

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

EAGLEMED, LLC)	
Healthcare Provider)	
)	CS-00-0234-819
V.)	AP-00-0427-574
)	
TRAVELERS INSURANCE)	CS-00-0043-233
Insurance Carrier)	AP-00-0427-589
)	
)	CS-00-0031-845
ARISING FROM THE WORKERS)	AP-00-0427-470
COMPENSATION CLAIMS OF:)	
Carlos J. Rios CL # 478CBEUD9648F)	CS-00-0410-870
Cody D. Crook CL # 478CBEUD9083J)	AP-00-0427-458
William R. Leikam CL # 478CBEUD5626H)	
Wayne Tommer CL # 478CBF9X9496R)	

ORDER

STATEMENT OF THE CASE

This matter is before the Board on remand from the Kansas Supreme Court from its May 13, 2022, Opinion.¹ The Supreme Court has ordered the Board to determine the “usual and customary charges” of air ambulance services, stating:

We need not precisely construe the term “usual and customary” or decide any preemption question without first having the Board's administrative fact-finding about EagleMed's billed charges and its application of the facts to the 2012 fee schedule. But we do hold the 2012 fee schedule requires billings for air ambulance services to be supportable by evidence that the charges are usual and customary. The Board's decision requiring Travelers to pay the billed amounts must be reversed because the decision is not supported by substantial competent evidence in light of the record as a whole. See K.S.A. 77-621(c)(7), (d); *Estate of Graber v. Dillon Companies*, 309 Kan. 509, 513, 439 P.3d 291 (2019); *Pener v. King*, 305 Kan. 1199, 1205, 391 P.3d 27 (2017). The evidentiary record contains nothing showing these charges meet any permutation of the “usual and customary” standard.

¹ *EagleMed, LLC v. Travelers Ins.*, ___ Kan. ___, 509 P.3d 471 (Kan. 2022).

On remand, it will be necessary for the Board to provide guidance to the parties as to the evidence expected for the Board to make its determinations. In other words, the Board will need to tell the parties whether defining “usual and customary charges” can be done only as EagleMed suggests through the air carrier's sole perspective, or whether there is an alternative that better reflects both federal law and the statutory purposes for our workers compensation system.²

The matter is remanded to the Hearing Officer for further proceedings. The parties are directed to submit evidence of usual and customary charges for the services at issue. The Hearing Officer is directed to conduct proceedings for receiving the additional evidence submitted by the parties. After the parties' evidence is received, the Hearing Officer is directed to issue an order on remand containing the findings of fact and conclusions of law on whether the charges submitted by Healthcare Provider are permissible under the 2012 fee schedule and Airline Deregulation Act as usual and customary charges, which shall be subject to review by the Board upon application by any of the parties.

WHEREFORE, it is the finding, decision and order of the Board the matter be remanded to the Hearing Officer to allow the parties to present evidence to determine “usual and customary charges” for air ambulance services consistent with the Court’s direction in *Eaglemed v. Travelers Insurance*. The Hearing Officer is also directed to issue an order on remand containing the findings of fact and conclusions of law regarding the “usual and customary charges” of air ambulance providers.

IT IS SO ORDERED.

Dated this _____ day of June, 2022.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

² 509 P.3d at 482.

EAGLEMED, LLC

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CS-00-0031-845; CS-00-0410-870**

c: J. Phillip Gragson, Attorney for Healthcare Provider
William L. Townsley, III, Attorney for Insurance Carrier
Douglas A. Hager, Hearing Officer, Division of Administrative Hearings
Jeffrey E. King, Director, Division of Workers Compensation