manual states that an outlier appeal request “must be submitted in writing and received within three (3) months of the month in which the initial payment was made (date of the initial EOP on which the claim appears). If the request and all required documentation are not received by the plan within three (3) months from the end of the month of the initial EOP payment, the outlier reconsideration request will be denied for failure to request payment reconsideration in a timely manner.” (Ex. R-3, p.93) (emphasis added).

³ The Agreement itself does not specify the procedures or other requirements for filing an outlier claim, except for the following statement in an attached exhibit: “Outlier payments shall be made in accordance with the State outlier payment methodology.” (Ex. R-6, at Ex. 2, p.46)

⁴ The Court notes that Appendix L of the DCH Policy Manual was amended in October 2011, after the time frame in dispute. Neither party submitted the manual as it existed prior to October 2011. For purposes of this decision, the Court will assume that the provision in Appendix L relating to the deadline for filing an outlier request was unchanged by the October 2011 amendments.

B. The Claim

9.

The patient involved in this case, K.R., was born on June 21, 2010. K.R. was admitted to MCCG the day he was born and remained at MCCG for ten months, with the exception of one day spent at Children's Healthcare of Atlanta ("CHOA"). Specifically, K.R. was admitted to MCCG on June 21, 2010 and was originally discharged on December 6, 2010. He was admitted to CHOA on December 6, 2010, but was readmitted to MCCG just one day later, on December 7, 2010. K.R. remained at MCCG until his final discharge on April 21, 2011. While at MCCG, K.R. required serious medical treatment and services, and the total charges for his admissions exceeded \$2,098,709.06. (Testimony of Ms. Eaton; Ex. R-2, PSHP 001017)

10.

On or about December 13, 2010, one week after K.R. was originally discharged from MCCG, MCCG filed an inlier claim with Peach State for the services provided to K.R. from June 21, 2010 to December 6, 2010 ("Initial Inlier Claim"). On December 23, 2010, Peach State issued an inlier DRG payment and an EOP indicating a payment to MCCG of \$100,725.87. The EOP's dates of service were from June 21, 2010 to December 6, 2010.⁵ (Ex. R-2, PSHP 000633-638)

11.

About one month after receiving the inlier DRG payment and accompanying EOP on the Initial Inlier Claim, MCCG submitted an outlier claim to Peach State, which Peach State

⁵ Peach State's assertion in its post-hearing briefs that it denied the First Inlier Claim is not supported by the probative evidence in the record. Rather, after weighing the evidence, the Court finds that MCCG did not deny the First Inlier Claim, but made an initial payment and issued an EOP on the First Inlier Claim in December 2010. See generally Baker v. Hous. Auth. Of Waynesboro, 268 Ga. App. 122 (2004) (the terms "paid" or "payment" in a contract are given their usual and common signification: a payment is paid when a debt or liability is discharged by the delivery of money (or other value) and where the money is tendered and accepted as extinguishing the debt or obligation in whole or in part).

received on January 28, 2011. The outlier claim covered the same time period as the Initial Inlier Claim, June 21 through December 6, 2010 (“First Outlier Request”). On February 1, 2011, Peach State sent MCCG a letter stating that “[y]our request for an Outlier Add-on has been denied/pended” because the “Outlier request can not [sic] be processed until member is discharged, and the final claim has been received and processed for payment.” Under the DCH Policy Manual, a patient’s “[r]eadmission for the same or related problem within three (3) days of discharge is considered the same admission.” Peach State thus considered K.R.’s readmission to MCCG one day after being discharged as part of a single admission for billing purposes, so it denied or “pended”⁶ the First Outlier Request until K.R. was finally discharged.⁷ (Testimony of Ms. Eaton; Exs. R-2, PSHP 000647, R-5, Section 904)

12.

MCCG did not dispute the denial or pending of its First Outlier Request. Rather, after K.R. was finally discharged from MCCG on April 21, 2011, MCCG submitted a new inlier claim, which was received by Peach State on May 6, 2011 and reflected K.R.’s entire inpatient stay from June 21, 2010 to April 21, 2011 (“Second Inlier Claim”). In completing the Second Inlier Claim, however, MCCG made an error in identifying the dates of service. MCCG

⁶ The term “pended” does not appear to be defined in the Agreement or any of the incorporated contracts or manuals. However, as MCCG points out in its post-hearing pleadings “pend” is defined in Black’s Law Dictionary as “to be awaiting decision or settlement.” Black’s Law Dictionary, 9th Ed., 2009. Moreover, both DCH, in its rules, and Peach State, in its Provider Manual, use the word “pend” consistent with the Black’s Law definition. See Ga. Comp. R. & Regs. 111-4-1-.04(11)(“[c]overage for Dependents whose eligibility is unverified will pend awaiting receipt and review of the documentation”); Ex. R-3, PSHP 001075, PSHP 001106.

⁷ Although this was the reason offered by Peach State at the administrative hearing for denying/pending the Initial Outlier Claim, Peach State did not point to any written policy or procedure dictating that an outlier claim cannot be processed until the patient is discharged. Further, under this reasoning, it is likely that Peach State should not have paid the Initial Inlier Claim in December 2010. Nevertheless, Peach State did not seek to recoup the inlier payment it made to MCCG under the Initial Inlier Claim, even though the Agreement allowed for recoupment. (Testimony of Ms. Eaton; Ex. R-6, Section 5.5)

submitted a corrected inlier claim, which was received by Peach State on May 12, 2011 (“Third Inlier Claim”). Peach State processed the Third Inlier Claim and sent out a new EOP on May 17, 2011. However, because the actual inlier payment due to MCCG after the Third Inlier Claim did not change from the December 2010 Initial Inlier Claim payment of \$100,725.87, no payment was actually made to MCCG at that time.⁸ (Testimony of Ms. Eaton; Ex. R-2)

13.

After May 17, 2011, MCCG filed a number of revised inlier claims relating to K.R., which made certain adjustments to the charges and codes used in the Third Inlier Claim. Specifically, on or before June 16, 2011, Peach State filed a revised inlier claim that made an adjustment to a revenue code on the Third Inlier Claim. On or about July 14, 2011, before Peach State had acted on the June 16, 2011 revised inlier claim, MCCG submitted another revised inlier claim. However, MCCG used an incorrect bill type on the July 14, 2011 revised claim, and Peach State denied this claim on or about July 22, 2011. On its July 22, 2011 denial letter, Peach State indicated that MCCG would submit a corrected claim “via paper adjustment.” On or about July 25, 2011, MCCG did submit a corrected paper claim, this time using the correct type of billing code. Although this corrected claim made changes to the units and charges relating to a particular revenue code, the inlier payment amount did not change. On August 8, 2011, Peach

⁸ Peach State’s denial letters mention an alleged May 17, 2011 DRG payment to MCCG. See, e.g., Ex. R-2, PSHP 000626, PSHP 000666. In addition, Peach State’s representative, Loni Eaton, initially testified at the administrative hearing that Peach State sent a check to MCCG on May 17, 2011, along with an EOP issued on that same date. The Court finds, however, that Peach State did not send a check or otherwise make an additional payment to MCCG relating to K.R.’s admissions after the December 2010 initial DRG inlier payment of \$100,725.87. First, the evidence shows that the Third Inlier Claim did not result in any additional DRG payment being owed to MCCG. In addition, Ms. Eaton admitted later in her testimony that Peach State did not, in fact, issue another check to MCCG in or around May 2011 because the additional dates of service did not result in an increase in the DRG reimbursement owed to MCCG. Finally, although MCCG does not appear to dispute that Peach State issued an EOP on or about May 17, 2011, the Court notes that Peach State did not tender a single exhibit identified as the May 17, 2011 EOP into the record, and the Court has not found it within Exhibit R-2, where the other claim documents are found.

State issued another EOP, which included all of MCCG's revised charges and adjustments ("Final EOP"). However, because the adjustments did not result in a change in the amount of the inlier payment issued by Peach State on December 23, 2010, the Final EOP reflected a zero payment. (Testimony of Ms. Eaton; Ex R-2, PSHP 000540-41, PSHP 000545, PSHP 000651, PSHP 000656)

14.

On or about September 15, 2011, MCCG submitted its second outlier request to Peach State ("Second Outlier Request"). The Second Outlier Request contained expenses for K.R.'s entire hospital stay. Peach State denied the Second Outlier Request on October 3, 2011 on the grounds that MCCG exceeded the timely filing guideline for outlier requests. In its denial, Peach State asserted that MCCG's Second Outlier Request was untimely because the "DRG payment was made on 5/17/2011 [and the] outlier request was received 09/26/2011[,] which exceeds the timely filing guideline" of ninety days. (Testimony of Eaton; Ex. R-2, PSHP 000666)

15.

At the administrative hearing, Peach State's representative explained that Peach State considered the "trigger date" for filing an outlier request to be May 17, 2011, the date Peach State contends it sent a payment -- albeit a "zero payment" -- and an EOP on the Third Inlier Claim. Peach State's representative testified that the Third Inlier Claim had all the "core attributes" of the claim for services provided to K.R., and therefore the May 17, 2011 EOP was the appropriate occurrence to start the clock running on the outlier request period. Peach State calculated the deadline for MCCG to submit an outlier claim as August 31, 2011 -- three months from the end of the May 2011.⁹ MCCG's Second Outlier Request, which was not received by

⁹ There is no evidence in the record that Peach State ever notified MCCG that it considered the May 17, 2011 EOP the start of the three-month outlier filing period, and Peach State did not identify any contract provision, manual or applicable federal or State law that identified or utilized a "core attribute" standard for determining the outlier trigger date.

Peach State until September 26, 2011, was beyond Peach State's August 31, 2011 deadline.
(Testimony of Eaton; Ex. R-2, PSHP 000666)

16.

MCCG contends that the Final EOP should be used as the "trigger date" for calculating the outlier request deadline, in which case the deadline to file was November 30, 2011. Under this calculation, MCCG's Second Outlier Request, which was filed on September 26, 2011, was timely. (Testimony of Ms. Eaton; Ex. R-2, PSHP 000626-630)

17.

On January 26, 2012, Peach State received another request from MCCG for outlier reimbursement for K.R. Peach State denied this claim. MCCG appealed this denial on January 31, 2012, and on February 15, 2012, Peach State denied MCCG's second appeal after an internal administrative review. On February 21, 2012, MCCG requested an administrative hearing. (Testimony of Ms. Eaton; Ex. R-2, PSHP 000528-30, PSHP 000625)

III. CONCLUSIONS OF LAW

1.

The burden of proof is on Peach State. Ga. Comp. R. & Regs. R. 616-1-2-.07. The standard of proof is a preponderance of the evidence standard. Ga. Comp. R. & Regs. R. 616-1-2-.21.

2.

DCH has entered into a partnership with Peach State, as a CMO, to provide health care services to Medicaid recipients in Georgia. Under Georgia law, "a provider of medical assistance, may request a hearing on a decision of a care management organization with respect to ... a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-

13 and 50-13-15 with the Department of Community Health.” O.C.G.A. § 49-4-153(e)(1).

3.

The relationship between Peach State and MCCG is a contractual one, and the legal principles governing contract enforcement and construction apply. See generally O.C.G.A. § 13-2-2. The cardinal rule of construction is to ascertain the intention of the parties. If that intention is clear and it contravenes no rule of law, the contract will be enforced according to its terms. See O.C.G.A. § 13-2-3. Furthermore, when the terms of a written contract are clear and unambiguous, the court will look to the contract alone to find the intention of the parties. Duffet v. E & W Properties, Inc., 208 Ga. App. 484, 486 (1993), citing Howell Mill-Collier Assoc. v. Pennypacker’s, 194 Ga. App. 169, 173 (1990).

4.

Both parties agree that the terms of the Agreement are clear and unambiguous as to the deadline for filing an outlier claim. The Agreement incorporates by reference the outlier filing provisions from the DCH Policy Manual and from the Provider Manual, which require MCCG to submit a written outlier request and all required documentation within three months from the end of the month in which Peach State makes an initial inlier payment and issues an initial EOP. Based on the Findings of Facts above, the deadline under the contract for submitting the outlier claim for services provided to K.R. was March 31, 2011, three months from the initial inlier payment and EOP issued on December 23, 2010.

5.

MCCG complied with this deadline, and its First Outlier Request was not untimely under the plain terms of the contract. However, because K.R. had been readmitted to MCCG and was still receiving inpatient hospital services, Peach State refused to process the First Outlier Request, choosing to “deny/pend” the outlier request “until member is discharged, and the final claim has been received and processed for payment.” There is no evidence that MCCG

contested or appealed this determination by Peach State. Rather, based on the conduct of the parties, including Peach State's "pending" of the First Outlier Request until the final inlier claim was processed, MCCG's filing of several revised inlier claims following K.R.'s final discharge in April 2011, and Peach State's processing of the revised inlier claims and issuance of additional EOPs, the Court concludes that the parties intended to depart from the terms of the contract and extend the deadline for filing the amended outlier claim until Peach State received and processed the final inlier claim.

6.

In Georgia, "[a] contract provision 'may be waived by the conduct of both parties intended to result in the 'mutual disregard' of, or 'mutual departure' from the contract terms.' See generally O.C.G.A. § 13-4-4.'" Hughes v. Great S. Midway, 265 Ga. 94, 95 (1995), quoting Kusuma v. Metametrix, Inc., 191 Ga. App. 255, 257 (1989).¹⁰ Even in contracts with "time is of the essence" provisions, whereby the entire contract is void if the deadline is not met, such provisions can be waived by the parties. See King v. Lipsey, 142 Ga. 832 (1914).

It is "well-settled" that such a waiver may be done orally or by conduct, and this waiver may be shown by actions before or after the date originally specified for performance....

In addition to waiver, a party may be foreclosed from relying on strict compliance with time requirements of a contract under theories of modification, estoppel, or mutual departure.

John K. Larkins, *GEORGIA CONTRACTS: LAW AND LITIGATION* (2d. ed. 2011) (citations omitted).

¹⁰ In *Hughes*, the parties had entered into a contract for the purchase of real property, which was to close thirty days after the seller obtained appropriate rezoning. Although the rezoning was granted, adjacent landowners filed an appeal of the rezoning. The buyer informed the seller that he would close only after the appeal was resolved. However, after the appeal was resolved favorably, the buyer refused to tender the purchase price. The Georgia Supreme Court upheld the trial court's finding that the parties had agreed to extend the closing date until the resolution of the challenge to the rezoning, and the buyer's subsequent failure to tender the purchase price constituted a breach of the parties' terms. *Id.*

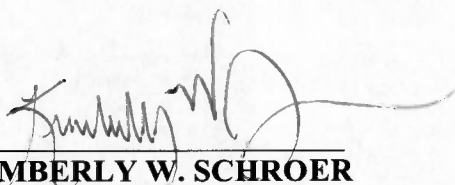
7.

Accordingly, the Court concludes that the parties intended to extend the deadline for filing the outlier request and that the new outlier request deadline was tied to the date that the final inlier claim was received and processed for payment by Peach State. The Court further concludes that the date the final inlier claim was processed was August 8, 2011, resulting in a deadline for filing the amended outlier claim of November 30, 2011. As MCCG filed its Second Outlier Request on September 26, 2011, its amended outlier request was timely.

IV. DECISION

Peach State's decision to deny reimbursement of MCCG's outlier claim due to the untimely filing of the request was improper. Accordingly, MCCG's request for relief is **GRANTED**, and Peach State's decision is hereby **REVERSED**. Pursuant to O.C.G.A. § 49-4-153(e)(3), the Court assesses court fees and expenses against Peach State in the amount of \$125.00.

SO ORDERED, this 20th day of August, 2012.


KIMBERLY W. SCHROER
Administrative Law Judge