

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 held on June 2, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the findings of Medical Fee Dispute Resolution that the health care provider is not entitled to \$108.31 for CPT code 90806 for services rendered to Claimant on _____?

PARTIES PRESENT

Claimant did not appear and his appearance is waived in this matter. Petitioner/Subclaimant appeared and was assisted by WC, layperson. Respondent/Carrier appeared and was represented by MM, attorney.

BACKGROUND INFORMATION

On _____, the Petitioner provided one unit of psychotherapy service to the claimant for his compensable injury. The Petitioner seeks reimbursement in the amount of \$108.31 for this service. Payment for the date of service was denied by the Respondent/Carrier because the bill was not submitted timely. Respondent/Carrier indicated that they did not receive the bill until January 8, 2008 and once they reviewed and processed the bill they determined that the 95th day for filing had expired. The Petitioner filed a request for Medical Fee Dispute resolution and on October 10, 2008 the Dispute Resolution Officer issued a finding that the petitioner was not entitled to reimbursement for the same reason provided by the Respondent, the bill was not timely submitted.

Texas Labor Code Section 408.027(a) states that "A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment."

The Petitioner argues that in accordance with Division Rule 102.4(h) the bill was timely submitted. Rule 102.4 (h) states as follows:

"(h) Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:

- (1) the date received, if sent by fax, personal delivery or electronic transmission or,
- (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the

date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday."

In evidence at the Medical Contested Case Hearing was a copy of the CMS-1500 form that was submitted by the Provider to the Carrier. The form is electronically signed by Dr. B and dated _____. The Petitioner states that the signature date on the CMS-1500 form should be used as the date the item was sent because a postmark date is unavailable.

If there had been no other evidence of the date the CMS-1500 was received by the Carrier then the date on the CMS-1500 may have been sufficient on its face to establish when the bill was sent to the Carrier. However, there is an electronic stamp from the Carrier contained on the CMS-1500 form that indicates it was received by the Carrier on January 8, 2008. Thus, the CMS-1500 form is deemed to have been sent five days prior to the date of receipt, i.e. on January 3, 2008. Rule 102.4 (h) requires that the later date of January 3, 2008 be used to establish the date the CMS-1500 was sent. Because January 3, 2008 is more than 95 days after the date of service, the Petitioner's right to reimbursement was forfeited by his failure to timely submit his bill. Based upon the evidence presented in this hearing, the Petitioner has not shown entitlement to reimbursement for the requested services.

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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On _____, Claimant was the employee of (Employer).
 - D. Claimant sustained a compensable injury on _____.
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 claim for \$108.31 was not timely submitted to the carrier for reimbursement in accordance with Texas Labor Code §408.027.

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 findings of the Medical Fee Dispute Resolution that the health care provider is not entitled to \$108.31 for CPT code 90806 for services rendered to Claimant on _____.

DECISION

Petitioner, Dr. B PH. D., is not entitled to reimbursement in the amount of \$108.31 for CPT Code 90806 for services rendered on _____.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST
SUITE 300
IRVING, TEXAS 75063-2732**

Signed this 24th day of June, 2009.

Jacquelyn Coleman
Hearing Officer