

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 November 2, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Medical Fee Dispute Resolution Findings and Decision that Petitioner is not due reimbursement of \$121.91 from Carrier for medical costs pertaining to Claimant's compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

The claim that is the basis of this Contested Case Hearing is a reimbursement request by a health care insurer to a workers' compensation insurance carrier. The statutory basis of the claim for reimbursement is Texas Labor Code Section 408.027(d):

(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.

The above statute provides a right of reimbursement by a health care insurer from a workers' compensation insurance carrier in certain situations and if specific conditions are met. In

particular, it gives a health care insurer the status of subclaimant under the workers' compensation act.

The subclaimant provisions of the Workers' Compensation Act are set out in Texas Labor Code Section 409.009 and Section 409.0091. Petitioner's claim for reimbursement deals with Section 409.0091 and the pertinent parts of the statute are quoted below:

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.

...

(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.

...

(n) Except as provided by Subsection (s), a health care insurer must file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084 (c-3) and not later than 18 months after the health care insurer paid for the health care service.

...

(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.

The underlying facts are not in dispute. Claimant sustained a compensable injury on _____. Claimant received medical services from two health care providers on March 7, 2006. The health care providers billed the health care insurance, Unicare, \$239.00. Unicare approved the medical service bill in the amount of \$121.91 and paid the health care providers that amount.

Unicare, through its authorized representative, (Subclaimant), the Petitioner in this case, filed for reimbursement with the workers' compensation insurance carrier, Ace American Insurance Company, the Carrier/Respondent. The Petitioner completed a Reimbursement Request For Payment Made By Health Care Insurer (DWC Form-026) that was received by the Respondent on October 23, 2007 (See CR Ex D). There is no record presented at this hearing that the Respondent ever responded to this request for reimbursement. The record does show that Respondent requested more information on May 9, 2008. The letter was addressed to (Subclaimant) at the street address for the (City) Field Office. There was no indication that this May 9, 2008 letter was ever received by the Petitioner.

The record next shows that the Petitioner filed a request for medical fee dispute resolution (DWC Form-060) with the Medical Fee Dispute Resolution, Division of Workers' Compensation, Texas Department of Insurance (MFDR) on November 25, 2008. The Respondent/Carrier provided a response that the Carrier is unable to submit the bill for processing as the provider has failed to provide the medical bill indicating CPTS codes, etc in order to process the bill. Upon receipt of the proper documentation the bill will be submitted for review. This response was dated December 15, 2008 and was over one year after the initial request for reimbursement was filed by the Petitioner.

The Medical Fee Dispute Resolution Findings and Decision was issued on April 9, 2010. There was no explanation offered by either party as to the reason for the sixteen month delay between the request for Medical Fee Dispute Resolution in November 2008 and the Decision in April 2010. The MFDR decision found that the Petitioner failed to establish that reimbursement in the amount of \$121.91 is due.

The Petitioner seeks reimbursement as a subclaimant under Texas Labor Code Section 409.0091. Subsection (n) sets out the general rule for timely filing of a claim for reimbursement. There are two requirements and both must be met:

- (1) filed not later than 6 months after the date on which the health care insurer received information data match under Section 402.084 (c-3) and
- (2) filed not later than 18 months after the health care insurer paid for the health care service.

Petitioner does not argue that it complied with the general rule for filing a claim for reimbursement, but does argue that the exception to the general rule set out in subsection (s) applies. Subsection (s) provides a limited window for filing specific claims for reimbursement that were identified by means of a data match under Section 402.084 (c-3). There are two basic

elements that must be met to come within the filing exception in subsection (s). First, the Petitioner must meet the time frames set out in subsection (s) and, second, the Petitioner must show that the claim for reimbursement was identified by means of a data match set out in Section 402.084 (c-3). Whether the Petitioner complied with the second element is the focus of this medical fee dispute.

The MFDR decision held that a data match under Texas Labor Code Section 402-084 (c-3) is required. It found that Petitioner did not provide the data match and, therefore is not eligible for reimbursement under Texas Labor Code Section 409.0091 (s).

The Petitioner argues that the electronic data match contains numerous other claim records and the release of that information is prohibited under Federal Confidentiality laws. Therefore, Petitioner is excused from providing the electronic data match and it has complied with the filing exception set out in Section 409.0091 (s).

The Petitioner's argument that subsection (s) requires an electronic data match with numerous claims records is not correct. To the extent that some of the language in the MFDR decision could be read to require such is also incorrect. Subsection (s) requires a Petitioner to show that a specific claim for reimbursement was identified by means of a data match.

Petitioner has failed to show that it timely filed a claim for reimbursement under either Section 409.0091 (n), the general rule, or Section 409.0091 (s), the exception to the general rule. Petitioner is not entitled to reimbursement because the claim for reimbursement was not timely filed.

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).
2. Respondent/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. On _____ Claimant sustained a compensable injury.
4. Petitioner is an authorized representative of Unicare, a health care insurer, that paid for medical treatment provided to the Claimant on March 7, 2006 in the amount of \$121.91.

5. Medical Fee Dispute Resolution determined that (Subclaimant) is not entitled to reimbursement in the amount of \$121.91.
6. Petitioner failed to timely file a claim for reimbursement in accordance with Texas Labor Code Section 409.0091.

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 Medical Fee Dispute Resolution Findings and Decision that Petitioner is not due reimbursement of \$121.91 from Carrier for medical costs pertaining to Claimant's compensable injury of _____.

DECISION

Petitioner is not entitled to reimbursement from the Respondent/Carrier in the amount of \$121.91.

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 Section 408.021 of the act.

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
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TX 75062**

Signed this 10th day of November, 2010.

Donald E. Woods
Hearing Officer