

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 opened on August 24, 2010 with the record closing on September 7, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of Medical Fee Dispute Resolution (MFDR) that 4600 Texas Group, Inc. is not entitled to reimbursement in the amount of \$672.33 for services rendered by (Healthcare Provider) (HCP) on December 1, 2003, December 2, 2003, December 4, 2003, December 6, 2003, December 7, 2003, December 8, 2003, December 9, 2003, December 11, 2003, July 14, 2004 and August 9, 2004 for the compensable injury of _____?

The record was held open to receive Petitioner's legal brief.

PARTIES PRESENT

Claimant did not appear and his appearance was excused. Petitioner appeared and was represented by CF, attorney. Respondent/Carrier appeared and was represented by BJ, attorney.

BACKGROUND INFORMATION

It was undisputed that the Claimant sustained a compensable injury on _____. He thereafter received treatment from (HCP) on the dates in question, and it is the assertion of Petitioner that such treatment was medically necessary to treat the compensable injury. Petitioner is a recovery vendor to the group health and managed care industries, and Attorney CF is Petitioner's president, as well as its attorney of record herein. According to its literature, Petitioner specializes in the identification and recovery of subclaims before the Texas Department of Insurance, Division of Workers' Compensation (Division). In this case, it is Petitioner's position that the treatment that the Claimant received from (HCP) on the dates in question was paid for by a health care insurer, Unicare Life & Health Insurance Co. (Unicare), who is represented by Attorney CF, and for whom Petitioner is an authorized representative. Unicare is not a party in this case. Petitioner asserts that in its capacity as an authorized representative of Unicare, it is a subclaimant in this case under §409.009 and/or §409.0091 of the Act, and that pursuant to both or either one of these provisions, it is entitled to seek and obtain reimbursement from Texas Mutual Insurance Co. (Texas Mutual), the workers' compensation insurance carrier herein, of the monies paid by Unicare for the services rendered to the Claimant by (HCP).

The MFDR Auditor determined that the Petitioner was not entitled to reimbursement under §409.009 because it failed to meet all of the requirements of Division Rule 140.6, which implements this provision of the statute. Specifically, the Auditor found that Petitioner did not timely submit its request for dispute resolution, nor did its request set forth the required information in the manner and form required by the Division. The Auditor also determined that Petitioner is not eligible to file for reimbursement under §409.0091 since it did not provide proof of a data match within the meaning of §402.084(c-3) as required by subsection (s), nor did it comply with subsection (f) in providing all of the required information in the required format. For the reasons that follow, it is determined that the preponderance of the evidence is not contrary to the findings of MFDR.

The legal framework within which the question raised must be analyzed involves several provisions of the Act and rules promulgated by the Division. As a beginning point, §408.027(d) of the Act provides as follows:

(d) If an insurance carrier contests the compensability of an injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

Under this provision, it is clear that a health care insurer may proceed as a subclaimant under §409.009 or §409.0091 of the Act to seek reimbursement of the cost health care for which it paid from a workers' compensation insurance carrier if the services provided are for a compensable injury.

Section 409.009 of the Act provides:

SUBCLAIMS. A person may file a written claim with the division as a subclaimant if the person has:

- (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and
- (2) sought and been refused reimbursement from the insurance carrier.

The evidence shows that Petitioner is not a health care insurer, and the evidence does not establish that Petitioner provided any compensation to the claimant, either directly or indirectly.

The evidence also fails to establish that the Petitioner sought and was refused reimbursement from Texas Mutual.

Texas Mutual argued at the hearing that Petitioner does not have standing to seek reimbursement under §409.009 because it does not meet the requirements of subsections (1) or (2), nor does its status as an authorized representative of Unicare confer upon Petitioner any eligibility to assert subclaimant status under this section. It is determined that Texas Mutual's position has merit, and that since Petitioner does not meet the definition of a subclaimant under §409.009, it is not eligible to seek reimbursement from Texas Mutual under this provision of the statute.

In addition, Rule 140.6(d) requires that a subclaimant as defined in §409.009 "...must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of [Title 28 of the Texas Administrative Code]." Division Rule 133.307(c)(1)(A), which applies to injured employees and health care providers, requires that a request for MFDR be filed not later than one year after the dates of service in dispute, and subsection (c)(2) of the Rule, which applies to health care providers, requires that a reimbursement request (DWC-60 form) provide specific documentation in a required format. In this case, the evidence shows that Petitioner filed its DWC-60 form with the Division on December 4, 2008, more than four years after the most recent date of service in dispute, and that its DWC-60 form lacked all of the required information regarding the disputed dates of service. For the reasons stated, Petitioner did not establish that under §409.009 of the Act it is entitled to reimbursement from Texas Mutual for the disputed dates of service.

Section 409.0091 of the Act provides in pertinent part:

Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES. (a) In this section, "health care insurer" means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).

(b) This section applies only to a request for reimbursement by a health care insurer.

(c) Health care paid by a health care insurer may be reimbursable as a medical benefit.

Unlike §409.009 of the Act, §409.0091 expressly includes the authorized representative of a health care insurer, like Petitioner, as an entity that can attain subclaimant status under its provisions. Pursuant to Acts 2007, 80th Leg., R.S., Ch. 1007 (HB724) §11 effective September 1, 2007, Section 409.0091 only applies to dates of injury on or after September 1, 2007, except as provided in subsection (s):

(s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:

(1) a subclaim with the division under Subsection (l) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

See also Appeals Panel Decision 081065-s, decided September 22, 2008. Subsection (s) refers to data matching that can be provided by the Division under §402.084(c-3) of the Act. Data matching is a tool that can be used by certain entities, like health care insurers, who may be obligated for the cost of health care services for an injured employee, to determine whether a workers' compensation claim exists such that it may be entitled to reimbursement from a workers' compensation insurance carrier for its payment of health care services that were necessitated as the result of a compensable injury. In this case, since the Claimant's injury occurred prior to September 1, 2007, Petitioner has to follow the requirements of subsection (s) to obtain reimbursement under §409.0091.

The evidence shows that Petitioner sent a letter constituting its notice of a subclaim to the Division on February 17, 2008. The letter, however, lists Sentry Insurance Co., and not Texas Mutual, as the workers' compensation insurance carrier, and it was not sent to Texas Mutual. The letter also contains the incorrect name of the employer in this case. The evidence does not establish that any such notice of a subclaim was given to Texas Mutual in this case. In addition, Mr. CF executed an affidavit on December 1, 2008, which again lists Sentry Insurance Co. as the workers' compensation insurance carrier herein, it lists the wrong employer in this case, and it states that Mr. CF has personal knowledge that a data match occurred in this case in March 2006. Proof of the data match, however, when requested by the Division in connection with MFDR, was not produced by Petitioner, according to the evidence. The evidence, thus, does not establish the existence of a data match in this case within the meaning of §402.084(c-3).

In addition, since the evidence shows that Petitioner had not previously submitted a request for reimbursement to Texas Mutual that was denied, §409.0091(s) requires that Petitioner had to comply with subsection (f) in submitting a reimbursement request, which must contain various data elements. Subsection (f) states as follows:

(f) Subject to the time limits under Subsection (n), the health care insurer shall provide, with any reimbursement request, the tax identification number of the health care insurer and the following to the workers' compensation insurance carrier, in a form prescribed by the division:

(1) information identifying the workers' compensation case, including:

- (A) the division claim number;
- (B) the name of the patient or claimant;
- (C) the social security number of the patient or

claimant; and

- (D) the date of the injury; and

(2) information describing the health care paid by the health care insurer, including:

- (A) the name of the health care provider;
- (B) the tax identification number of the health care

provider;

- (C) the date of service;
- (D) the place of service;

- (E) the ICD-9 code;
 - (F) the CPT, HCPCS, NDC, or revenue code;
 - (G) the amount charged by the health care provider;
- and
- (H) the amount paid by the health care insurer.

Rules 140.7 and 140.8 implement §409.0091, and Rule 140.8 requires that Petitioner's request for reimbursement be submitted in the manner and form set forth in the rule, which is accomplished by using a DWC-26 form. The evidence shows that Petitioner did not provide a DWC-26 form containing the required information with its request for reimbursement. Specific documentation regarding the disputed dates of service was not provided by Petitioner. For these reasons, Petitioner did not establish that it is eligible for reimbursement under §409.0091.

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 over this matter, and venue is proper in the (City) Field Office.
 - B. On _____, the Claimant was the employee of (Employer).
 - C. On _____, employer had workers' compensation insurance coverage with Texas Mutual.
 - D. On _____, the Claimant sustained a compensable injury while in the course and scope of his employment with (Employer).
2. (Subclaimant) has not provided documentation showing a data match with Texas Mutual in this case obtained from the Division pursuant to §402.084(c-3) of the Act.
3. (Subclaimant) has not provided to Texas Mutual, or filed with the Division, a completed DWC-26 form regarding the disputed dates of service in this case.
4. (Subclaimant) is an authorized representative of Unicare, which is a health care insurer that paid for treatment that the Claimant received from (HCP) on the disputed dates of service in this case.
5. (Subclaimant) is not a health care insurer, and it has not provided compensation or health care to the Claimant, either directly or indirectly, in this case.
6. (Subclaimant) had not sought and been refused reimbursement from Texas Mutual before filing its underlying request for MFDR in this case.
7. (Subclaimant) did not timely file a completed DWC-60 form with the Division regarding the disputed dates of service.

8. The Carrier delivered to Petitioner a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which was admitted into evidence as Hearing Officer's Exhibit Number 1.

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 decision of the MFDR Auditor that (Subclaimant) is not eligible for reimbursement in the amount of \$672.33 from Texas Mutual under §409.009 or §409.0091 for services rendered to the Claimant by (HCP) on December 1, 2003, December 2, 2003, December 4, 2003, December 6, 2003, December 7, 2003, December 8, 2003, December 9, 2003, December 11, 2003, July 14, 2004 or August 9, 2004 for the Claimant's compensable injury of_____.

DECISION

The preponderance of the evidence is not contrary to the decision of the MFDR Auditor that (Subclaimant) is not eligible for reimbursement in the amount of \$672.33 from Texas Mutual under §409.009 or §409.0091 for services rendered to the Claimant by (HCP) on December 1, 2003, December 2, 2003, December 4, 2003, December 6, 2003, December 7, 2003, December 8, 2003, December 9, 2003, December 11, 2003, July 14, 2004 or August 9, 2004 for the Claimant's compensable injury of _____.

ORDER

Respondent/Carrier is not liable for the reimbursement at issue in this hearing.

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:

**RON WRIGHT, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TX 78723**

Signed this 22nd day of September, 2010.

Patrice Fleming-Squirewell
Hearing Officer