

**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 contested case hearing was scheduled for February 26, 2009. By agreement of the parties, it was held on February 27, 2009, to decide the following disputed issues:

In Docket No. (DOCKET NO. 1):

1. Is the preponderance of the evidence contrary to the decision of Medical Review that Petitioner is not entitled to \$70.43 for services rendered on June 13, 2008, for the compensable injury of \_\_\_\_\_?

In Docket No. (DOCKET NO. 2):

1. Is the preponderance of the evidence contrary to the decision of Medical Review that Petitioner is not entitled to \$70.43 for services rendered on July 11, 2008, for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner appeared and was represented by AP, lay representative. Carrier appeared and was represented by BWJ, attorney.

**BACKGROUND INFORMATION**

On June 13, 2008, and July 11, 2008, Petitioner's clinic rendered services to claimant for which the total amount sought was \$70.43. When the bills were submitted to Carrier, they were signed by Dr. RP, M.D.; however, Carrier denied the claimed amounts because they were not signed by MS, R.N., M.S.N., A.N.P., who provided the services on the subject dates at the clinic operated by Dr. RP.

Petitioner asserts that Carrier is liable for the claimed amounts under Medicare policy regarding "incident to" services because Nurse MS was performing services "incident to" those being provided by Dr. RP. Petitioner relies upon a publication of Highmark Medical Services, Inc., which states in part,

"Medicare defines "incident to" services as those services and supplies furnished as an integral, although incidental, part of the physician's personal professional services in the course of diagnosis or treatment of an injury or illness. In other words, these services do not represent the major portion of the overall service provided to a beneficiary by the physician. To be covered incident to the services of a physician, services and supplies must be:

- a. Of a type that is commonly furnished in physicians' offices or clinics;
- b. Furnished by the physician or by auxiliary personnel under the physician's supervision;
- c. Commonly rendered without charge or included in the physician's bill; and
- d. An integral, although incidental, part of the physician's professional service."

Under Petitioner's argument, the licensed nurse was not required to sign the claim forms, CMS-1500's.

Carrier asserts it is not liable for the claimed amounts under DWC Rule 133.20(d)(2), Rule 133.20(e)(2) and Rule 134.203(a)(7) which provide as follows:

"Rule 133.20(d) The health care provider that provided the health care shall submit its own bill, unless:

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill.

"Rule 133.20(e) A medical bill must be submitted:

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

"Rule 133.203(a)(7) Specific provisions contained in the Texas Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies."

Carrier argues correctly that the bills should have been submitted in the name of the licensed nurse who rendered the services in order for Carrier to be liable for the amounts in dispute. The same logic was properly followed by Medical Review in Medical Fee Dispute Resolution Findings and Decision's under MFDR Tracking Nos. M4-09-2140-01 and M4-09-2095-01. The evidence preponderates that Petitioner is not entitled to \$70.43 for services rendered on June 13, 2008, and \$70.43 for services rendered on July 11, 2008, for the compensable injury of

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) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_\_, Claimant was the employee of (Employer), when she sustained a compensable injury.
2. Carrier delivered to Petitioner 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. Petitioner's claims for \$70.43 for services rendered on June 13, 2008, and for services rendered on July 11, 2008, were not submitted in the name of MS, R.N., the licensed health care provider who provided the health care.

## **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 preponderance of the evidence is not contrary to the decisions of Medical Review that Petitioner is not entitled to \$70.43 for services rendered on June 13, 2008, and is not entitled to \$70.43 for services rendered on July 11, 2008, for the compensable injury of \_\_\_\_\_.

## **DECISION**

The preponderance of the evidence is not contrary to the decision of Medical Review that Petitioner is not entitled to \$70.43 for services rendered on June 13, 2008, and is not entitled to \$70.43 for services rendered on July 11, 2008, for the compensable injury of \_\_\_\_\_.

## **ORDER**

Respondent/Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**MR. RUSSELL RAY OLIVER, PRESIDENT  
6210 HIGHTWAY 290 EAST  
AUSTIN, TEXAS 78723**

Signed this 2nd day of March, 2009.

Charles T. Cole  
Hearing Officer