VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by RAPAPORT
Commissioner

Nov. 30, 2021

JACK POWELL v. AUTOMATIC EQUIPMENT SALES OF NORFOLK INC
ADULT & PEDIATRIC NEUROSURGERY, P.C., Medical Provider
MASSACHUSETTS BAY INS CO, Insurance Carrier
MASSACHUSETTS BAY INS CO, Claim Administrator
Jurisdiction Claim No. 1961810
Claim Administrator File No. 653805942N
Date of Injury: May 11, 1999

Jack Powell
Claimant, pro se.

Raymond J. Williams, Esquire
For the Defendants.

Philip J. Geib, Esquire
For the Medical Provider.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The medical provider requests review of the Deputy Commissioner's June 2, 2021 Opinion finding the doctrine of laches barred the medical provider's application. We AFFIRM.

I. Material Proceedings

The claimant suffered a compensable injury by accident to his back on May 11, 1999. He was awarded medical benefits and temporary total disability benefits for periods of disability through January 15, 2001.

On July 5, 2020, the medical provider sought payment of $4,598.63 for services provided to the claimant in February, September, and October 2000. Pertinent to our review, the defendants defended the application on the basis the doctrine of laches barred the application.

The parties submitted position statements, and the Deputy Commissioner conducted an on-the-record hearing on May 21, 2021. Pursuant to his Opinion dated June 2, 2021, the Deputy Commissioner denied the medical provider's application. He considered the evidence in the case and explained, in part:

> [T]he medical provider's destruction of its own records of care according to its own document retention policy both demonstrates an abandonment of its claim against the defendants and prejudice to the defendants. Judith White, the medical provider's practice manager who handled billing and collections, acknowledged that the provider did not ret[]ain the records of the claimant's treatment at issue in this claim. While the medical provider retained digital records related to billing, including those serving as the basis for the provider's July 5, 2020 application, they made a choice to relinquish any supporting treatment records.
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> This decision is not inconsequential and irrelevant. The Commission has noted that the general rule that a bill submitted by a medical provider constitutes prima facie evidence of the reasonableness of the medical provider's charges does not necessarily reach the issues of medical causation or necessity, citing *McMunn v. Tatum*, 237 Va. 558 (1989). *See Curro/Virginia Spine Institute v. Fairfax (County of) Police*, JCN 2249752 (November 9, 2011). The medical provider's relinquishment of its records of treatment establishes that they did not continue to feel it necessary to address these issues after accepting payment for its services from the defendants.
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> Furthermore, the medical provider's action prejudiced the defendants because they lost the primary source for requesting and receiving records through the discovery procedures set forth in Rule 1.8 of the Rules of the Commission that they could evaluate for the purposes of preparing their defense. In addition, the medical provider's action interferes with the Commission's jurisdiction "to do full and complete justice in each case" by depriving the Commission of the opportunity to review all of the relevant evidence that was in existence at the time the services were rendered that form the basis for its application. It is found that the medical provider may not benefit from this inequitable circumstance.

(Op. 5-6.)

The medical provider requests review. The medical provider asserts the claim is not barred by the doctrine of laches.

II. Findings of Fact and Rulings of Law

The Supreme Court of Virginia defines laches as the "'neglect or failure to assert a known right or claim for an unexplained period of time under circumstances prejudicial to the adverse party.'" *Stewart v. Lady*, 251 Va. 106, 114 (1996) (quoting *Princess Anne Hills v. Susan Constant Real Est.*, 243 Va. 53, 58 (1992)). "'[N]o rigid rule can be laid down as to what delay will constitute laches; every suit must depend upon its own circumstances.'" *Stewart*, 251 Va. at 114 (quoting *Puckett v. Jessee*, 195 Va. 919, 930 (1954)). "Delay alone does not establish laches; absent prejudice resulting from a party's delay, the bar of laches is not applicable." *Masterson v. Bd. of Zoning Appeals*, 233 Va. 37, 48 (1987). The litigant raising laches as a defense bears the burden of demonstrating both the requisite delay and prejudice. *Bar v. S.W. Rodgers Co.*, 34 Va. App. 50, 58 (2000).

We have reviewed all evidence in the record, including statements on review. Here, we agree with the Deputy Commissioner's decision finding the medical provider's destruction of the pertinent medical records demonstrates an abandonment of its claim against the defendants and prejudice to the defendants.

The medical provider did not file an application for additional reimbursement for treatment provided to the claimant in 2000 until July 5, 2020.[1] By deposition on April 21, 2021, Judith White,

[1] We note the medical provider's July 5, 2020 application also contains a May 20, 2019 application. The May 20, 2019 application is not in the Commission's file as received prior to July 5, 2020.

who worked full-time as the practice manager for the medical provider from 2007 through 2014, testified the medical provider did not know it could dispute partial payments. Ignorance of the law is not a reasonable excuse for the almost twenty-year delay in filing an application in this case. "The Commission must presume that parties are aware of their rights and responsibilities under law." *Belter v. Hampton Roads Custom Painting*, 77 O.W.C. 119, 122 (1998). Nonetheless, delay without prejudice resulting from the delay is not sufficient. *See Seals v. City of Newport News*, JCN 1774097 (July 26, 2019), *aff'd*, *City of Newport News v. Peninsula Neurosurgical Assocs.* Nos. 1315-19-1 and 1382-19-1 (Va. Ct. App. Mar. 31, 2020) (finding insufficient evidence of prejudice to the defendant from the passage of time).

We find the defendants were prejudiced by the delay, given the medical provider's destruction of the pertinent medical records in accordance with its retention policy of seven years. Ms. White testified that the medical provider no longer had the pertinent medical records to support the medical bills at issue. At her April 21, 2021 deposition, Patricia Smith, a workers' compensation unity claims manager for the insurer since November 2014, testified, based on the medical billing provided, she was only able to determine that the bills were not paid as they were originally billed. She was not able to determine the basis for the underpayment.

We recognize medical bills are prima facie evidence that the charges were reasonable. *See Ceres Marine Terminals v. Armstrong*, 59 Va. App. 694, 703 (2012). The bills are some evidence that the charges are reasonable in amount, which should be considered by the fact finder along with other evidence in the case. *Curro/Va. Spine Inst. v. Fairfax (Cnty. of) Police*, JCN 2249752 (Nov. 9, 2011). Although the absence of medical records may not necessarily impact the medical provider's prima facie evidence that the charges were reasonable as it pertains to the prevailing

community rate at the time, the medical provider's billing evidence does not provide sufficient information to adequately address the requisite issues of medical causation or necessity of the claimant's treatment, which prompted the medical charges.[2] Due to the medical provider's delay in filing the application, the defendants were no longer able to request the medical records to fully prepare their defense to the medical provider's application.[3] Despite the medical provider's assertion to the contrary, we are not persuaded the billing codes provided on the health insurance claim forms and the adjuster's notes provide sufficient information to mitigate this prejudice to the defendants. The doctrine of laches bars the medical provider's application based upon the circumstances of this case.

III. Conclusion

The Deputy Commissioner's June 2, 2021 Opinion is AFFIRMED.

This matter is removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.

[2] Below, the defendants clearly disputed the reasonableness, necessity and causation of the claimant's medical treatment as part of their basis for the doctrine of laches defense.

[3] We are not persuaded by the medical provider's assertion on review that the defendants were required to retain the medical records of the claimant. The medical provider generated the medical records, and it is the party requesting relief.