

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 January 4, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that Petitioner/Claimant is not entitled to reimbursement in the amount of \$1,494.00 for treatment in (Country) by JV, Chiropractor, between February 1, 2008 and October 11, 2009 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by WB, ombudsman. Carrier appeared and was represented by LW, attorney.

BACKGROUND INFORMATION

Petitioner/Claimant (hereinafter called "Claimant") seeks reimbursement from Respondent/Carrier (hereinafter called "Carrier") for 30 sessions of spinal manipulation by JV, a chiropractor, in (Country), between the dates of January 1, 2008 and November 10, 2009. Claimant contended that the treatment was necessary for the compensable injury and that she expended a total of \$1494.00 for such treatment.

On August 11, 2010, a Medical Fee Dispute Resolution Findings and Decision (MFDR Decision) was issued denying Claimant reimbursement. In that decision, the portion of the expenses Claimant seeks to have reimbursed which were incurred between January 2, 2008 and November 25, 2008 were found not to have been eligible for review under Rule 133.307(c)(1)(A) because they were not filed within one year of the date of service. In this regard, the proof at the contested case hearing showed that these charges were not filed with Carrier until January 12, 2010 which was more than one year after these dates of service, and thus that portion of the claim totaling \$444.00 is barred under the quoted section of the Rule.

The MFDR Decision further cited Claimant's failure to comply with Rule 133.307(c)(3)(B) which required her to submit a description of the healthcare, why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount. The record indicates that the Division requested this documentation on June 7, 2010. Claimant was required to furnish the additional documentation within 14 days after receipt of the request. The requested records were not received by the date of the MFDR Decision, August 11, 2010, and the Division was authorized to base its decision on the information available under Rule 133.307(e)(1). At the CCH, Claimant submitted a letter from her treating chiropractor in (City), Texas to the effect that he had advised her to continue her

chiropractic care while in (Country) in 2008 and that he continued to treat her upon her return from (Country). There was also a letter from the (Country) chiropractor stating that the chiropractic adjustments were necessary for chronic pain resulting from her (year) injury. These letters were not submitted to the Division until September 10, 2010. The Division acted properly in making its Decision in the absence of these records which were not timely submitted. The submitted letters from Claimant's physicians are conclusory, and Claimant submitted no evidence to establish the nature of her original injury, her treatment to date, and no evidence through which the alleged continuing need for chiropractic care for Claimant could be objectively evaluated.

The MFDR Decision is also grounded upon Claimant's failure to obtain a referral from her treating doctor, DR. H, D.C., to the physician rendering care in (Country), JV, B.Sc., MC. Such a referral is required under Rule 180.22(c)(1) and the failure to obtain a referral to the physician rendering the disputed charges is fatal to Claimant's reimbursement request.

At the contested case hearing. Carrier raised the jurisdiction question whether Claimant had timely perfected an appeal from the MFDR Decision. Under Rule 102.5, Claimant was deemed to have received the MFDR Decision five days after August 11, 2010, on August 16, 2010. Claimant's assertion that she did not receive the Decision until August 19, 2010 was unsupported and unexplained by the evidence. Claimant had 20 days from August 16, 2010 to appeal by requesting a hearing under Rule 133.307(f)(2)(A), which time expired on September 6, 2010. Even under Claimant's assertion that she did not receive the Decision until August 19, 2010, the appeal would have been due on September 8, 2010. The evidence shows that Claimant sent a letter requesting to appeal the MFDR Decision to the Division by FAX on September 10, 2010, which was not timely.

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).
 - C. Claimant sustained a compensable injury on _____.
 - D. Treatment for Claimant's compensable injury is not covered under a Workers' Compensation Healthcare Network.
 - E. The Medical Fee Dispute Resolution Division of the Texas Department of Insurance Division of Workers' Compensation rendered a Decision on August 11, 2010 that Claimant was entitled to no reimbursement for the submitted charges.

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. Claimant's request for reimbursement of the disputed charges was first submitted to Carrier on January 12, 2010.
4. The portion of the disputed charges incurred between January 2, 2008 and November 25, 2008 totaling \$444.00 were not submitted to Carrier for reimbursement within one year.
5. The Division requested documentation on June 7, 2010 including a description of the healthcare, why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount.
6. Claimant failed to provide any documentation in response to the Division request regarding a description of the healthcare, why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount within 14 days of the Division's request.
7. The documentation submitted by Claimant is insufficient to provide description of the healthcare, why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount.
8. Claimant's treating physician during the time the disputed charges were rendered was DR. H, D.C.
9. Claimant failed to obtain a referral from Dr. H to JV, B.Sc., MC, the physician rendering the disputed charges.
10. Claimant is deemed to have received the August 11, 2010 MFDR Decision on August 16, 2010.
11. Claimant's appeal of the MFDR Decision was not filed with the Division's Chief Clerk of Proceedings until September 10, 2010, which was not within 20 days of the date Claimant received notice of the Decision.

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 Medical Fee Dispute Resolution Findings and Decision that Petitioner/Claimant did not establish entitlement to reimbursement of any portion of the disputed charges.

DECISION

Petitioner/Claimant is not entitled to reimbursement from Respondent/Carrier for any portion of the disputed charges.

ORDER

Respondent/Carrier is not liable for the benefits at issue in this hearing. Petitioner/Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY SUITE 1000
PLANO, TEXAS 75093**

Signed this 6th day of January, 2011.

Warren E. Hancock, Jr.
Hearing Officer