

**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.

**ISSUE**

A contested case hearing was held on April 3, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of Medical Review dated February 12, 2009 that Respondent/Provider is entitled to \$137.50 as additional reimbursement for services rendered on August 6, 2008, August 18, 2008, August 25, 2008, August 27, 2008 and August 29, 2008.

**PARTIES PRESENT**

Petitioner/Carrier American Home Assurance Company appeared and was represented by DCK, attorney. Respondent/Provider (Healthcare Provider) was represented by CF who appeared by telephone at the hearing. The Claimant did not appear and her presence was waived by the parties. The record was held open until April 7, 2009 in order to allow Respondent/Provider additional time to submit proof of a timely cross appeal, but Respondent/Provider advised that such proof could not be located, and the record was closed on April 7, 2009.

**BACKGROUND INFORMATION**

Respondent/Provider is a hospital which rendered outpatient physical therapy services to Claimant on the referenced dates. Provider billed for these services at 200% of the Medicare Allowable reimbursement rate. Carrier paid \$538.40 and Provider contended that it was owed the 200% rate resulting in an additional \$337.02 being owed by Carrier. Medical Fee Dispute Resolution (MDFR) initially issued a decision on February 3, 2009 applying a conversion factor of \$52.83 for physical therapy in a hospital setting stating that Carrier's payment was correct and that no additional compensation was due. Subsequently on February 12, 2009, MDFR issued a new decision which superseded its prior decision, stating that the correct conversion factor is \$66.32 and resulting in an additional payment of \$137.50 being ordered. Petitioner/Carrier has appealed from this decision stating that the \$66.32 conversion factor is for surgery when performed in a facility setting.

Rule 134.403 upon which Respondent/Provider relies applies to medical services provided in an outpatient acute care hospital which mentions the 200% reimbursement rate. However, section (h) of that Rule addresses services for which Medicare reimburses using other fee schedules, such as physical therapy, and states that those services are paid using the applicable Division Fee Guideline in effect for that service on the date the service was provided. Medicare is shown to have special billing provisions for outpatient physical therapy in Section 220.3.3 of CMS Manual System, Pub. 100-02 - Medicare Benefit Policy. Accordingly the Division fee guideline for physical therapy as set out in Rule 134.203(c)(1) is applicable, which provides for a conversion

factor of \$52.83 for physical medicine, and \$66.32 for surgery in a facility setting. MFDR correctly applied the \$52.83 factor in its February 3, 2009 decision, and incorrectly applied the \$66.32 factor in its February 12, 2009 decision. Accordingly, Petitioner/Carrier is correct that the additional reimbursement ordered on February 12, 2009 is in error.

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), Employer.
  - C. Claimant sustained a compensable injury on \_\_\_\_\_.
2. Carrier delivered to Claimant 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 correct conversion factor for outpatient physical therapy services performed in a hospital setting is \$52.83 as provided by Rule 134.403(h) and Rule 134.203(c)(1).
4. Using the correct conversion factor, Provider was entitled to no reimbursement in addition to the sum of \$538.40 paid by Carrier.

### **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 contrary to the decision of Medical Review dated February 12, 2009 that Respondent/Provider (Healthcare Provider) is entitled to \$137.50 as additional reimbursement for services rendered on August 6, 2008, August 18, 2008, August 25, 2008, August 27, 2008 and August 29, 2008.

### **DECISION**

Respondent/Provider (Healthcare Provider) is not entitled to \$137.50 as additional reimbursement for services rendered on August 6, 2008, August 18, 2008, August 25, 2008, August 27, 2008 and August 29, 2008.

**ORDER**

Petitioner/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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 16<sup>th</sup> day of April, 2009

Warren E. Hancock, Jr.  
Hearing Officer