COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS	BOARD #096790-88 #072505-88
Alberto Tedeschi S & F Concrete Contractors U.S.F. & G.	Employee Employer Insurer
Martin Alderson Foster Forbes Glass Co. Home Insurance Co.	Employee Employer Insurer

REVIEWING BOARD DECISION
(Greiman[1], McCarthy and Pearson)

Donald E. Wallace, Esq., for Alberto Tedeschi
David Perry, Esq., for S & F Concrete Contractors

Neal Winston, Esq. for Martin Alderson
Joseph S. Buckley, Jr. for Foster Forbes Glass Co.,
Morgan J. Gray, Esq. with him

MCCARTHY, J. On October 17, 1988, while in the course of his employment as a carpenter, Alberto Tedeschi fell from a ladder sustaining injuries to his low back. The employee is a domiciliary of Rhode Island, but was hired in Massachusetts. The insurer accepted the claim and commenced payment of weekly benefits under the provisions of the Massachusetts Workers' Compensation Act. The employee received medical treatment (including surgery on the left knee) in Rhode Island and the treating physician billed the employee at his usual and customary rates. The charges exceed the rates established by the Massachusetts Rate Setting Commission for the medical treatment rendered. A claim seeking full payment of

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1 Judge Greiman heard oral arguments and took part in post argument deliberations in these cases. She resigned from the board prior to the filing date of the decision.

the medical bills was filed. Following a conference, an administrative judge ordered the bill to be paid at rates established by the Massachusetts Rate Setting Commission. The employee appealed, claiming that the attending physician should be paid in full since the bill reflected his usual and customary charge for these medical services and was comparable to rates prevailing in his geographical area for such treatment. The claim went to hearing on an agreed statement of facts. Thereafter, the administrative judge found that the Massachusetts Rate Setting Commission rates applied thus the insurer was not obliged to pay in full the bill submitted by the Rhode Island treating physician. The judge noted that "...no employee can be liable for services compensable under this Chapter which have been paid at the rates established by the Commission." (Dec. pp. 5,6) The judge also observed that, "It would be incongruous that two physicians of equal stature, separated by a geographical border, would receive different compensation rates for the same services." (Dec. pp. 6,7) This case comes to us on appeal by the employee.

In the companion case, Martin Alderson suffered a low back injury arising out of and in the course of his employment on November 15, 1988, at the employer's work place in Milford, Massachusetts. The insurer accepted the case and commenced payment of weekly incapacity benefits. Shortly after the industrial accident, the employee moved to Pennsylvania where he received medical treatment for his injury. Pennsylvania medical providers submitted bills and the insurer made payment at Massachusetts Rate Setting Commission rates. When the insurer

refused to pay the Pennsylvania bills in full as submitted, the employee filed claim. [2] After a full hearing, the administrative judge decided that the Massachusetts Rate Setting Commission rates do not apply to medical providers not licensed in Massachusetts and providing care outside the Commonwealth of Massachusetts. In so finding, the judge relied heavily on an advisory opinion rendered in May 1980, by the then Chairman of the Massachusetts Rate Setting Commission. This opinion, which was offered in evidence at the hearing, took the position that rates established by the Commission apply only when the medical provider is "licensed, registered, certified or otherwise qualified to provide medical or rehabilitative services in the Commonwealth of Massachusetts", and further, that, "the medical or rehabilitative services must be provided to the injured person within the Commonwealth of Massachusetts." The judge then ordered the insurer to "pay the medical bills of the medical providers in the State of Pennsylvania in accordance with the actual bills of those providers." (Dec. p. 11) The insurer appealed this finding.

So far as we know, the issue raised in these companion cases is one of first impression. We are asked to decide whether medical services rendered by providers outside of Massachusetts are subject to the rates established by the Rate Setting Commission pursuant to c.6A, §32. For reasons set out below, we believe the answer is yes.

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2 A complaint to terminate or modify weekly benefits was joined with the medical bill issue. The judge in her decision established an earning capacity and neither party appealed from that finding.

In both of these cases the employee is being paid weekly incapacity benefits under the Massachusetts statutory scheme. Once it is determined that a particular state has jurisdiction over a worker's compensation claim, the law of that state controls that case. The rights created by a state's Workers' Compensation Act cannot be separated from the tribunal established to enforce them. Workmen's Compensation Law, Larson, Vol. 4, §84.20-24 (1989). Disputes arising in a Workers' Compensation case must be returned to the jurisdiction in which the claim was originally filed and adjudicated or accepted. See Grenier v. Alta Crest Farms, Inc. 165 Vt. 324, 58 A 2d. 884 (1948).

We have no desire to treat the 1980 opinion of the Rate Setting Commission Chairman cavalierly. Nevertheless, we disagree with it. We believe that c.152, §13 rather than c.6A is the vehicle which carries Massachusetts Rate Setting Commission Rates outside the borders of the Commonwealth.[3] There is nothing in §13 which suggests that these rates are to be confined in their application to Massachusetts medical vendors providing in state

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At the time of the hearings in these cases, §13 read in pertinent part as follows:

"(1) The rate of payment by insurers for health care services adjudged compensable under this chapter shall be established by the rate setting commission under the provisions of chapter six A. No insurer shall be liable for hospitalization expenses, adjudged compensable under this chapter at a rate in excess of the rate set by the rate setting commission, or for other health services in excess of the rate established for that service by the rate setting commission. Nor shall any employee be liable for services adjudged compensable under this chapter which have been paid for at the rates established by the rate setting commission."

medical services. There is no suggestion in §30 or elsewhere in c.152 that medical treatment for an industrial injury must be rendered in Massachusetts in order for the insurer to be responsible for payment. Under Massachusetts law, an injured employee is assured of "adequate and reasonable medical and hospital services and medicines if needed," See §30. An employee is free to seek to this treatment wherever he or she wishes.[4] Just as §30 does not limit the geographic lengths to which an employee may go for treatment, neither does §13 limit the applicability of Massachusetts Rate Setting Commission rates to treatment rendered within this Commonwealth.

While we are satisfied that §§13 and 30, as in effect at the time of the hearings in these cases, called for the application of Massachusetts Rate Setting Rates outside the state, the most recent change in §13 adds considerable weight to our conclusion. See St. 1991, c.398 §33. As amended, §13(1) now reads in pertinent part as follows:

> "Except as provided above, no insurer shall be liable for hospitalization expenses adjudged compensable under this chapter at a rate in excess of the rate set by the Rate Setting Commission, or for other health services in excess of the rate established for that service by the Rate Setting Commission regardless of the setting in which the service is administered."(emphasis ours)

This amendment is procedural and therefore, retroactive. The question as to whether this procedural amendment to §13 is applicable to the cases at hand seems resolved by City Counsel of

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St. 1991, c398, §53, rewrote §30. The new section imposes restrictions on changing from one physician to another but does not restrict the locus of treatment to Massachusetts.

Waltham v. Vinciullo 364 Mass. 624 (1974), where the court held that statutes which are remedial or procedural should be deemed to apply retroactively to those pending cases, which on the effective date of the statute, have not yet gone beyond the procedural stage to which the statute pertains. It is appropriate then for us to look at and apply this most recent amendment to §13. Any argument with respect to interpretation of the phrase, "setting in which the service is administered" as appearing in new §13 has been laid to rest by emergency amendments to 452 CMR 1.00, the Department of Industrial Accidents adjudicatory rules. These emergency regulations have defined the phrase in question to mean, "the physical location, including the jurisdiction and the type of facility, in which any health care service other than in-patient hospital service is administered". (emphasis ours) See 452 CMR 1.02 (emergency regulation promulgated February 3, 1992).[5] We must give regulations as much deference as we would a legislative enactment. See Greenleaf Finance Co. v. Small Loans Regulatory Board, 377 Mass. 282, 293 (1979).

It is important to note that §13 as in effect at the time that the medical treatment was rendered and as most recently amended unequivocally provides that an employee shall not be personally liable for health care services adjudged compensable under c.152. Just as they do in Massachusetts, injured workers seeking medical treatment outside the Commonwealth may confront

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5 The exclusion of in-patient hospital service from the definition seems to have been done in deference to St. 1991, c.495, An Act Improving Health Care Access and Financing.

balky medical providers when the vendors realize that they will be paid at the Massachusetts Rate Setting rates. There is another danger. An unwitting medical vendor upon finding that he is bound by Massachusetts rates may "balance bill" and sue to collect it if not paid. Since the employee is clearly not liable to pay for these services, it is the insurer who is the real party in interest and thus it is the insurer who should come forward to resist such a claim. While this finding is peripheral to the precise issue at hand, as we make it we note that the board is not bound by strict legal precedent or legal technicalities, but, rather, governed by the practice in equity. See Duggan's Case 315 Mass. 355, 357 (1944); Pierce's Case 325 Mass. 649, 652 (1950). The term "in equity" is consonant with the liberal construction to be given to c.152 and has been "applied to supply a remedy [even] where there may be a gap in the statute. Garnhum's Case 349 Mass. 473 (1965).

The decision of the administrative judge in Tedeschi's Case stands affirmed. In Alderson's Case we reverse so much of the decision as orders of payment of medical treatment rendered by Pennsylvania providers in an amount in excess of Massachusetts Rate Setting Commission rates.

William A. McCarthy
Administrative Law Judge

Filed: April 16, 1992
WAM/bw

PEARSON, J. (Concurring) I agree that c. 6A standing alone, was not intended to apply to out of state providers. I do not agree with my colleague that there is error in the 1980 advisory opinion by the then Chairman of the Massachusetts Rate Setting Commission. Rather, it is by reference in c. 152 § 13 that the rates specified in c. 6A become applicable and binding upon the Department of Industrial Accidents to limit the obligation of the insurance carrier.

Further, I believe the statutory language intended and public policy dictates that c. 152 should not put out of state providers in a better position than Massachusetts providers with respect to payment for compensable services under c. 152. The potential for abuse is too great. For those reasons, I agree with the outcome of the majority decision.

Barbara Savitt Pearson
Administrative Law Judge

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