

MEDICAL CONTESTED CASE HEARING NO. 14022

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 October 9, 2013, with the record closed on October 21, 2013, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Resolution Findings and Decision (MFDRD) that (Healthcare Provider 2) is entitled to reimbursement in the amount of \$612.00 for a functional capacity evaluation (FCE) for date of service July 29, 2009, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Carrier (hereinafter "Carrier") appeared and was represented by TR, attorney. Respondent did not appear for the October 9, 2013, medical contested case hearing (MCCH). Claimant did not appear and his appearance was excused.

BACKGROUND INFORMATION

Although properly notified, Respondent failed to appear for the MCCH scheduled for 2:00 PM on Wednesday, October 9, 2013. A letter was mailed to Respondent on October 9, 2013, and the Respondent was advised in the letter that the MCCH had reconvened, and that the record would be held open for ten days to afford Respondent the opportunity to respond and request that the hearing be rescheduled to permit Respondent the right to present evidence on the disputed issue. Respondent failed to respond to the letter and the record was closed on Monday, October 21, 2013.

Concerning the disputed issue, the Division's Medical Fee Dispute Resolution Officer issued a decision ("Medical Fee Dispute Resolution Findings and Decision" or MFDRD) holding that Respondent was entitled to reimbursement in the amount of \$612.00 from Carrier.

According to the Health Insurance Claim Form 1500 with attached documentation, Respondent sought payment from Carrier for an FCE of Claimant that it administered during Claimant's inpatient visit on July 29, 2009. (Healthcare Provider 1) was an entity established by HD, M.D. (Healthcare Provider 1) required an FCE to be ordered for every designated doctor examination whether the designated doctor was of the opinion that such a test was necessary or even aware that one had been ordered. In addition, (Healthcare Provider 1) would routinely bill the

maximum permissible time for FCEs which was four hours even though the evidence adduced indicated that the typical FCE would take a fraction of that time.

When it was discovered that (Healthcare Provider 1) was billing fraudulently for services that were either not provided, were unnecessary, or simply took far less time than claimed, Dr. D established a new entity, (Healthcare Provider 2), with a new tax identification number to continue the practice in hopes of evading detection by the fraud investigators.

KH gave a sworn affidavit dated October 7, 2013. According to her affidavit, Ms. H is a Health Care Fraud Investigator for Carrier. Ms. H indicated that she conducted an investigation and determined that Respondent engaged in exaggerated and unnecessary billing practices and failed to explain the actual duration of the FCEs performed by Respondent. Dr. D has been convicted of fraudulent billing practices and has been ordered to pay restitution to Carrier.

According to the documentary evidence, the services billed by Respondent did not conform to the AMA CPT Code 97750 for the services rendered which specifically required "direct one-on-one contact." In addition, the documentary evidence indicated that the four hours of FCEs were routinely billed by Respondent failed to comply with that requirement.

Based on the evidence presented in the hearing, the preponderance of the evidence is contrary to the MFDRD that Respondent is entitled to reimbursement in the amount of \$612.00 for a FCE for date of service of July 29, 2009, for the compensable injury on (Date of Injury).

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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On (Date of Injury), Claimant was the employee of (Employer), Employer.
3. On (Date of Injury), Employer provided workers' compensation insurance with Texas Mutual Insurance Company, Carrier.
4. Claimant sustained a compensable injury on (Date of Injury).
5. The Division sent a single document stating the true corporate name of the Carrier and the name and street address of Carrier's registered agent for service with the letter to Respondent at its address of record. That document was admitted into evidence as Hearing Officer's Exhibit Number 2A.

6. Respondent failed to appear for the October 9, 2013, medical contested case hearing and did not respond to the Division's letter offering it an opportunity to have the hearing rescheduled.
7. The services for which Respondent billed under AMA CPT Code 97750 for dates of service of July 29, 2009, were not shown to be necessary and were billed at an excessive rate.
8. No evidence was produced by Respondent to show the actual duration of the FCE at issue.

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 contrary to the Medical Fee Dispute Resolution Findings and Decision (MFDRD) that (Healthcare Provider 2) is entitled to reimbursement in the amount of \$612.00 for a FCE for date of service on July 29, 2009, for the compensable injury of (Date of Injury). The amount of reimbursement to which Respondent is entitled for that testing is reduced from \$612.00 to \$0.00.

DECISION

(Healthcare Provider 2) is not entitled to reimbursement in the amount of \$612.00 for an FCE for date of service on July 29, 2009, for the compensable injury of (Date of Injury). The amount of reimbursement to which Respondent is entitled for that testing is reduced from \$612.00 to \$0.00.

ORDER

Carrier is not liable for the benefits at issue in this hearing in the amount of \$612.00. Claimant remains entitled to medical benefits for the compensable injury of (Date of Injury), in accordance with Texas Labor Code Ann. §408.021.

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

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Signed this 28th day of October, 2013.

Wes Peyton
Hearing Officer