



# TEXAS DEPARTMENT OF INSURANCE

## Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Aetna Life Insurance Company

**Respondent Name**

State Office of Risk Management

**MFDR Tracking Number**

M4-11-4330-01

**Carrier's Austin Representative**

Box Number 45

**MFDR Date Received**

July 27, 2011

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Aetna Life Insurance asserts that it paid medical service claims totaling \$184.07 which clearly should have been billed to, and paid in good faith by the workers' compensation carrier in this case."

**Amount in Dispute:** \$184.07

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "To date the requestor has failed to submit sufficient evidence to substantiate their claim pursuant to the aforementioned statutes and Division rules..."

**Response Submitted by:** State Office of Risk Management

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 31, 2010	96372, J1040, J1094 and 99215	\$184.07	\$182.28

### FINDINGS AND DECISION

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

#### Background

1. Texas Labor Code §409.0091 sets out the requirements for health care insurers to bill for and receive reimbursement from workers' compensation carriers for services provided to covered Texas injured employees.
2. 28 Texas Administrative Code §102.3 applies to the computation of time.
3. 28 Texas Administrative Code §134.203 applies to professional fees.
4. 28 Texas Administrative Code §140.7 applies to Health Care Insurer Reimbursement.
5. 28 Texas Administrative Code §140.8 applies to Reimbursement of Medical Benefits.
6. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

## Issues

1. Did the health care insurer timely file a request for reimbursement from the workers' compensation insurance carrier?
2. Were the workers' compensation insurance carrier denial reasons supported?
3. Is reimbursement due to the health care insurer?

## Findings

Texas Labor Code §409.0091 was added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, and is effective for dates of injury on or after September 1, 2007, with few exceptions. The requestor of this medical fee dispute represents Aetna Life Insurance Co., 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, hereafter referred to as the subclaimant, is seeking \$184.07 from State Office of Risk Management - a Texas workers' compensation insurance carrier (carrier). The subclaimant alleges it paid for services provided to an injured employee with a compensable Texas workers' compensation claim and is seeking to recover the amounts it paid from the carrier - State Office of Risk Management. 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 and are considered.

1. In order for the subclaimant to recover amounts it paid on behalf of the injured employee that received the services in dispute, the subclaimant must request reimbursement from the carrier in the form, manner and timeframes prescribed by Texas Labor Code §409.0091. There are two concurrently running deadlines that limit the subclaimant's timeframe for a request for reimbursement from the carrier. These are found at Texas Labor Code §409.0091(n). The subclaimant's submission for reimbursement must be sent not later than six months from the date of a data match date, and not later than 18 months from the date that the subclaimant originally paid health care providers for the services in dispute. The Division now considers the available documentation in order to establish the date of a request for reimbursement, the data match date, and the date that the subclaimant originally paid for the services in dispute.

### Date of Request for Reimbursement

The subclaimant is required to provide the information denoted in Texas Labor Code §409.0091(f) with any request for reimbursement it makes to the carrier. Division rule at Title 28 Texas Administrative Code §140.8(c) (1) requires that the request for reimbursement "be in the form and manner prescribed by the Division of Workers' Compensation (Division) and must contain all the required elements on the form." The Division prescribed DWC Form-026 titled *REQUEST FOR REIMBURSEMENT OF PAYMENT MADE BY THE HEALTH CARE INSURER* for use by subclaimant's when making a request for reimbursement pursuant to §409.0091.

The subclaimant alleges that it first billed the carrier using DWC Form-026 on March 25, 2011. Review of the documentation available finds a complete DWC Form-026 with a mailing label addressed to the carrier and respondent in this dispute. The carrier in its position statement acknowledges that "The Office received a request for reimbursement pursuant to Labor Code §409.0091 from Medrecovery Management on 03/25/2011..." MedRecovery management is an authorized representative of the health care insurer as defined pursuant to §409.0091(a).

The parties therefore agree that the subclaimant billed the carrier on March 25, 2011.

#### Data Match Date

The requestor alleges that it received a data match pursuant to Texas Labor Code §402.084(c-3) from the Division on February 14, 2011. A sworn affidavit dated May 31, 2011 and signed by Susan Esford, a representative of the subclaimant, affirms that a response file named tx161510689142073027066033492251p201110210101500.zip was sent by the Division and received by the subclaimant. The subclaimant further affirms that the file contained 99,173 separate matches including one match to the name, and division-assigned claim number consistent with the injured employee identified as the recipient of the services in dispute. Comparison to the Division's records supports the assertions made by the requestor in the sworn affidavit.

The Division finds that the subclaimant reasonably supported that it received a data match on February 14, 2011.

#### Payment Dates

A document titled "Aetna Life Insurance Co. – Trad – TX Billing Transmittal" was found which identified the injured employee that received the services in dispute, and which supports that the health care insurer or subclaimant paid \$184.07 to health care provider Matthew David Thomas, tax id 752648615 on September 9, 2010, for services totaling \$361.00 provided on August 31, 2010.

The Division finds that the subclaimant supported that it paid for the services in dispute on September 9, 2010.

Comparison of the data match date of February 14, 2011 to the date of the subclaimant's request for reimbursement from the carrier of March 25, 2011 finds that the subclaimant billed the carrier within the required 6 month deadline. Furthermore, comparison of the September 9, 2010 date that the subclaimant paid for the services in dispute to the billing date of March 25, 2011 finds that the subclaimant sent a request for reimbursement from the carrier within the required eighteen-month deadline. The Division concludes that the subclaimant met both timeliness requirements of Texas Labor Code §409.0091(n).

2. On May 23, 2011 the carrier sent a letter to the subclaimant explaining why the subclaimant's request for reimbursement was not processed. This letter reads, in pertinent part:

On March 29, 2011, the State Office of Risk Management (Office) received correspondence regarding the above-referenced claim(s). The correspondence appears to be related to §409.0091, Texas Labor Code, regarding reimbursement of certain health care costs. Requests must contain all statutorily required information to be processed by the Office. In resubmitting your request, please ensure the request: 1. includes the date(s) payment(s) were made by the health care insurer; 2. clearly indicates the date on which the health care insurer received information under Section 402.084(c-3)...

Review of the "correspondence" referenced by the carrier in its letter finds a complete DWC Form-026 which includes the dates payments were made by the subclaimant along with all other information or data statutorily required by Texas Labor Code §409.0091(f)(2). The Division concludes that the carrier received the dates that the payments were made by the subclaimant's with the initial request for reimbursement.

In regards to the data match date, Texas Labor Code §409.0091 does not specifically require a data match date with the initial request for reimbursement, nor did the version of the DWC Form-026 submitted at the time require the data match date. Although the data match date is not "statutorily required" as part of a request for reimbursement as the carrier alleges, the Division finds the carrier's request for the data match date is reasonable and relevant as a request for additional information pursuant to Texas Labor Code §409.0091(j).

The subclaimant responded to the carrier’s request for the data match date on May 31, 2011. In its response, the subclaimant provided a sworn affidavit attesting to the data match date of February 14, 2011, and it provided other very detailed information about the data match request file to the Division, and response file from the Division. The subclaimant also offered an explanation that that a copy of the data match file could not be provided because it contains “confidential information on a large number of individuals and workers’ compensation cases.” The carrier rebutted in a letter dated June 15, 2011 stating that “In this claim no data match has been provided, only an affidavit purporting to represent the ‘results’ of an official data match... SORM has not been provided the documentation necessary to ascertain when or if a data match ever occurred in this claim.” The Division disagrees. Not only is the subclaimant obligated to keep data match information confidential as required by §402.084 (c-5), the sworn affidavit provided the carrier specific and verifiable claim information including the injured employee’s name, the correct date of injury, and the correct Division-assigned claim number. The affidavit therefore prevents any unauthorized release of confidential information and reasonably supports that the Division performed a data match and released information about the subject injured employee’s Texas workers’ compensation claim. As further verification, the Division compared the data match information on the sworn affidavit to its records and was able to verify that the specific data match response file named tx161510689142073027066033492251p20110210101500.zip indeed exists and that the information was transmitted to the subclaimant on February 14, 2011.

The Division concludes that the subclaimant initially filed a complete request for reimbursement from the carrier, and provided sufficient information that reasonably indicates the existence of a data match date which included claim information related to the specific injured employee that received the services in dispute. For this reason, the services in dispute are eligible for payment.

3. For the reasons stated above, the Division finds that the services in dispute are eligible for payment. Applicable Texas Labor Code §409.0091(h) states:

For each medical benefit paid, the workers’ compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline...or the actual amount paid by the health care insurer.

The Texas medical fee guidelines are found at Title 28, Part 2, of the Texas Administrative Code (TAC). The table below points to the applicable TAC Rule and section, and illustrates the fee guideline allowable compared to the amounts paid by the subclaimant or health care insurer (HCI) for the purpose of establishing the total allowable for the services in dispute. The “§409.0091(h) Allowable” column represents the lesser of the amount payable under the applicable fee guideline and the actual amount paid by the subclaimant.

Date	Service Code	Zip Code of Service Location	Type	Fee Rule 28 TAC	Fee Guideline Allowable	Amount Paid by HCI	§409.0091 (h) Allowable
Aug 31, 2010	96372	75028	Professional	§134.203(c)	\$30.75	\$16.65	\$16.65
Aug 31, 2010	J1040	75028	Professional	§134.203(d)	\$8.88	\$8.60	\$8.60
Aug 31, 2010	J1094	75028	Professional	§134.203(d)	\$0.29	\$2.08	\$0.29
Aug 31, 2010	99215	75028	Professional	§134.203(c)	\$194.44	\$156.74	\$156.74
						<b>Total</b>	<b>\$182.28</b>

The division concludes that the total allowable for the services in dispute is \$182.28.

**Conclusion**

The Division concludes that the subclaimant’s request for reimbursement is sufficiently supported. Reimbursement in the amount of \$182.28, without interest, is recommended. The Division notes that the subclaimant may not recover interest as part of this subclaim pursuant to Texas Labor Code §409.0091(h).

The Division emphasizes that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution. Even though all the evidence was not discussed, it was considered.

***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$182.28, without interest, due within 30 days of receipt of this Order.

**Authorized Signature**

		August 3, 2015
Signature	Medical Fee Dispute Resolution Officer	Date

***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 MFDR 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 this *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.**