



**MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

**GENERAL INFORMATION**

**Requestor Name**

AETNA LIFE INSURANCE

**Respondent Name**

BENCHMARK INSURANCE CO

**MFDR Tracking Number**

M4-09-8837-01

**Carrier's Austin Representative**

Box Number 17

**MFDR Date Received**

MAY 28, 2009

**REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "Aetna Life Insurance asserts that it paid medical service claims totaling \$344.22 which clearly should have been billed to, and paid in good faith by the workers' compensation carrier in this case. The carrier has never disputed the compensability of the injury. The carrier has never offered a substantive objection to the compensability of the services."

**Amount in Dispute:** \$344.22

**RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Sec. 409.091(s) [sic] grants two exceptions to what amounts to a statute of limitations defense favoring Rochdale, if Aetna originally obtained notice of a potential right to recovery from Rochdale from information provided by the Division to Aetna prior to 1-1-7. Setting aside the quality of Aetna's proof that it did indeed obtain its original data prior to 1-1-7, thereby qualifying for the exceptions, Rochdale believes that the Aetna fails to establish its right to either exception."

**Response Submitted by:** Pappas & Suchma, P.C.

**SUMMARY OF FINDINGS**

| Date(s) of Service                        | Disputed Service(s)   | Amount In Dispute | Amount Due |
|---|-----------------------|-------------------|------------|
| August 7, 2004 through September 20, 2004 | Professional Services | \$344.22          | \$0.00     |

**FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. Texas Labor Code §409.0091 sets out the reimbursement procedures for health care insurers.
2. Texas Labor Code §409.0091(s) sets out an exception for reimbursement for services provided to injured employees with dates of injury prior to September 1, 2007.
3. 28 Texas Administrative Code §140.7 applies to Health Care Insurer Reimbursement under Labor Code §409.0091.
4. 28 Texas Administrative Code §140.8 applies to Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091.
5. 28 Texas Administrative Code §140.8(h) sets out the conditions for requests by the health care insurer for dispute resolution.
6. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

## Issues

1. Did the health care insurer meet the applicable requirements of Texas Labor Code §409.0091?
2. Did the workers' compensation insurance carrier fulfill its duties to timely pay, reduce or deny payment?
3. Is reimbursement due to the health care insurer?

## Findings

Texas Labor Code §409.0091 effective September 1, 2007 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8. The requestor of this medical fee dispute represents a health care insurer as defined by Texas Labor Code §409.0091(a). Texas Labor Code §409.0091(c) states that health care paid by a health care insurer may be reimbursable as a medical benefit. The requestor is seeking \$344.22 pursuant to the provisions of §409.0091. The respondent is a Texas workers' compensation insurance carrier. The provisions of Texas Labor Code §409.0091, and 28 Texas Administrative Code Rules §§140.7 and 140.8 apply to this request for reimbursement by a health care insurer and are hereby applied in the Division's determination of whether payment is due in this case.

1. The services in dispute relate to an injury that occurred on [REDACTED]. For this reason, the exception under Texas Labor Code §409.0091(s) applies. Pursuant to §409.0091(s), for data matches provided to the health care insurer before January 1, 2007, the health care insurer may not file a request for reimbursement later than March 1, 2008. Review of the documentation provided by the requestor finds the following.
  - The requestor alleges that a data match was received from the Division on 11/28/06, which included and identified the injured employee that received the services in dispute. The date of this data match precedes the required January 1, 2007 date.
  - The requestor provided a copy of a DWC Form-026 filed on 11/5/07. The request included all information and documentation required by §409.0091(f) for the services in dispute.The Division concludes that the requestor sufficiently supported that it met the conditions of §409.0091(s).
2. Texas Labor Code §409.0091(i) states "On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received." Review of the documentation finds the following.
  - The health care insurer's request for reimbursement sent on 11/5/07 and was received by the workers' compensation insurance carrier on 11/19/07.
  - 28 TAC §102.3(a) (1) computing a period of days. In counting a period of time measured by days, the first day is excluded and the last day is included. Additionally, 28 TAC §102.3(a)(3) states that, unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. The respondent was therefore required to respond to the reimbursement request not later than 2/20/08. Review of the submitted documentation finds that the insurance carrier responded to the requestor on 11/19/07 and 12/21/07.

The Division concludes that the workers' compensation insurance carrier timely respond to the health care insurer's request for reimbursement.

3. Texas Labor Code §409.0091(l) states that "Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules."

Applicable Texas Labor Code §409.0091(k)(1), and corresponding 28 Texas Administrative Code §140.8 (h)(3)(A)(i), states that a health care insurer must file a request for medical dispute resolution with the Division not later than the 120th day after a workers' compensation insurance carrier fails to respond to a health care insurer's reimbursement request or reduces or denies the requested reimbursement amount for reasons other than lack of medical necessity.

28 Texas Administrative Code §140.8 (h)(3)(B) furthermore states that a medical dispute based on the workers' compensation insurance carrier's failure to respond to a health care insurer's reimbursement request or the result of a reduction or denial of the requested reimbursement amount for reasons other than those listed in paragraph (1) or (2) of this subsection is subject to medical dispute resolution pursuant to §133.307 of this title, notwithstanding the definition of medical fee dispute in §133.305 of this title (relating to MDR--General), and the health care insurer must follow the medical fee dispute resolution process allowed for a health care provider under that section, with any modifications specified by this subsection. The reimbursement request is therefore subject to dispute resolution under 28 Texas Administrative Code §133.307. The requestor was therefore required to file its request to medical fee dispute resolution not later than 120 days from 12/21/07 for the services in this dispute. Review of the documentation finds that the requestor filed for medical fee dispute resolution on May 28, 2009. This date is past the 120 day filing deadline required by §140.8 (h)(3)(A)(i).

The Division finds that the requestor failed to meet the timeliness condition for filing a medical fee dispute set out by Texas Labor Code §409.0091(k)(1), and corresponding 28 Texas Administrative Code §140.8 (h)(3)(A)(i). For this reason, the medical fee dispute is not eligible for review.

**Conclusion**

The outcome of this medical fee dispute relied upon the available evidence presented by the requestor and the respondent. Even though all the evidence was not discussed, it was considered. For the reasons stated above, the Division finds that the requestor failed to establish that additional reimbursement is due. As a result, the amount ordered is zero.

**ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
Date

April 15, 2016

**YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**