



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

ERIC A. VANDERWERFF, DC

Respondent Name

LIBERTY INSURANCE CORP

MFDR Tracking Number

M4-14-1503-01

Carrier's Austin Representative

Box Number 01

MFDR Date Received

JANUARY 27, 2014

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The Functional Capacity Evaluations (FCEs) performed on **2/14/13** and **3/11/13**, which has been denied, are actually REQUIRED, according to the ODG guidelines...the ODG requires us to re-evaluate our Chronic Pain Management patients every two weeks while they are in the program. An FCE is the standard method of objective re-evaluation, since this program is also known as a multi-disciplinary functional restoration program. We cannot measure function any other way, besides a Functional Capacity Evaluation. **We are exempt from the limitation of 3 FCEs per compensable injury, because these FCEs that we are REQUIRED to perform, as per the ODG (which is required by the DWC's Rules) are exempted by §134.202...Furthermore, because these FCEs were performed as required by the ODG, and because we are ordered by the Division to follow the ODG in Rule §137.100, all of our FCEs are allowed to last for up to four hours per test.**"

Amount in Dispute: \$974.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "A maximum of three FCEs for each compensable injury shall be billed and reimbursed."

Response Submitted By: Liberty Mutual Insurance Co.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 14, 2013	CPT Code 97750-FC (16 units) Functional Capacity Evaluation (FCE)	\$194.80	\$70.95
March 11, 2013	CPT Code 97750-FC (16 units) Functional Capacity Evaluation (FCE)	\$779.20	\$0.00
TOTAL		\$974.00	\$70.95

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. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.204 and §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- M359-Time expended on or the number of functional capacity evaluations has been exceeded.
- B13-Previously paid. Payment for this claim/service may have been provided in a previous payment.
- 193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.

Issues

1. Is the requestor entitled to additional reimbursement for the functional capacity evaluation rendered on February 14, 2013?
2. Is the requestor entitled to reimbursement for the functional capacity evaluation rendered on March 11, 2013?

Findings

1. According to the explanation of benefits, the respondent denied reimbursement for the disputed February 14, 2013 FCEs based upon reason code "M359."

28 Texas Administrative Code §134.204(g) states "The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier "FC." FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required."

CPT code 97750 is defined as "Physical performance test or measurement (eg, musculoskeletal, functional capacity), with written report, each 15 minutes." CPT code 97750 requires direct one-on-one patient contact."

A review of the submitted February 14, 2013 FCE report indicates "Total Examination Time: 3 hours 30 minutes (14 units)."

The respondent submitted copies of explanation of benefits, that support the claimant had undergone two FCEs prior to February 14, 2013. Therefore, the maximum reimbursement for the February 14, 2013 FCE is three hours per 28 Texas Administrative Code §134.204(g). To determine if additional reimbursement is due, the Division refers to 28 Texas Administrative Code §134.203(c)(1)(2).

Per 28 Texas Administrative Code §134.203(c)(1)(2), the following formula is used to calculate the Maximum Allowable Reimbursement (MAR): (DWC Conversion Factor/Medicare Conversion Factor) X Participating Amount = MAR.

The 2013 DWC conversion factor for this service is 55.3.

The Medicare Conversion Factor is 34.023.

The Medicare participating amount is \$33.60.

Using the above formula, the MAR is \$655.35. The respondent paid \$0.00. The difference between the MAR and paid is \$70.95. As a result, \$70.95 is recommended for reimbursement.

2. According to the explanation of benefits, the respondent denied reimbursement for the disputed March 11, 2013 FCE based upon reason code "M359."

The requestor states in the position summary that "**We are exempt from the limitation of 3 FCEs per compensable injury, because these FCEs that we are REQUIRED to perform, as per the ODG (which is required by the DWC's Rules) are exempted by §134.202.**"

28 Texas Administrative Code §134.204(g) states in part "A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury." The March 11, 2013 was the fourth FCE. A review of the submitted documentation finds that the requestor did not submit any documentation to support that the Division ordered

the fourth FCE; therefore, the requestor exceeded the limit allowed for compensable injury per 28 Texas Administrative Code §134.204(g). As a result, reimbursement is not recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$70.95.

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 \$70.95 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

04/10/2015
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request 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 §141.1(d).

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