STATE OF RHODE ISLAND

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

THOMAS SKAHAN	)	
	)	
VS.	)	W.C.C. No. 2020-03993
	)	
THE STOP & SHOP SUPERMARKET COMPANY, LLC	)	

FINAL DECREE OF THE APPELLATE DIVISION

This matter came to be heard by the Appellate Division upon the claim of appeal of the respondent/employer and upon consideration thereof, the employer's claim of appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

1. That the findings of fact and the orders contained in a decree of this Court entered on May 26, 2021 be, and they hereby are, affirmed.

2. That the employer shall pay a counsel fee in the amount of Two Thousand Five Hundred and 00/100 ($2,500.00) Dollars to John A. Toro, Esq., attorney for the employee, for the successful defense of the employer's appeal.

Entered as the final decree of this Court this **25th** day of **January 2024.**

PER ORDER:

/s/ Nicholas DiFilippo

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Reall, J.

STATE OF RHODE ISLAND

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
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THOMAS SKAHAN	)	
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VS.	)	W.C.C. No. 2020-03993
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THE STOP & SHOP SUPERMARKET COMPANY, LLC	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employer's claim of appeal from the trial judge's decision and decree granting the employee's petition to review alleging that The Stop & Shop Supermarket Company, LLC ("the employer") refused to provide or pay for necessary medical services, specifically a bill from Landmark Medical Center ("LMC") totaling Four Thousand Three Hundred Forty-five and 54/100 ($4,345.54) Dollars, as required by Rhode Island General Laws §§ 28-33-5 and 28-33-8. After a thorough review of the record and consideration of the arguments presented by both parties, we find that the trial judge did not commit error when he granted the employee's petition. We therefore deny the employer's appeal and affirm the trial judge's decision.

On October 20, 2020, a pretrial order was entered in this matter granting the employee's Petition and awarding a counsel fee and reimbursement of the filing fee to the employee's attorney. On the pretrial order, the trial judge noted that "[t]he [employer] had the claim [number] in this case per the email of [employer's] counsel dated 6/30/2020" and that "[t]he

[employer] paid the medical bill of the Landmark Medical Center after the filing of this petition." Ee's Ex. 3, Pretrial Order W.C.C. No. 2020-03993, dated 10/20/2020. The employer timely filed a claim for trial.

The evidence presented at trial consisted of a stipulation of facts together with supporting documentation introduced by the parties as a joint exhibit. *See* Joint Ex. 1, Stipulation of Facts, marked as exhibit 4/28/2021. For purposes of our decision, we have summarized the pertinent facts from that exhibit.

On June 10, 2019, the employee suffered a work-related injury to his right ankle. The employer issued a Memorandum of Agreement ("MOA"), dated May 18, 2020, accepting liability for the employee's June 10, 2019 work-related injury, and memorializing the injury as a right ankle fracture. On June 16, 2020, the employee's counsel sent a 21-day demand letter ("Demand Letter") that requested payment of the LMC medical bill for the services rendered on June 10, 2019. The receipt of the Demand Letter is not an issue; however, the Demand Letter did not reference the claim number, did not include a copy of the MOA, and did not include the HCFA forms regarding the services rendered on June 10, 2019. The Demand Letter did include an itemized LMC bill (including CPT/HCPCS Codes) totaling Four Thousand Three Hundred Forty-five and 54/100 ($4,345.54) Dollars and the medical reports documenting the services rendered.

On June 30, 2020, the employer's counsel sent an email to the employee's counsel which requested that the HCFA forms be provided. The email contained the claim number for this matter. The employee's counsel did not provide the requested HCFA forms. On July 10, 2020, the employee's counsel filed the petition to review, seeking payment of the LMC bill for the services rendered on June 10, 2019. On August 12, 2020, the employer made a payment of the

LMC's bill in the amount of Seven Hundred Nineteen and 94/100 ($719.94) Dollars. At the pretrial conference on October 20, 2020, the trial judge granted the employee's petition, and the employer timely filed a claim for trial on October 21, 2020.

Both parties submitted memoranda to the trial judge arguing their respective positions. The employer's memorandum identified three (3) reasons why the employee's petition should be denied. First, the employer argued that the employee did not comply with the mandate of the word "shall" as found in Rhode Island General Laws § 28-35-12(a) as the employee's Demand Letter failed to reference the claim number, and the employee also failed to enclose a copy of the MOA that established liability with his Demand Letter.[1]

Second, the employer contended that the employee failed to comply with Rhode Island General Laws § 28-33-8(b) because the LMC bill that was attached to the Demand Letter was not on a CMS HCFA 1500 ("HCFA 1500") form as statutorily required by § 28-33-8(d).[2] Further, the employer argued that the use of the word "hospital" in the statute title indicates that this section applies to hospitals as well as to individual medical providers.

Finally, the employer argued that the employee's petition was not ripe for filing. Pursuant to Rhode Island General Laws § 28-33-8(f)(1), the employee or medical provider can file a petition with the Rhode Island Workers' Compensation Court when the employer or

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[1] Rhode Island General Laws § 28-35-12(a) states that "[a]ll demands seeking payment of bills for medical services rendered shall include reference to a claim number or a legible copy of the agreement, order, and/or decree, if appropriate, establishing liability."

[2] Rhode Island General Laws § 28-33-8(b) states that: "[t]he healthcare provider shall, in writing, submit to the employer or insurance carrier an itemized bill and report for the services or treatment and a final itemized bill for all unpaid services or treatment within three (3) months after the conclusion of the treatment."

Rhode Island General Laws § 28-33-8(d) defines "itemized bill" as "a completed statement of charges, on a form CMS HCFA 1500, UB 92/94 or other form suitable to the insurer, that includes, but is not limited to, an enumeration of specific types of care provided; facilities or equipment used; services rendered; and appliances or medicines prescribed, for purposes of identifying the treatment given the employee with respect to his or her injury."

insurance carrier fails to pay a medical bill within twenty-one (21) days of a request for payment.[3] However, the employer argued that, under § 28-33-8(f)(2), the twenty-one (21) day period should not begin to run until the appropriate required documentation needed for processing payment is received by the employer. The employer contended that the employee's failure to submit the specific documents and /or information referenced in the statutes rendered the demand for payment defective and therefore, the twenty-one (21) day waiting period had not begun. *See* R. I. Gen. Laws § 28-33-8(f)(2). Therefore, the petition was premature.

In response to the employer's memorandum, the employee, in his memorandum, initially asserted that, as provided in the stipulation of facts, the employer voluntarily paid the LMC bill. *See* Joint Ex. 1. Therefore, based on the employer's voluntary payment, any issue regarding the payment of the LMC bill had been resolved and is moot.

Next, the employee contended that the failure to include a claim number or the MOA did not render his Demand Letter defective because, under Rhode Island General Laws § 28-35-12(a), the claim number or the MOA must only be submitted "if appropriate." *See* R.I. Gen. Laws § 28-35-12(a). The employee argued that this information is "appropriate" only when the employer is not aware of the claim. The employee asserted that submitting the claim number or the MOA with his Demand Letter was not necessary as the employer was well aware of the employee's claim due to prior litigation and previous communications.

Finally, the employee asserted that the HCFA 1500 form is not required because the LMC bill and medical reports attached to his Demand Letter satisfied the definition of an

[3] Rhode Island General Laws § 28-33-8(f)(1) states that "[c]ompensation for medical expenses and other services under §§ 28-33-5, 28-33-7, or this section is due and payable within twenty-one (21) days from the date a request is made for payment of these expenses by the provider of the medical services . . . The employee or the medical provider may file a petition with the administrator of the workers' compensation court which petition shall follow the procedure as authorized in chapter 35 of this title."

"itemized bill" set forth in Rhode Island General Laws § 28-33-8(d). The employee explained that the documents included all the information necessary for the employer or insurer to identify the treatment provided to the employee and determine whether it was for the work-related injury. Furthermore, the employee pointed out that the employer voluntarily paid the LMC bill on August 12, 2020, without any further documentation, demonstrating that the employer was able to identify the claim and determine whether the services were necessary to treat the work-related injury based upon the information previously provided in the employee's Demand Letter.

In a reply memorandum, the employer noted that, despite the payment of the medical bill, the matter should still be determined by the court because the issues presented were of significant importance, they would arise repeatedly, and they would continually evade court review. Countering the employee's interpretation, the employer stated that the phrase "if appropriate" in Rhode Island General Laws § 28-35-12(a) only refers to whether liability has been established by either a decree or an agreement. In that situation the document establishing liability must be attached to the employee's demand letter to enable the employer and insurer to match the request to the correct claim. Finally, the employer argued that the employee misinterpreted the meaning of the expression "suitable to the insurer" as found in Rhode Island General Laws § 28-33-8(d). The employer asserted that if the employee fails to submit a HCFA 1500 or UB 92/94 form, the employer is the proper party to determine what alternative form will be accepted for payment.

The trial judge issued a written decision in which he concluded that the employee's Demand Letter complied with the provisions of the Workers' Compensation Act and that the LMC hospital bill, totaling Four Thousand Three Hundred Forty-five and 54/1000 ($4,345.54) Dollars, shall be paid pursuant to the hospital reimbursement rate for LMC set forth in the Rhode

Island Workers' Compensation Fee Schedule as promulgated by the Department of Labor and Training (DLT). The trial judge acknowledged that the Demand Letter did not include the claim number or a copy of the MOA but stated that it did provide "other detailed and valuable information, including the employee's name, the employer's name, the date of injury, the name of the hospital, the date of hospital service, and the amount of the outstanding hospital bill." Trial Dec. at 4. Citing the June 30, 2020 email from the employer's counsel to the employee's counsel, which referenced the insurer's claim number, the trial judge noted that, "by June 30, 2020, *at the latest, and still within the 21-day window*, the respondent was able to correctly match the twenty-one (21) day letter in this matter to the correct workers' compensation claim." *Id.* Referring to the legal principle that substance should prevail over form, the trial judge concluded that the Demand Letter, together with the included hospital bill and medical reports, provided the employer with sufficient information to identify the claim and respond to the request for payment.

Regarding the failure to include a HCFA 1500 form, the trial judge concluded that hospital bills, as distinguished from non-hospital medical bills, are not subject to the HCFA and CPT coding requirements to determine the reimbursement amount. He noted that Rhode Island General Laws § 28-33-7 "grants the Director of the Department of Labor and Training with the authority to establish a schedule of medical and hospital reimbursement rates." *Id.* at 6. The trial judge then took judicial notice of the hospital reimbursement rates set forth in the Rhode Island Workers' Compensation Fee Schedule and determined that the reimbursement rate for the services rendered by LMC on June 10, 2019 is seventeen and 8/100 percent (17.08%). *Id.* at 8. After multiplying the total bill of Four Thousand Three Hundred Forty-five and 54/100 ($4,345.54) Dollars by the reimbursement rate, the trial judge found that the employer should

pay LMC the sum of Seven Hundred Forty-two and 22/100 ($742.22) Dollars. *Id.* The trial judge gave the employer credit for the Seven Hundred Nineteen and 94/100 ($719.94) Dollars that the employer had already paid to LMC and ordered the employer to pay LMC an additional Twenty-two and 28/100 ($22.28) Dollars as well as a counsel fee to the employee's attorney. *Id.* at 9. The employer filed a timely claim of appeal.

In reviewing the decision of a trial judge, we are guided by the standard set forth in Rhode Island General Laws § 28-35-28(b), which states that "[t]he findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous." R.I. Gen. Laws § 28-35-28(b). In the present matter, the parties have stipulated to the pertinent facts. Consequently, we need only address how the relevant law applies to those facts.

The employer submitted three (3) reasons of appeal. The first reason is merely a general allegation that the trial decree is against the law and evidence and the weight thereof. An appellant must state with specificity the exact aspects of the adverse decision or decree that form the basis for the appeal. R.I. Gen. Laws § 28-35-28(a); *Bissonnette v. Federal Dairy Co.*, 472 A.2d 1223, 1226 (R.I. 1984). As no specific error is alleged, we need not address this argument.

The remaining reasons of appeal essentially repeat the arguments that were presented to the trial judge as outlined above. First, the employer contends that the trial judge ignored and/or failed to follow the plain language of Rhode Island General Laws § 28-35-12(a) which requires that the demand letter include the claim number or a copy of the MOA. The employer asserts that the language of the statute is unambiguous and must be strictly construed so that the employee's failure to include the claim number or a copy of the MOA renders the Demand Letter invalid.

The Rhode Island Supreme Court has provided clear guidance on the issue of statutory construction. The Court has stated that "our ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Powers v. Warwick Pub. Sch.*, 204 A.3d 1078, 1085 (R.I. 2019) (quoting *State v. Whiting*, 115 A.3d 956, 958 (R.I. 2015)). In addition, "[i]t is well settled that when the language of a statute is clear and unambiguous, [the Rhode Island Supreme Court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Id.* at 1086 (quoting *Whittemore v. Thompson*, 139 A.3d 530, 540 (R.I. 2016)). "The plain meaning approach, however, is not the equivalent of myopic literalism, and it is entirely proper for us to look to the sense and meaning fairly deducible from the context." *W. Reserve Life Assurance Co. of Ohio v. ADM Associates, LLC*, 116 A.3d 794, 798 (R.I. 2015) (quoting *National Refrigeration, Inc. v. Capital Properties, Inc.*, 88 A.3d 1150, 1156 (R.I. 2014)). "Therefore, we must consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Id.* (quoting *National Refrigeration, Inc.*, 88 A.3d at 1156).

After reviewing the facts of this case, we cannot agree with the employer's contention that the language of Rhode Island General Laws § 28-35-12(a) mandates strict compliance with the requirement that the demand letter include a claim number or a MOA and failure to do so renders the demand letter fatally deficient. In *Palumbo v. U.S. Rubber Co.*, 97 R.I. 20, 195 A.2d 238 (1963), the Rhode Island Supreme Court was confronted with an almost identical issue.

The decision in *Palumbo* addressed the application of the notice requirement set forth in Rhode Island General Laws § 28-33-8 which gives the injured employee the right to choose his own physician and states as follows:

> No claim for care or treatment by a physician * * * shall be valid and enforceable as against his or her employer, the employer's

> insurer or the employee, unless the physician * * * gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15) days after the beginning of the services or treatment.

R.I. Gen. Laws § 28-33-8(b). The trial judge and the full commission on appeal found that the terms of the statute required strict and literal compliance with the notice requirements and that the physicians who performed the medical services in question had failed to comply with those requirements. *Palumbo*, 97 R.I. at 22, 23-24, 195 A.2d at 239-40. However, there was evidence in the record that the physicians had forwarded certain information to the employer and the employer had issued a preliminary agreement establishing the employee's incapacity just prior to his surgery being performed by those physicians.

In reviewing the matter, the Rhode Island Supreme Court stated that "the purpose of these provisions of the statute is to provide the employer with knowledge that will enable him to ascertain the necessity for medical treatment and the reasonableness of the cost thereof." *Id.* at 25-26, 195 A.2d at 241. Bearing this interpretation in mind, the Court reasoned that, "[t]o whatever extent an employer has actual knowledge concerning these matters, compliance with the pertinent provisions of the statute would serve no useful purpose." *Id.* at 26, 195 A.2d at 241. The Court therefore concluded that compliance with the notice requirements of the statute is waived or excused to the extent that the employer has actual knowledge of the pertinent information. *Id.* at 26, 195 A.2d at 241.

We find the reasoning and analysis by the Court in *Palumbo* applicable to the case presently before the panel. The employer's argument focuses solely on the language of § 28-35-12(a) which states that "[a]ll demands seeking payment of bills for medical services rendered shall include reference to a claim number or a legible copy of the agreement, order, and/or

decree, if appropriate, establishing liability." However, this statute must be read in conjunction with § 28-33-8(f)(2) which provides as follows:

> The twenty-one (21) day period in subsection (f)(1) of this section and in § 28-35-12 shall begin on the date the insurer receives a request with appropriate documentation required to determine whether the claim is compensable and the payment requested is due.

As stated in *Palumbo*, the purpose of these statutes "is to provide the employer with knowledge that will enable him to ascertain the necessity for medical treatment and the reasonableness of the cost thereof." *Id.* at 26, 195 A.2d at 241. It is clear from the stipulation of facts and accompanying attachments that the employer had actual knowledge of the claim number and the MOA accepting liability for the employee's injury.

The parties stipulated that the employer issued a MOA dated May 18, 2020 accepting liability for the employee's June 10, 2019 work-related injury which was described as a right ankle fracture. In response to the employee's Demand Letter dated June 16, 2020, the employer's counsel sent an email to employee's counsel dated June 30, 2020. In the subject line of the email the employee is referred to by name, "Thomas Skahan," and a claim number is provided, "Claim No.: 001000033418501." Joint Ex. 1, Stipulation of Facts, attached Exhibit 4. Thus, the June 30, 2020 email clearly indicates that the employer had actual knowledge of the claim number and had in its possession the MOA that had just been issued a month earlier. Following the reasoning of the *Palumbo* decision, we find that the requirement to provide a claim number and copy of the MOA is waived or excused in this case because the employer had possession of the relevant information.

In its final reason of appeal, the employer contends that the trial judge erred when he failed to strictly apply the requirements of § 28-33-8(d) after finding that those requirements do

not apply to the bills of hospitals, such as LMC, as distinguished from the bills of other medical providers. Specifically, the employer asserts that the Demand Letter is deficient because it did not include the HCFA form/s relating to the bill/services rendered on June 10, 2019. The employer relies upon the definition of an itemized bill as stated in § 28-33-8(d).

> "Itemized bill," as referred to in this section, means a completed statement of charges, on a form CMS HCFA 1500, UB92/94 or other form suitable to the insurer, that includes, but is not limited to, an enumeration of specific types of care provided; facilities or equipment used; services rendered; and appliances or medicines prescribed, for purposes of identifying the treatment given the employee with respect to his or her injury.

First, we reject the employer's argument that a specific form is an absolute requirement for the payment of a medical bill pursuant to §§ 28-33-8(b) and 28-33-8(d). The HCFA 1500 form demanded by the employer includes the following information: the service date; the place of service; the CPT codes for procedures, services, or supplies; the amount of money charged; and the provider's identification number. The documentation attached to the employee's Demand Letter included an itemized bill from LMC which provided the service date, a description of each of the procedures performed, services rendered, and supplies used with accompanying CPT codes, and the charge for each item. The medical reports that were also attached to the Demand Letter provided supplementary information for the employer or insurer to verify that the services and treatment that the employee received were for his work-related injury. *See* Joint Ex. 1, attached Exhibit 3. Therefore, the information that would have been contained in the HCFA 1500 form was already provided to the employer in the attachments to the Demand Letter, simply in a different form.

As we have previously stated, the purpose of these statutes requiring the provision of certain information as a condition to the obligation of the employer to pay medical bills is to

provide the employer with sufficient information to identify the employee's claim and ascertain the necessity of the treatment and the reasonableness of the cost. Section 28-33-8(d) specifies that a "suitable" alternate form to the HCFA 1500 should include "an enumeration of specific types of care provided; facilities or equipment used; services rendered; and appliances or medicines prescribed, ..." The documentation attached to the Demand Letter in this case certainly more than satisfied that criteria. In arguing that the information must be provided on a HCFA 1500 form, the employer elevates form over substance, in contradiction of the judicial policy that the substance, not the form should control. *See Silva v. Brown & Sharpe Mfg. Co.*, 524 A.2d 571, 573 (R.I. 1987); *Proulx v. French Worsted Co.*, 98 R.I. 114, 121-22, 199 A.2d 901, 905-06 (1964).

We refer again to the reasoning applied in the *Palumbo* decision. By virtue of the information contained in the attachments to the Demand Letter, the employer had in its possession all of the necessary information to make a determination as to the necessity of the medical services provided and the reasonableness of the cost of those services. The employer never pointed to any deficiency in the information provided by the employee that would have been included on the HCFA form. To require that the employee or medical services provider restate the same information on a different form would serve no useful purpose. *See Palumbo*, 97 R.I. at 26, 195 A.2d at 241.

The employer contends that any alternate form of itemized bill must be "suitable to the insurer," as stated in § 28-33-8(d). We cannot believe that the Legislature intended to give the employer or insurer the unfettered discretion to arbitrarily reject any alternate form of itemized bill that it may deem unsuitable. Such an interpretation would lead to an absurd result in

contravention of the principles of statutory construction. *See National Refrigeration, Inc. v. Capital Properties, Inc.*, 88 A.3d 1150, 1156 (R.I. 2014).

Furthermore, such an interpretation can only result in needless litigation and unnecessary delay and inefficiency. Section 28-30-12 authorizes "[t]he workers' compensation court, with the approval of the supreme court, shall prescribe forms, make suitable orders, and adopt rules of procedure to secure a *speedy, efficient, informal, and inexpensive disposition of its proceedings* under chapters 29 – 38 of this title . . .." R.I. Gen. Laws § 28-30-12 (emphasis added). Requiring that a demand for payment of medical services must be submitted on a specific form or a form deemed suitable at the discretion of the insurer is unreasonable, particularly since specific forms referenced in the statute no longer exist. The specific forms referenced in the statute are not generated by the Workers' Compensation Court, but rather by other outside agencies. For example, in 2007, the UB-92 form, which is identified in § 28-33-8(d), was replaced by the UB-04 form. Therefore, we find that an alternate form that includes all of the information that is necessary to pay a medical bill as set forth in § 28-33-8(d), like the LMC bill, satisfies the definition of an itemized bill.

Finally, we would like to clarify one (1) portion of the trial judge's decision. We believe the trial judge misstated that hospital bills are completely excluded from the requirements of § 28-33-8. Hospital bills do need to be presented as an "itemized bill," including a description of the services provided and accompanying CPT codes, so that the employer can make a determination as to whether the particular services were necessary to treat the employee's work-related injury. We do agree with the trial judge that hospitals are *paid* differently than other medical service providers. In accordance with § 28-33-7, the Director of the Rhode Island Department of Labor and Training annually promulgates a document entitled "Rhode Island

Workers' Compensation Hospital Rates" which lists the reimbursement rates for inpatient, ambulatory surgery, or emergency room services which are based on a percentage of the actual cost of the services. The trial judge correctly referred to this document and noted that the LMC medical bill totaling Four Thousand Three Hundred Forty-five and 54/1000 ($4,345.54) Dollars must be paid at a reimbursement rate of seventeen and 8/100 percent (17.08%) which amounts to Seven Hundred Forty-two and 22/100 ($742.22) Dollars. The parties stipulated that the employer had previously paid LMC the amount of Seven Hundred Nineteen and 94/100 ($719.94) Dollars and therefore, the trial judge properly ordered the employer to pay the additional Twenty-two and 28/100 ($22.28) Dollars.

Based upon the foregoing discussion of the issues raised on appeal, we find that the trial judge was not clearly erroneous in granting the employee's petition and we therefore deny and dismiss the employer's appeal. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a proposed copy of which is enclosed, shall be entered on January 25, 2024.

Feeney, J. and Reall, J., concur.

ENTER:

/s/ Olsson, J.

/s/ Feeney, J.

/s/ Reall, J.