

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

**ISSUES**

A benefit contested case hearing was held on May 21, 2008, to decide the following disputed issue:

Is the Provider entitled to reimbursement in the amount of \$251.76 plus applicable accrued interest under CPT Code 97750-FC for services rendered on March 1, 2007?

**PARTIES PRESENT**

Carrier appeared and was represented by TR, attorney. Provider appeared and was represented by LD, lay representative. Claimant did not appear and his appearance was waived.

**BACKGROUND**

The Claimant sustained a compensable injury on \_\_\_ and he was subsequently referred for four FCE's which were performed on October 16, 2006, November 13, 2006, February 6, 2007 and March 1, 2007. The first FCE was referred by Dr. J from (health care provider) and the second FCE was recommended by Dr. G. The third and fourth FCE's were performed by Dr. D, the Claimant's treating doctor. The Claimant changed treating doctors to Dr. D on or about September 20, 2006. Dr. D testified that the first two FCE's were not performed at the Claimant's treating doctor's direction and, therefore, were unauthorized. The Carrier paid for the first three FCE's. The Provider maintains that the fourth FCE should be reimbursed because there were not three "authorized" FCE's.

Pursuant to Rule 143.202, (4) a maximum of three FCE's for each compensable injury shall be billed and reimbursed. FCE's ordered by the commission (Division) shall not count toward the three FCE's allowed for each compensable injury. FCE's shall be billed using the "Physical performance test or measurement..." CPT code with modifier "FC." FCE's shall be reimbursed in accordance with subsection (c)(1). Pursuant to Texas Labor Code Ann. §413.018, the Division may require a treating or examining doctor to provide a FCE for an injured employee. As such, FCE's ordered by the Division do not count toward the three FCE's allowed. Although Texas Labor Code Ann. §408.021 (c) provides that, "except in an emergency, all health care must be approved or recommended by the employee's treating doctor," Rule 143.202 specifically allows reimbursement for only three FCE's for an injured employee's compensable injury unless the FCE is ordered by the Division.

The greater weight of the evidence is not contrary to the findings of Medical Review and the Provider is not entitled to \$251.76 plus interest under CPT code 97750-FC for services rendered on March 1, 2007.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_, Claimant was the employee of (employer), when he sustained a compensable injury.
  - C. The Provider requested \$251.76 for an FCE performed on March 1, 2007 and reimbursement was denied by Medical Fee Dispute order dated March 14, 2008.
2. Carrier delivered to Claimant and the Provider a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The preponderance of the evidence is not contrary to the decision of Medical Review rendered on March 14, 2008 that the Provider is not entitled to reimbursement in the amount of \$251.76 plus applicable accrued interest under CPT Code 97750-FC for services rendered on March 1, 2007.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The Provider is not entitled to reimbursement in the amount of \$251.76 plus applicable accrued interest under CPT Code 97750-FC for services rendered on March 1, 2007.

### **DECISION**

The Provider is not entitled to reimbursement in the amount of \$251.76 plus applicable accrued interest under CPT Code 97750-FC for services rendered on March 1, 2007.

### **ORDER**

Carrier is not liable to the health care provider for payment for services rendered on March 1, 2007 under CPT code 97750-FC.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RUSSELL OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TX 78723**

Signed this 21st day of May, 2008.

Carol A. Fougerat  
Hearing Officer