

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

**SIoux VALLEY HOSPITAL AND
HEALTH SYSTEM,**

HF No. 134, 2003/04

Petitioner,
vs.

DECISION

**SOUTH DAKOTA BUREAU OF PERSONNEL/
STATE OF SOUTH DAKOTA,**

Respondent.

This matter was brought before the South Dakota Department of Labor pursuant to a Petition for Hearing on Medical Benefits. The Department has jurisdiction over this matter pursuant to SDCL chapter 1-26 and 47:03:05:06 of the Administrative Rules of South Dakota. Lois Marshall represented Petitioner, Sioux Valley Hospital and Health System (Sioux Valley). Robert B. Anderson represented Respondent, South Dakota Bureau of Personnel/State of South Dakota (State). The parties agreed that the Department may decide this matter based on the administrative record made before the Office of Hearing Examiners (OHE). The parties also submitted briefs for the Department's consideration.

On October 18, 2001, Bruce Crumb, a state employee, suffered a work-related injury. Crumb was admitted to Sioux Valley Hospital on October 18th and was discharged on October 22, 2001. During that time, Crumb incurred \$20,339.71 in medical expenses.

On November 4, 2001, Sioux Valley billed the State for the full value of services rendered to Crumb. On January 28, 2002, the State reimbursed Sioux Valley \$8,061.03, or 40% of the billed charges. Sioux Valley expected to be reimbursed 85% of the billed charges as per the fee schedule for a total payment of \$17,288.75. Therefore, the State paid Sioux Valley \$9,227.72 less than the expected reimbursement amount. On March 25, 2002, Tony Morrison, Sioux Valley's Director of Centralized Billing Services, sent a letter to the State and requested an explanation of the amount paid by the State.

On March 29, 2002, Larry Kucker, Director of Employee Benefits for the State, responded with an explanatory letter. Kucker advised Sioux Valley that the State interpreted the fee schedule to provide "a *maximum* reimbursement rate." Kucker wrote, "[w]e have devised an internally calculated reimbursement rate that reflects a rate similar to our voluntary independent contract with your facility by our employee health plan. As you are aware that plan reimburses in-patient claims under a DRG based system. We have similar contracts with other facilities statewide and calculate Workers [sic] Compensation reimbursements consistently for all of those facilities."

It is true that the State has negotiated contracts with various medical providers, including Sioux Valley, to provide healthcare services, not including workers' compensation, to state employees under the State Employee Benefit Plan at reduced or negotiated rates. These contracts, or agreements, govern what the State pays for

specific medical services provided to state employees by the various healthcare providers. However, the State does not negotiate such agreements with healthcare providers regarding payments to be made pursuant to the workers' compensation laws. More specifically, the State did not negotiate or have a contract with Sioux Valley to provide healthcare services to state workers injured on the job at a rate lower than what is provided for in the fee schedule. The State made a unilateral decision to reimburse Sioux Valley the amount it would reimburse a provider for similar services under the Benefit Plan.

Sioux Valley requested a formal appeal of Kucker's decision and the Commissioner of the Bureau of Personnel referred this matter to OHE for a hearing. OHE conducted a hearing on January 10, 2003. At hearing, the State admitted that the amount of Sioux Valley's bill was not excessive and that the bill contained the usual and customary charges for the services provided. OHE rendered a written Proposed Decision adopting the State's interpretation of the fee schedule. Subsequently, the Commissioner adopted OHE's Proposed Decision in its entirety. Sioux Valley then appealed to the Department.

ISSUE

WHETHER THE STATE COMPENSATED SIOUX VALLEY FOR THE CORRECT AMOUNT PURSUANT TO ARSD 47:03:05:12?

SDCL 62-4-1 provides that employers "shall provide necessary first aid, medical, surgical, and hospital services, or other suitable and proper care including medical and surgical supplies, apparatus, artificial members, and body aids during the disability or treatment of an employee within the provisions of this title." SDCL 62-7-8 gives the Department authority to establish standards and procedures for the payment of health services. This statute specifically provides:

Except as otherwise provided, fees for health services, including hospital services, depositions, and reproduction of medical and hospital information, under this title are subject to the approval of the department. The department shall, by rule promulgated pursuant to chapter 1-26, establish standards and procedures for determining if charges for health services, including hospital services are excessive and for determining if a provider of health services is performing procedures or providing services at a level or with a frequency that is excessive. The department shall consult with the examining boards of all providers in establishing such standards and procedures.

(emphasis added). The fee schedule, as established in ARSD Chapter 47:03:05, provides for "the maximum allowable fee for medical services or treatment determined according to the procedures established in the chapter[.]" See ARSD 47:03:05:01(7).

ARSD 47:03:05:05 provides for reimbursement criteria. This rule states:

To be reimbursed, the charge must be for reasonable and necessary services for the care or relief of the effects of a compensable injury or disability. A health

care provider is not entitled to payment from an insurer or employee for fees in excess of the maximum reimbursement allowed under this chapter.

(emphasis added). SDCL 62-7-8 and the administrative rules demonstrate the fee schedule was adopted to protect insurers from paying for medical services that are not reasonable and necessary, as well as protect against the payment of excessive charges or charges for excessive treatment. In other words, one of the main purposes of the fee schedule is to ensure that medical providers do not charge an *excessive* amount for healthcare services. This theme is stated throughout the administrative rules pertaining to workers' compensation. For example, ARSD 47:03:04:14 states:

Participating and nonparticipating medical providers are not entitled to payment from an insurer or employee for fees or services determined to be excessive under SDCL 62-7-8, medically unnecessary under the provisions of this chapter, or in violation of other requirements of § 47:03:04:06.

Sioux Valley's charges for the services in this case were not excessive. In addition, Sioux Valley charged the usual and customary charges for the services provided to the injured state employee.

The administrative rules 47:03:05:08 through 47:03:05:14 set forth the maximum reimbursement allowable for various medical services under the fee schedule. ARSD 47:03:05:12 governs reimbursement for medical expenses under the circumstances of this case.¹ This administrative rule provides:

The maximum reimbursement for medical services not otherwise identified in this chapter is eighty-five percent of the amount charged. Those medical facilities identified in Appendix B are exempt from the provisions of this section.

Sioux Valley is not a facility identified in Appendix B and this is not at issue. Sioux Valley argued that this rule provides that reimbursement by the State is 85% of the amount charged.

The State argued that the plain meaning of this administrative rule does not provide for reimbursement at the level of 85%; rather, the rule establishes a maximum or cap of 85% for any such reimbursement. The State's position is there is nothing in the administrative rule that prevents it from paying less than 85% of the billed charges.

The following well-settled principles apply when interpreting legislative enactments, or in this case, administrative rules:

The purpose of statutory construction is to discover the true intention of the law which is to be ascertained primarily from the language expressed in the statute. The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used. Words and phrases in a statute must be given their plain

¹ On October 28, 2002, ARSD 47:03:05:12 was amended to change the maximum reimbursement for medical services from 85% to 80%. Based on the date of Crumb's injury, this change does not pertain to the facts of this case. See Westergren v. Baptist Hosp. of Winner, 549 N.W.2d 390, 395 (S.D. 1996) ("The law in effect when the injury occurred governs the rights of the parties.").

meaning and effect. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed. Since statutes must be construed according to their intent, the intent must be determined from the statute as a whole, as well as enactments relating to the same subject. But, in construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result.

State of South Dakota v. Myrl & Roy's Paving, 2004 SD 98, ¶ 6 (citations omitted).

The State's position is contrary to the plain meaning and intent of the fee schedule. The fee schedule is based on maximum reimbursement amounts so that providers are not reimbursed in excess of the maximum amounts allowed under the fee schedule. If the State's arguments were accepted, it would lead to an absurd or unreasonable result as any insurer could unilaterally decide to pay a meager amount for charges that were not excessive. Providers would be left with no remedy to recover usual and customary charges. Further, there is no other administrative rule that provides for or covers circumstances in which an insurer would pay less than the maximum reimbursement amount of 85%.

The language of ARSD 47:03:05:12 is clear. This rule provides that the maximum reimbursement will not exceed 85%. There is no provision allowed to pay less than the maximum reimbursement amount. Sioux Valley did not agree to accept any payment less than what is provided in the fee schedule. The parties could have negotiated and agreed to pay an amount less than what is set forth in the fee schedule. But, that is not the case here. The State made a unilateral decision to pay less than what is required by the fee schedule in the administrative rules.

The State is erroneous in its interpretation of the fee schedule, in particular the way it applied ARSD 47:03:05:12. Sioux Valley is entitled to be reimbursed 85% of the billed charges. Sioux Valley's petition for an award of \$9,227.72, plus prejudgment interest is granted. Sioux Valley's request for attorney's fees pursuant to SDCL 58-12-3 will not be addressed at this time.

Sioux Valley shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten days from the date of receipt of this Decision. The State shall have ten days from the date of receipt of Sioux Valley's Findings and Conclusions to submit objections or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Sioux Valley shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 17th day of February, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge