MEDICAL CONTESTED CASE HEARING NO. 11080
M4-10-1600-01

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 September 22, 2010, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of Medical Fee Dispute Resolution Findings and Decision that (Sub-claimant), Petitioner, is not entitled to reimbursement in the amount of $1,639.54 for the compensable injury of ______________?

PARTIES PRESENT

Claimant did not appear. Petitioner appeared and was represented by CF, attorney. Respondent/Carrier appeared and was represented by GS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on ______________. Claimant was provided medical treatment through physicians with Healthcare Provider) for his compensable injury. (Healthcare Provider) (HCP) was billed $3,585.92 for medical services rendered to Claimant, and HCP paid $1,639.54 of the $3,585.92 billed. Petitioner sought to recover the amount of $1,639.54 paid by the HCP, and asserted that the medical treatment was medically necessary to treat Claimant's compensable injury.

Petitioner contended that the medical treatment received by Claimant was paid for by HCP, a health care insurer. Petitioner further contended that HCP was a subclaimant that retained Petitioner, and that Petitioner was an authorized representative to represent HCP before the Division. Mr. CF is an attorney, and is the authorized representative of Petitioner. HCP is not a party in this case. Petitioner asserts that in its capacity as an authorized representative of HCP, it is a subclaimant in this case under §409.009 and/or §409.0091 of the Texas Labor Code, and that pursuant to both or either one of these provisions, it is entitled to seek and obtain reimbursement from Carrier for the amount paid by HCP for the medical services rendered to Claimant.

Petitioner sought medical fee dispute resolution (MFDR) before the Division. On April 7, 2010, a MFDR Auditor rendered a Medical Fee Dispute Resolution Findings and Decision (MFDRFD), and determined that the Petitioner was not entitled to reimbursement under Texas Labor §409.009 because it failed to meet all of the requirements of Division Rule 140.6, which implements the provisions of Texas Labor Code §409.009. Specifically, the MFDR 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 MFDR

Auditor also determined that Petitioner is not eligible to file for reimbursement under Texas Labor Code §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 MFDRFD.

The disputed issue in this medical fee dispute must be analyzed in accordance with several provisions under the Texas Workers' Compensation Act (Act) and the rules of the Division that implement the Act. As a beginning point, Texas Labor Code §408.027(d) 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 Texas Labor Code §408.027(d), a health care insurer may proceed as a subclaimant under §409.009 or §409.0091 of the Act to seek reimbursement of the cost of the health care services for which it paid from a workers' compensation insurance carrier if the services provided are for a compensable injury.

Texas Labor Code §409.009 provides as follows:

> "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 Claimant, either directly or indirectly. The evidence also fails to establish that the Petitioner sought and was refused reimbursement from Carrier. Carrier contended that Petitioner did not have standing to seek reimbursement under Texas Labor Code §409.009 because it does not meet the requirements of subsections (1) or (2), nor does its status as an authorized representative of HCP confer upon Petitioner any eligibility to assert subclaimant status under Texas Labor §409.009. Because Petitioner failed to

meet the definition of a subclaimant under §409.009, Petitioner is not eligible to seek reimbursement from Carrier under this provision of the statute.

In addition, 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 the provisions of Texas Labor Code §409.009. Under Division Rule 140.6(d), a subclaimant as defined in Texas Labor Code §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]."

The 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 Form-060) provide specific documentation in a required format. Petitioner was required as a subclaimant to submit a reimbursement request in the form, format, and manner prescribed by the Division, and the reimbursement must contain all the elements listed on the form. The DWC Form-060 has a table that requires information, including dates of service, CPT Code(s), amount billed, medical fee guideline (maximum allowable reimbursement), total amount paid, amount in dispute, country where services were rendered, requestor's rationale for increased reimbursement or refund, and respondent's rationale for maintaining the reduction or denial. According to documentation submitted by Petitioner, the DWC Form-060 did not have the required information Petitioner was to provide and list on the table. In addition, Petitioner failed to attach and make part of the DWC Form-060 its position summary, explanation of benefits provided, medical bills, and medical documentation. According to the documentation submitted by Petitioner, the last date of service provided to Claimant was on November 27, 2005, and there was no evidence, including a date stamp, as to when the DWC Form-060 was submitted and filed by Petitioner with the Division. Thus, Petitioner failed to prove that it is entitled to reimbursement under Texas Labor Code §409.009 because it failed to meet all of the requirements of Division Rule 140.6, which implements the provisions of §409.009.

The pertinent part of Texas Labor Code §409.0091 is as follows:

> "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, Texas Labor Code §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. Under Texas Labor Code §409.0091 effective September 1, 2007, subsection (s) provides as follows:

> "(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."

Under Texas Labor Code §402.084(c-3) referred to in §409.0091(s) of the Act, the information that is sought is called data matching and is provided by the Division. Under Texas Labor Code §402.084(c-3), certain entities, including health care insurers who may be obligated for the cost of health care services for an injured employee, may request the Division to determine whether a workers' compensation claim exists so that the requestor of the information can determine if it is 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, Claimant's injury occurred on ______________. Since Claimant's injury occurred prior to September 1, 2007, Petitioner has to follow the requirements of subsection (s) to obtain reimbursement under Texas Labor §409.0091.

At the hearing, Petitioner provided a document entitled "Affidavit of CF" dated October 22, 2009, which indicated that a data match occurred on July 9, 2007, and submitted an attached e-mail from a person named BL who is associated with Petitioner. According to the evidence, the MFDR section of the Division had requested Petitioner to furnish the original data that had been sent by the Division with the data match to support that a data match had occurred on July 9, 2007, as stated in the affidavit. According to the MFDRFD, Petitioner failed to provide the information, and Petitioner did not offer the original data information at the hearing. The evidence did not establish the existence of a data match in this case within the meaning of Texas Labor Code §402.084(c-3).

According to the evidence, Petitioner had not previously submitted a request for reimbursement to Carrier that was denied under Texas Labor Code §409.0091(s)(1) and (s)(2). Petitioner did submit a request on behalf of HCP, and was required to comply with Texas Labor Code §409.0091(f) in submitting a reimbursement request, which must contain various data elements. Texas Labor Code §409.0091(f) 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."

Division Rules 140.7 and 140.8 implement Texas Labor Code §409.0091, and Division Rule 140.8 requires that Petitioner's request for reimbursement be submitted in the manner and form set forth in the rule. In particular, Texas Labor Code §409.0091(f) relates to the form and manner in which the health care insurer shall file for reimbursement from the workers' compensation insurance carrier. The Division prescribed a form entitled Reimbursement Request for Payment Made by Health Care Insurer (DWC Form-026) to meet the requirements under Texas Labor Code §409.0091(f). The DWC Form-026 form requires pertinent information to be provided when requesting reimbursement, including dates of service and a description of services. The evidence shows that Petitioner did not provide documentation to support that it provided a DWC Form-026 form in its request for reimbursement containing the required information with its request for reimbursement. Petitioner is not eligible for reimbursement because the request was not filed in the form and manner as required under Texas Labor Code §409.0091(f).

Based on the probative evidence, including a careful review and fair reading of the documentation, the preponderance of the evidence is not contrary to the decision of MFDRFD that Petitioner is not entitled to reimbursement in the amount of $1,639.54 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 (Self-Insured).

   C. Claimant sustained a compensable injury on ______________.

2. 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 2.

3. On April 7, 2010, the Medical Fee Dispute Resolution Findings and Decision determined that (Sub-claimant), Petitioner, is not entitled to reimbursement in the amount of $1,639.54 for the compensable injury of ______________.

4. Petitioner has not provided documentation showing a data match with Carrier in this case obtained from the Division pursuant to Texas Labor Code §402.084(c-3).

5. Petitioner has not provided to Carrier or filed with the Division, a completed DWC Form-026 regarding medical services in dispute in this case.

6. Petitioner is an authorized representative of (Healthcare Provider), which is a health care insurer that paid for treatment that Claimant received from (Healthcare Provider) on the disputed dates of service in this case.

7. Petitioner is not a health care insurer, and it has not provided compensation or health care either directly or indirectly to Claimant.

8. Petitioner had not sought and been refused reimbursement from Carrier before filing its underlying request for Medical Fee Dispute Resolution in this case.

9. Petitioner did not timely file a completed DWC Form-060 with the Division regarding the medical fee dispute.

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 Medical Fee Dispute Resolution Findings and Decision that (Sub-claimant), Petitioner, is not entitled to reimbursement in the amount of $1,639.54 for the compensable injury of ______________.

DECISION

(Sub-claimant), Petitioner, is not entitled to reimbursement in the amount of $1,639.54 for the compensable injury of ______________.

ORDER

Carrier is not liable for the reimbursement at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury of ______________, in accordance with the Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **(SELF-INSURED),** and the name and address of its registered agent for service of process is:

EXECUTIVE DIRECTOR
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 27th day of December, 2010.

Wes Peyton
Hearing Officer