IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

CHESTERFIELD SPINE CENTER, LLC, d/b/a ST. LOUIS SPINE & ORTHOPEDIC SURGERY CENTER,

Appellant,

v.

BEST BUY COMPANY, INC., and XL INSURANCE AMERICA, INC.,

Respondents.

DOCKET NUMBER WD83757

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: January 12, 2021

APPEAL FROM

The Labor and Industrial Relations Commission

JUDGES

Division Two: Hardwick, P.J., and Newton and Mitchell, JJ. CONCURRING.

ATTORNEYS

Jack B. Spooner, St. Louis, MO, Attorney for Appellant.

Joshua K. Friel, St. Louis, MO, Attorney for Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHESTERFIELD SPINE CENTER, LLC, d/b/a ST. LOUIS SPINE & ORTHOPEDIC SURGERY CENTER, Appellant,

v.

BEST BUY COMPANY, INC., and XL INSURANCE AMERICA, INC., Respondents.

WD83757 **Labor and Industrial Relations Commission**

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and Thomas H. Newton and Karen King Mitchell, Judges

Chesterfield Spine Center, LLC, d/b/a St. Louis Spine & Orthopedic Surgery Center (Chesterfield) appeals from the decision of the Labor and Industrial Relations Commission dismissing Chesterfield's medical fee dispute as time barred. Chesterfield raises seven points on appeal. In its first three points, Chesterfield argues that the Commission erred in dismissing its medical fee dispute because genuine issues of material fact exist as to whether the payment explanation provided to Chesterfield is a notice of dispute. For its remaining points, Chesterfield raises constitutional challenges to the medical fee dispute statute and regulation and their application to this case. Finding no error, we affirm.

AFFIRMED.

Division Two holds:

1. When reviewing a final award by the Commission on undisputed facts in a medical fee dispute, we determine whether, based on the undisputed facts of the employer/insurer, the health care provider's response to those facts, and any additional disputed material facts of the health care provider, there are sufficient material facts to support the Commission's award and whether any genuine issues of material fact remain.

2. If an employer/insurer disputes the reasonableness of a provider's request for reimbursement of medical fees, the employer/insurer must notify the provider in writing that the medical charge is being disputed and explain the basis for the dispute.

3. The provider may then file with the Commission an application for payment of additional reimbursement for the disputed amount. If the underlying medical services were provided after July 1, 2013, as was the case here, the provider must file its application for reimbursement within one year of receiving the employer's/insurer's notice of dispute.

4. In response to the provider's application for reimbursement, the employer/insurer may file a request for an award on undisputed facts on any ground that would fully negate liability for further payment, including expiration of the one-year filing period. The request for an award on undisputed facts must state with particularity each material fact as to which the employer/insurer claims there is no genuine issue, with specific references to the contents of the application for reimbursement, deposition testimony, affidavits, and documents that demonstrate the lack of a genuine issue as to such facts.

5. The provider must then file a response admitting or denying each of the factual statements made by the employer/insurer. The provider's response must support each denial with specific references to the depositions, documents, or affidavits that demonstrate specific facts showing that there is a genuine issue to be decided at an evidentiary hearing. The response may also set forth, in detail, additional material facts that remain in dispute.

6. The undisputed material facts offered by Employer/Insurer showed that the Explanation of Bill Review sent to Chesterfield was in writing; identified the Employer, Insurer, and its Third-Party Administrator; reflected the reduction in benefits for each medical procedure performed; and explained the reason(s) for each reduction. Chesterfield's response offered only a general denial that the Explanation was a notice of dispute but did not provide any additional evidence to support its denial. Because the undisputed material facts showed that the Explanation contained all elements required by rule, the Explanation was a notice of dispute.

7. The undisputed material facts offered by Employer/Insurer showed that Third-Party Administrator was authorized to send the Explanation and the accompanying partial payment to Chesterfield on behalf of Employer/Insurer. Chesterfield offered no evidence challenging Third-Party Administrator's authority to act on behalf of Employer/Insurer, and Chesterfield's suggestion that Third-Party Administrator lacked such authority was mere speculation. Based on the undisputed facts, the Explanation was a notice of dispute by Employer/Insurer.

8. Employer's/Insurer's undisputed material facts showed that Chesterfield received the Explanation more than a year before it filed its application for reimbursement. Chesterfield offered no evidence as to when it received the Explanation. Thus, the undisputed facts showed that Chesterfield's application was time barred.

9. In a case involving a constitutional challenge to the validity of a statute, we have jurisdiction to determine whether the constitutional issue is real and substantial and not merely colorable. Here, our initial inquiry reveals that Chesterfield's constitutional claims are not real and substantial but are, instead, merely colorable.

10. On its face, the one-year limitations period bars Chesterfield's application for reimbursement because the underlying medical services were rendered after July 1, 2013, and the application was filed more than a year after Chesterfield received the notice of dispute.

11. Application of the one-year limitations period in this case is not retrospective because the medical services for which Chesterfield seeks reimbursement were provided nearly two years after the limitations period went into effect. The statutory amendment created no new obligation, duty, or disability related to a transaction that had already transpired. Thus, this case does not involve the retrospective application of a statute.

12. The one-year limitations period, which was enacted nearly two years before Chesterfield and Employer/Insurer contracted for the underlying medical services, is not clearly and plainly unreasonable; nor did it unreasonably interfere with Chesterfield's ability to contract with Employer/Insurer to provide those services.

13. The notice of dispute requirements are not unconstitutionally vague. A person of ordinary intelligence would easily understand that a notice of dispute must (1) be in writing; (2) indicate that the employer/insurer disputes the medical charge; and (3) explain the reason(s) for the dispute.

14. We decline to find that the medical fee dispute regulation violates due process where Chesterfield's claim of a due process violation is based on a hypothetical fact—that Chesterfield submitted properly supported additional material facts (which it did not here). Any opinion rendered on hypothetical facts is advisory, and we do not issue advisory opinions.

Opinion by: Karen King Mitchell, Judge January 12, 2021

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