

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

CECILIA D. ALBEZA, )  
)  
Employee, and )  
) FINAL DECISION AND ORDER  
ALIVIO THERAPUTIC MASSAGE, )  
) AWCB Case No. 201716937  
Claimant, )  
) AWCB Decision No. 19-0003  
v. )  
) Filed with AWCB Anchorage, Alaska  
STATE OF ALASKA, )  
) on January 11, 2019  
)  
Employer, )  
Defendant. )  
.)

Alivio Therapeutic Massage's (Alivio) February 21, 2018 claim was heard on December 20, 2018, in Anchorage, Alaska, a date selected on November 7, 2018. A November 7, 2018 prehearing conference hearing request gave rise to this hearing. Non-attorney representative Whitney Woodmansee appeared, testified for and represented Alivio. There was no appearance for Cecelia Albeza (Employee). Attorney Adam Franklin appeared and represented the State of Alaska (Employer). Witnesses included Gabriella Aldebot who also testified for Alivio. The record remained open for one week so Alivio could file and serve emails between the parties and certified mailing evidence, and closed on December 27, 2018.

## ISSUES

Employee did not appear for the hearing after having been noticed. Employee had no real interest in Alivio's claim and neither Alivio nor Employer objected, so the hearing proceeded.

**1) Was the decision to proceed with the hearing in Employee's absence correct?**

Alivio contends Employer failed to timely pay properly documented medical bills for services it rendered to Employee. It further contends while Employer ultimately paid the bills and some penalties and interest, Employer still owes additional penalties and interest to Alivio.

Employer concedes it made errors in processing and paying Alivio’s bills for services rendered to Employee. However, it further contends it eventually calculated the bills, corrected additional errors and paid appropriate penalties and interest to Alivio. Employer contends it does not know what additional penalties or interest Alivio requests, and contends Alivio bears the burden to prove Employer owes it an additional amount.

**2)Is Alivio entitled to additional penalties and interest?**

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On February 22, 2018, Alivio claimed \$5,832.75 in medical costs, a penalty and interest on unpaid medical bills for services it provided to Employee. (Claim for Workers’ Compensation Benefits, February 21, 2018).
- 2) On February 22, 2018, the division served Alivio’s claim on Alivio, Employer, Penser its adjusters and Employee. (Letter, February 22, 2018).
- 3) On March 5, 2018, Employer filed and served Employee’s medical records received from Alivio as follows, according to “received” stamps or facsimile headings on the records:

**TABLE I**

<b>Date of Medical Service</b>	<b>Date Penser Received Records</b>
1/3/18	1/8/18
1/5/18	1/19/18
1/10/18	1/19/18
1/12/18	1/19/18
1/16/18	1/19/18
1/19/18	1/29/18
1/23/18	1/29/18
1/31/18	2/6/18

2/2/18	2/6/18
2/7/18	2/7/18
2/9/18	2/9/18
2/14/18	2/14/18
2/16/18	2/16/18
2/21/18	2/21/18

(Employer’s Medical Summary, March 2, 2018).

4) On March 12, 2018, Employer admitted Employee sustained an injury arising out of and in the course of her employment with Employer. Employer said it paid and continued to pay medical and indemnity benefits to or on Employee’s behalf. It stated there were no documents attached to the claim to identify the bills in dispute and Employer deferred to its adjuster’s review of bills and neither admitted nor denied it owed \$5,832.75. Employer asked for a stay on the claim pending its adjuster’s review of appropriate bills and reserved its right to amend its answer as discovery progressed. (Employer’s Answer, March 12, 2018).

5) On March 21, 2018, Alivio explained when it sent Employee’s medical bills to Employer’s adjuster and provided an itemized statement called a “Claim List” and a “Patient Ledger” showing service dates and CPT codes along with a description of services provided. Woodmansee stated that on March 5, 2018, Alivio received a summary of bills received and four bills were not included. She called someone to inquire about these missing payments and “John” said he did not have the referenced bills so she printed them again and sent them along with the chart notes. Woodmansee had previously mailed these four bills and records as follows: December 19, 2017 on December 22, 2017; December 22, 2017 on December 29, 2017; December 28, 2017 on December 29, 2017; and January 26, 2018 on January 30, 2018. Alivio’s “Claim List” shows:

**TABLE II**

<b>Date of Medical Service</b>	<b>Date Alivio Mailed Bills &amp; Records</b>
12/19/17	12/22/17
12/22/17	12/29/17
12/28/17	12/29/17
1/3/18	1/4/18

CECILIA D. ALBEZA & ALIVIO THERAPUTIC MASSAGE v. STATE OF ALASKA

1/5/18	1/8/18
1/10/18	1/11/18
1/12/18	1/13/18
1/16/18	1/17/18
1/19/18	1/22/18
1/23/18	1/25/18
1/26/18	1/30/18
1/31/18	2/1/18
2/2/18	2/9/18
2/7/18	2/9/18
2/9/18	2/12/18
2/14/18	2/15/18
2/16/18	2/23/18
2/21/18	2/23/18
2/28/17	3/2/18
3/2/18	3/8/18
3/6/18	3/8/18
3/9/18	3/12/18

The services rendered equaled \$7,260 and the total amount requested was \$7,484.40, including penalty and interest. (Notice of Intent to Rely, March 20, 2018).

6) On April 17, 2018, Employer filed and served Employee’s Alivio chart notes along with one record from Leslie Langum, PA-C, as follows according to “received” stamps or facsimile headings on the records:

**TABLE III**

<b>Date of Medical Service</b>	<b>Date Penser Received Records</b>
2/23/18	2/23/18
3/21/18	3/21/18
3/23/18	3/23/18
3/28/18	3/28/18

CECILIA D. ALBEZA & ALIVIO THERAPUTIC MASSAGE v. STATE OF ALASKA

3/30/18 (Langum)	3/30/18
3/30/18	3/30/18

(Employer’s Medical Summary, April 17, 2018).

7) Between April 18, 2018 and July 9, 2018, Employer’s adjuster Penser paid Employee’s relevant medical bills as follows:

**TABLE IV**

<b>Date of Medical Service</b>	<b>Date Penser Paid</b>	<b>Amount Paid</b>
12/19/17	5/18/18	\$295.67
12/22/17	5/18/18	\$295.67
12/28/17	5/16/18	\$266.00
1/3/18	5/18/18	\$296.47
1/5/18	4/16/18	\$255.34
1/10/18	4/16/18	\$255.34
1/12/18	4/16/18	\$255.34
1/16/18	4/16/18	\$255.34
1/19/18	4/16/18	\$255.34
1/23/18	4/16/18	\$255.34
1/26/18	4/16/18	\$255.34
1/31/18	4/16/18	\$255.34
2/2/18	4/16/18	\$255.34
2/7/18	4/16/18	\$255.34
2/9/18	4/16/18	\$255.34
2/14/18	4/16/18	\$255.34
2/16/18	4/16/18	\$255.34
2/21/18	4/16/18	\$255.34
2/23/18	4/30/18	\$156.47
2/28/18	4/16/18	\$255.34
3/2/18	4/16/18	\$255.34
3/6/18	4/16/18	\$255.34
3/9/18	4/16/18	\$255.34

CECILIA D. ALBEZA & ALIVIO THERAPUTIC MASSAGE v. STATE OF ALASKA

3/16/18	4/16/18	\$255.34
3/21/18	4/30/18	\$296.47
3/23/18	4/30/18	\$296.47
3/28/18	4/30/18	\$296.47
3/30/18	4/30/18	\$156.47
4/4/18	5/18/18	\$296.47
4/11/18	5/18/18	\$296.47
4/18/18	5/18/18	\$296.47
4/20/18	5/18/18	\$296.47
4/28/18	5/18/18	\$296.47
5/5/18	5/25/18	\$296.47
5/12/18	6/7/18	\$280.00
5/19/18	6/7/18	\$280.00
5/23/18	6/15/18	\$210.00
5/25/18	6/28/18	\$280.00
5/28/18	5/28/18	\$280.00
5/30/18	7/9/18	\$280.00

(Alivio’s Letter, To Whom It May Concern, Claim List, filed November 29, 2018; Hearing Brief, Exhibit M, December 12, 2018).

8) On May 15, 2018, Employer filed and served Employee’s Alivio chart notes as follows according to “received” stamps or facsimile headings on the records:

**TABLE V**

<b>Date of Medical Service</b>	<b>Date Penser Received Records</b>
12/19/17	12/19/17
12/22/17	12/22/17
4/4/18	4/4/18
4/6/18	4/6/18
4/11/18	4/11/18
4/18/18	4/18/18
4/20/18	4/20/18

4/28/18	4/28/18
---------	---------

(Medical Summary, May 15, 2018).

9) On June 12, 2018, Alivio confirmed all its past due medical bills were paid, resolving the past medical cost issue. However, it stated penalties and interest were still owed. The parties agreed to try to resolve these issues. (Prehearing Conference Summary, June 12, 2018).

10) On June 21, 2018, Employer filed and served one relevant May 2018 Alivio chart note for Employee, and one record for her from PA-C Langum as follows according to “received” stamps or facsimile headings on the records:

**TABLE VI**

<b>Date of Medical Service</b>	<b>Date Penser Received Records</b>
5/30/18	5/30/18
5/31/18	5/31/18

(Medical Summary, June 21, 2018).

11) On July 23, 2018, Employer denied Employee’s right to certain benefits, not including massage therapy. (Controversion Notice, July 23, 2018).

12) On July 26, 2018, Alivio stated its claim for medical costs was resolved, but the penalty and interest claims remained. Employer requested a list of bills Alivio claimed are subject to penalties and interest, and the amounts requested. (Prehearing Conference Summary, July 26, 2018).

13) On August 10, 2018, Employer denied Employee’s right to all benefits. This is the first time Employer denied Employee’s medical care. (Controversion Notice, August 10, 2018).

14) On August 21, 2018, Alivio called the division inquiring what to do since they “were unable to contact claims adjuster for over two months.” (ICERS database, August 21, 2018).

15) On August 29, 2018, Employer’s lawyer acknowledged receiving Alivio’s ledger setting forth bills subject to penalty and interest. However, he could not understand which service dates were subject to penalties and interest or the amounts. Alivio agreed to send Employer’s lawyer an itemized letter setting forth specific service dates subject to penalty and interest and the attorney agreed to calculate penalties and interest. (Prehearing Conference Summary, August 29, 2018).

16) On October 12, 2018, Alivio sent an email with a Patient Ledger (listing services, CPT codes, and billing amounts from December 19, 2017 through June 12, 2018) attached, to

Franklin. Alivio calculated \$11,706.45 in medical services allegedly paid late, and asserted a \$2,926.61 penalty and \$117.06 in interest on these allegedly late-paid amounts. (Woodmansee email, October 12, 2018; Employer’s Documentary Evidence, November 29, 2018).

17) On November 7, 2018, Franklin acknowledged some medical benefit claims had not been paid pursuant to the Alaska medical fee schedule. He sent these claims to the adjuster for reassessment and anticipated checks would be forthcoming for outstanding balances. The penalty and interest issues were pending. The designee set a hearing for December 20, 2018. (Prehearing Conference Summary, November 7, 2018).

18) On November 19, 2018, the division gave written notice to Employee for the December 20, 2018 hearing on Alivio’s claim. (Hearing Notice, November 19, 2018).

19) On November 28, 2018, Employer filed and served Alivio’s chart notes for Employee’s visits as follows.

**TABLE VII**

<b>Date of Medical Service</b>	<b>Date Penser Received Records</b>
5/12/18	5/12/18
5/19/18	5/19/18
5/23/18	5/23/18
5/25/18	5/25/18
5/28/18	5/28/18

(Medical Summary, November 28, 2018).

20) On November 29, 2018, Alivio said Woodmansee would testify for Alivio at the December 20, 2018 hearing. Attached to Alivio’s letter-form witness list is a Patient Ledger for Employee’s services between December 19, 2017 and June 12, 2018, CPT codes, costs incurred and payments from Employer’s adjuster. (Letter, November 29, 2018, with attachments).

21) On November 29, 2018, Employer provided a document purporting to show dates Employer’s adjuster sent checks to Alivio, dates the checks cleared the bank and the payment amount on each check. (Employer’s Documentary Evidence, November 29, 2018).

22) Employer contends Alivio did not specify service dates or the amount owed until October 12, 2017, and never provided an explanation for its calculations. It noted, “Employer has conceded since the pendency of this claim that it owes [Alivio] costs, penalties and interest.”



Employer concedes it owed Alivio \$1,946.42 in penalties and interest and states it issued payment “for that amount on December 12, 2018.” (Hearing Brief, December 12, 2008).

23) Employer concedes it made errors in calculating and making payments in this case and intended to pay the subject medical bills, penalties and interest since the claim’s inception, and in fact has done so. It further contends the parties were working cooperatively to resolve the issue informally without hearing, but Alivio suddenly changed its position and demanded a hearing. Employer contends it paid all medical bills, penalty and interest awardable in this case and Alivio bears the burden to demonstrate some other amount is owed. (*Id.*).

24) On December 19, 2018, division staff called Employee’s telephone number to tell her what time to appear for the November 20, 2018 hearing. The person answering the phone told the staff member no one by Employee’s name used that telephone number. Employee did not appear personally or telephonically at the December 20, 2018 hearing. (Observations).

25) At hearing on December 20, 2018, Woodmansee testified Alivio incurred \$11,706.45 in medical services to Employee, all of which was paid late, resulting in a \$2,926.61 penalty and \$117.06 in interest owed on this amount. Alivio eventually received \$1,946.42 for penalty and interest from Employer. Woodmansee said Employer discovered it underpaid some billings by using the wrong fee schedule rate and Alivio received another check from Employer for \$811 to cover this shortage. Alivio’s “Patient Ledger” shows service and payment dates along with billing amounts, fee-schedule-reduced payment amounts and CPT codes for treatment it rendered to Employee. Alivio’s “Claim List” shows the same service dates plus the dates Alivio billed Employer for the services and the dates it received Employer’s payments, including the amounts. For example, Employee’s first service date was December 19, 2017. Alivio billed the adjuster for this service on December 22, 2017, and Alivio received payment on May 21, 2018. Woodmansee never received any mail back from Employer’s adjuster stating the mail had not been received properly. She billed each visit using a Health Insurance Claim Form (HICF) medical claim form, which included personally identifiable information, service dates, charges and CPT codes. Woodmansee calculated a penalty based upon the actual amounts Employer paid. (Woodmansee).

26) Woodmansee said she did not provide the current Claim List to Employer prior to November 29, 2018. However, she sent this information in various correspondence to the adjuster and Franklin. She based her requested penalty on the total amount Employer paid,

\$11,706.45, during the late-paid period from December 19, 2017 through May 30, 2018. If one wanted to determine how Woodmansee came up with \$11,706.45, one would simply need to add the amounts Employer paid from December 19, 2017 through May 30, 2018, to obtain this sum. The Claim List does not contain this number because payments made in June 2018 were not late, so Woodmansee did not include these amounts in her calculation. She agreed, based upon the documents she provided, Employer “would have to do the math.” Similarly, a person wanting to know how Woodmansee came up with her penalty and interest amounts would have to perform the calculations based on the documents she provided as evidence. Alivio did not file a formal hearing brief. Its February 22, 2018 claim included the amount due at that time, and Alivio presented the exact amounts requested at subsequent prehearing conferences. Employer brought the fee schedule errors to Alivio’s attention. It also asked Alivio to provide a breakdown showing how it came up with its penalty and interest amounts and she did so in email correspondence beginning October 12, 2018 and ending November 6, 2018. The penalty and interest are based on the 22 late-paid service dates. Woodmansee initially stated her penalty and interest calculations did not take into account the 30 days Employer had to pay after receiving the medical billings in question and began the date the bill was mailed and ended on the date it was paid. She calculated the penalty by multiplying \$11,706.45 times 25 percent. She understood, based on information she received from the division, the interest rate was one percent. So, she multiplied \$11,706.45 times one percent. Woodmansee was confused about the date her interest calculation began; *i.e.*, was it the date the services were billed or was it 30 days after that date? (*Id.*).

27) Aldebot testified Alivio did not consider payment to be late until 30 days after the date it billed the insurance company. (Aldebot).

28) Alivio contends Woodmansee put in much more work than necessary in this case to get Alivio paid. After numerous follow-ups, Alivio filed a claim and contends it is entitled to additional penalties and interest based on the evidence presented. (Alivio’s hearing arguments).

29) Employer concedes it is responsible for penalties and interest. It agrees there is no question Employer erred in handling this case but Employer made calculations and paid what it thought it owed for penalties and interest. Employer contends it still does not know how Alivio determined its interest calculation and repeatedly asked Alivio to provide a breakdown. Employer concedes payments should not be late. However, it contends Alivio did not meet its

burden of proof in demonstrating additional penalties and interest were owed and the claim for additional penalties and interest should be denied. (Employer’s hearing arguments).

30) Employer does not contend it never received some or all of the bills in question or argue the date they were received and it does not question Alivio’s billing practices. Employer concedes it “dropped the ball” in timely paying the bills. (*Id.*).

31) The HICF forms attached to Employer’s November 29, 2018 filing and its hearing brief did not include a stamp showing the date on which Employer or its adjuster “received” the forms. (Observations).

32) At hearing, Employer provided Alivio’s HIFC forms, which included the “received” stamps. These documents were marked as Employer’s Hearing Exhibit #1. (Record).

33) Employer agreed some dates on the stamped HIFC forms reflected a “resubmission” date for the HIFC forms and may have reflected “a” date on which the adjuster received a copy of the forms, and not necessarily “the” first date the adjuster received them. Franklin stated his “marching orders” when he received the case assignment was to go with the “Penser date-stamped documents” on the bills. (Employer’s hearing arguments).

34) Aldebot and Woodmansee clarified that Alivio sends all billings in workers’ compensation cases, including this case, by certified mail. (Aldebot; Woodmansee).

35) Employer conceded the word “LATE” on its hearing brief Exhibit P is an admission a particular payment was late. (Employer’s hearing arguments).

36) Employer had no objection to Alivio filing emails addressing the penalty and interest calculations, post-hearing. Employer had no additional documents to file post-hearing. (*Id.*).

37) The panel held the record open until December 27, 2018, for Alivio to submit certified mail service evidence and the aforementioned emails. (*Id.*).

38) Alivio filed no additional evidence by the December 27, 2018 deadline. (Agency file).

#### PRINCIPLES OF LAW

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board’s “experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above.” *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

**AS 23.30.095. Medical treatments, services, and examinations. . . .**

. . . .

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature, is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. . . .

**AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

**AS 23.30.097. Fees for medical treatment and services. . . .**

. . . .

(d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later. . . .

**AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter. . . .

Compensation claims are presumed compensable. *Meek v. Unocal Corp.*, 914 P.2d 1276 (Alaska 1996). The presumption applies to any claim for compensation under the workers' compensation statute. (*Id.*). The presumption involves a three-step analysis. To attach the presumption, a claimant must first establish a "preliminary link" between an injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Credibility is not examined at the first step. *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985). If the claimant's evidence raises the presumption, it attaches to the claim and in the second step the burden of production shifts to the employer. Credibility is not examined at the second step either. (*Id.*). If the employer's

evidence is sufficient to rebut the presumption, it drops out and the claimant must prove its case by a preponderance of the evidence. This means the claimant must “induce a belief” in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, the evidence is weighed, inferences are drawn and credibility is considered. *Steffey v. Municipality of Anchorage*, 1 P.3d 685 (Alaska 2000).

**AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .

. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the time period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid. . . .

**8 AAC 45.060. Service.** . . .

. . . .

(b) . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

. . . .

(e) Upon its own motion or after receipt of an affidavit of readiness for hearing, the board will serve notice of time and place of hearing upon all parties at least 10 days before the date of the hearing unless a shorter time is agreed to by all parties or written notice is waived by the parties. . . .

**8 AAC 45.063. Computation of time.** (a) In computing any time period prescribed by the act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.

**8 AAC 45.070. Hearings.** (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

....

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

- (1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the application or petition;
- (2) dismiss the case without prejudice; or
- (3) adjourn, postpone, or continue the hearing.

**8 AAC 45.082. Medical treatment.** . . .

....

(d) Medical bills for an employee's treatment are due and payable no later than 30 days after the date the employer received the medical provider's bill . . . and a completed report in accordance with 8 AAC 45.086(a). . .

**8 AAC 45.086. Physician's reports.** (a) A provider who renders medical or dental services under the Act shall serve a report on the employer no later than 14 days after each service. . . .

....

(d) The employer shall file the physician's report with the board and serve a copy upon the employee after a workers' compensation claim has been filed under AS 23.30.110. . . .

### ANALYSIS

#### **1) Was the decision to proceed with the hearing in Employee's absence correct?**

On November 19, 2018, the division served on Employee at her address of record a written hearing notice for the December 20, 2018 hearing, giving her well in excess of 10 days' notice. 8 AAC 45.060(e). On December 19, 2018, division staff called Employee's telephone number listed in her agency file to let her know what time to appear for the hearing. The person answering Employee's phone said no one by her name was associated with that telephone number. Employee did not appear either in person or telephonically for the December 20, 2018 hearing on Alivio's claim. Employee had no vested interest in the remaining issues in Alivio's

claim -- penalty and interest. *Rogers & Babler*. No present party objected to her absence and the hearing properly proceeded without her. 8 AAC 45.070(a), (f)(1).

**2) Is Alivio entitled to additional penalties and interest?**

Employer concedes it made errors promptly paying Alivio's bills in this case. Accordingly, Employer paid penalties and interest. AS 23.30.155(e). Employer provided the only evidence on the amount it already paid: \$1,946.42 in penalties and interest. AS 23.30.155(a). It also found an underpayment, and paid an additional \$811 to Alivio to cure this shortfall, an amount which also included penalties and interest on the underpayment. Alivio agreed it received these amounts and conceded the principal bills have been paid. There is no dispute over the \$811 payment. The only remaining issue is Alivio's claim Employer owes it additional penalties and interest. Employer claims it paid all penalties and interest it owed. This legal issue turns on when Alivio's medical bills for services rendered to Employee became "due," and whether or not Employer paid those bills within seven days of the due date. This raises factual disputes to which the presumption of compensability analysis applies. AS 23.30.120(a)(1); *Meek*.

Alivio raises the presumption with Woodmansee's testimony stating Alivio's bills were not timely paid and through documentary evidence showing when it provided medical records and associated billings, with the necessary information included, to Employer for most of the bills for which it seeks penalties and interest. *Meek*. Employer rebuts the presumption with documentary evidence showing when it received Employee's medical records and associated billings from Alivio, and when it made payments. *Tolbert*. It also rebuts the presumption with its undisputed evidence that it has already paid \$1,946.42 for penalties and interest on the disputed bills. Alivio bears the burden of producing evidence demonstrating Employer failed to pay its properly submitted bills timely within seven days after their due date. *Saxton*.

Employer is the only party in this case to have properly filed and served any medical records, which it did on several medical summaries set forth in the factual findings, above. It also filed evidence showing when it paid Alivio's bills, as well as penalties and interest. Alivio filed evidence showing when it served records and bills containing the requisite identifying information and codes on Employer, which included the amounts. Woodmansee and Aldebot

corroborated this evidence. *Steffey*. This analysis considers their testimony and takes information from the tables set forth in the above factual findings, above, to create a composite table based on the evidence.

There is no dispute about the dates of medical service on which Alivio treated Employee. There are some inconsistencies on the documents about when the adjuster received the medical reports. However, while Penser’s “received” stamps provide one receipt date, each medical record Employer filed on a medical summaries also contains a facsimile transmission date. While it is not entirely clear from the marginal information on these documents whose facsimile number it is, it is undisputable Employer or Penser either sent or received the medical reports on the dates shown in the marginality. Therefore, Employer received Employee’s medical records no later than the dates printed by the facsimile machine in the margins, rather than on the often-much-later dates stamped on the faces of the documents. *Rogers & Babler; Saxton*.

To prevail on its claim, Alivio must provide substantial evidence showing it timely sent and Employer received Employee’s medical records and associated medical bills, which then became “due” 30 days following Employer receiving the latter of the two documents. AS 23.30.095(c); AS 23.30.097(d); 8 AAC 45.082(d). It must also show Employer did not pay the bills within seven days of the due dates. AS 23.30.155(e). To the extent Alivio mailed these documents to Employer, three days must be added to the prescribed time. 8 AAC 45.060(b). If a calculated date falls on a weekend or other holiday, the prescribed period runs to the next date which is not a weekend or other holiday. 8 AAC 45.063(a). This analysis is best done with a table:

**COMPOSITE TABLE**

Date of Medical Service	Date Penser Received Records	Date Penser Received Bills	Date Payment Due	7 Days Per 155(e)	Date Paid	Late?	Paid	25%	Interest '17-4.25% '18-5%
12/19/17	12/19/17	12/22/17	1/21/18	1/28/18	5/18/18	Y	\$295.67	\$73.92	\$4.02
12/22/17	12/22/17	12/29/17	1/28/18	2/4/18	5/18/18	Y	\$295.67	\$73.92	\$3.78
12/28/17	12/29/17	12/29/17	1/28/18	2/4/18	4/16/18	Y	\$266.00	\$66.50	\$3.09
1/3/18	1/8/18	1/3/18	2/7/18	2/14/18	5/18/18	Y	\$296.47	\$74.12	\$4.06



CECILIA D. ALBEZA & ALIVIO THERAPUTIC MASSAGE v. STATE OF ALASKA

1/5/18	1/19/18	1/8/18	2/18/18	2/25/18	4/16/18	Y	\$255.34	\$63.84	\$1.99
1/10/18	1/19/18	1/11/18	2/18/18	2/25/18	4/16/18	Y	\$255.34	\$63.84	\$1.99
1/12/18	1/19/18	1/13/18	2/18/18	2/25/18	4/16/18	Y	\$255.34	\$63.84	\$1.99
1/16/18	1/19/18	1/17/18	2/18/18	2/25/18	4/16/18	Y	\$255.34	\$63.84	\$1.99
1/19/18	1/29/18	1/22/18	2/28/18	3/7/18	4/16/18	Y	\$255.34	\$63.84	\$1.64
1/23/18	1/29/18	1/25/18	2/28/18	3/7/18	4/16/18	Y	\$255.34	\$63.84	\$1.64
1/26/18	1/30/18	1/30/18	3/1/18	3/8/18	4/16/18	Y	\$255.34	\$63.84	\$1.61
1/31/18	2/6/18	2/1/18	3/8/18	3/15/18	4/16/18	Y	\$255.34	\$63.84	\$1.36
2/2/18	2/6/18	2/9/18	3/11/18	3/18/18	4/16/18	Y	\$255.34	\$63.84	\$1.26
2/7/18	2/7/18	2/9/18	3/11/18	3/18/18	4/16/18	Y	\$255.34	\$63.84	\$1.26
2/9/18	2/9/18	2/12/18	3/14/18	3/21/18	4/16/18	Y	\$255.34	\$63.84	\$1.15
2/14/18	2/14/18	2/15/18	3/17/18	3/24/18	4/16/18	Y	\$255.34	\$63.84	\$1.05
2/16/18	2/16/18	2/23/18	3/25/18	4/1/18	4/16/18	Y	\$255.34	\$63.84	\$0.73
2/21/18	2/21/18	2/23/18	3/25/18	4/1/18	4/16/18	Y	\$255.34	\$63.84	\$0.73
2/23/18	2/23/18	11/29/18	12/29/18	1/5/19	4/30/18	N	\$156.47		
2/28/18	3/2/18	3/2/18	4/1/18	4/8/18	4/16/18	Y	\$255.34	\$63.84	\$0.52
3/2/18	3/8/18	3/8/18	4/7/18	4/14/18	4/16/18	Y	\$255.34	\$63.84	\$0.24
3/6/18	3/8/18	3/8/18	4/7/18	4/14/18	4/16/18	Y	\$255.34	\$63.84	\$0.24
3/9/18	3/12/18	3/12/18	4/11/18	4/18/18	4/16/18	N	\$255.34		
3/16/18					4/16/18		\$255.34		
3/21/18	3/21/18	3/30/18	4/1/18	4/8/18	4/30/18	Y	\$296.47	\$74.12	\$1.18
3/23/18	3/23/18	3/30/18	4/1/18	4/8/18	4/30/18	Y	\$296.47	\$74.12	\$1.18
3/28/18	3/28/18	4/5/18	5/5/18	5/12/18	4/30/18	N	\$296.47		
3/30/18	3/30/18	4/5/18	5/5/18	5/12/18	4/30/18	N	\$156.47		
4/4/18	4/4/18	4/9/18	5/9/18	5/16/18	5/18/18	Y	\$296.47	\$74.12	\$0.37
4/6/18	4/6/18	4/12/18	5/12/18	5/17/18	5/18/18	Y	\$296.47	\$74.12	\$0.04
4/11/18	4/11/18	4/19/18	5/19/18	5/26/18	5/18/18	N	\$296.47		

CECILIA D. ALBEZA & ALIVIO THERAPUTIC MASSAGE v. STATE OF ALASKA

4/18/18	4/18/18	4/23/18	5/23/18	5/30/18	5/18/18	N	\$296.47		
4/20/18	4/20/18	4/28/18	5/28/18	6/4/18	5/18/18	N	\$296.47		
4/28/18	4/28/18	5/7/18	6/7/18	6/14/18	5/18/18	N	\$296.47		
5/5/18		5/10/18			5/25/18		\$296.47		
5/12/18	5/12/18	5/25/18	6/24/18	7/2/18	6/7/18	N	\$280.00		
5/19/18	5/19/18	5/25/18	6/24/18	7/2/18	6/7/18	N	\$280.00		
5/23/18	5/23/18	5/27/18	6/26/18	7/3/18	6/15/18	N	\$210.00		
5/25/18	5/25/18	6/1/18	7/1/18	7/8/18	6/28/18	N	\$280.00		
5/28/18	5/28/18	6/1/18	7/1/18	7/8/18	6/28/18	N	\$280.00		
5/30/18	5/30/18	6/3/18	7/3/18	7/10/18	7/9/18	N	\$280.00		
5/31/18	5/31/18								
TOTAL								\$1,670.22	\$39.11

Alivio had a duty to provide its medical bills to Employer within 14 days of each service. Employer does not contend Alivio failed in this requirement. AS 23.30.095(c). It appears Alivio sent most medical records to the adjuster by facsimile although Aldebot and Woodmansee said they were mailed. *Rogers & Babler*. Employer had to pay Employee’s medical bills within 30 days after the date Employer received Alivio’s bill “or” a completed report. AS 23.30.097(d). However, 8 AAC 45.082(d) states Employee’s medical bills are “due and payable” no later than 30 days after the date Employer received the medical provider's bill “and” a completed report in accordance with 8 AAC 45.086(a). The latter regulation refers to a Physician’s Report form or its equivalent. Alivio stated bills submitted in June 2018 were paid timely, leaving only those incurred prior to that date at issue. As seen in the composite table, above, while Alivio provided adequate information to calculate penalties and interest for some bills not timely paid, it failed to provide enough information to address all bills in question. Blank cells in the above chart mean there is no supporting evidence in the agency record. Drawing evidence from the parties’ filings, along with Woodmansee’s and Aldebot’s credible testimony, Alivio demonstrated by a preponderance of the evidence that Employer paid numerous medical bills late. AS 23.30.122; *Smith*; AS 23.30.095(c); AS 23.30.097(d); AS 23.30.155(e). Employer paid numerous bills more

than seven days after they were “due.” However, the evidence only supports \$1,670.22 in penalties, and interest totaling \$39.11. The interest and penalties Employer already paid, \$1,946.42, far exceeds the amounts Alivio demonstrated through evidence in the agency record (\$1,670.22 + \$39.11 = \$1,709.33). While it may be Employer untimely paid additional Alivio bills for services rendered to Employee, Alivio failed to produce adequate evidence to support its position and its request for additional penalties and interest will be denied. *Saxton*.

CONCLUSIONS OF LAW

- 1) The decision to proceed with the hearing in Employee’s absence was correct.
- 2) Alivio is not entitled to additional penalties or interest.

ORDER

Alivio’s February 28, 2018 claim for additional penalties and interest is denied.

Dated in Anchorage, Alaska on January 11, 2019.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/  
William Soule, Designated Chair

\_\_\_\_\_/s/  
Robert Weel, Member

\_\_\_\_\_/s/  
Pamela Cline, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Cecilia D. Albeza, employee and Alivio Therapeutic Massage, claimant v. State of Alaska, employer/ defendant; Case No. 201716937; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on January 11, 2019.

\_\_\_\_\_  
/s/  
Nenita Farmer, Office Assistant