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 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name
Memorial Compounding Pharmacy

Respondent Name
Zurich American Insurance Company

MFDR Tracking Number
M4-18-1532-01

Carrier's Austin Representative
Box Number 19

MFDR Date Received
January 25, 2018

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The original bill was submitted to **carrier (VIA CERTIFIED MAIL) ON 09/11/2017** … Memorial did not receive any correspondence as per rule so we submitted a Request for Reconsideration … The request was submitted and received by the carrier on **10/24/2017** still with no response."

Amount in Dispute: $188.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The Carrier has no liability for this claimed injury. The claim was denied from the beginning. The ALJ's Decision and Order of September 14, 2017 found the claimant did not sustain an injury in the course and scope of he employment."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 1, 2017	Acetaminophen/Codeine #4 Tablets	$90.61	$45.39
September 1, 2017	Gabapentin 300 mg Capsules	$97.39	$53.86
		Total	$99.25

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. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §102.4 establishes the rules for non-division communications.
3. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
4. 28 Texas Administrative Code §133.10 defines the requirements for submitting a complete pharmaceutical bill.

5. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.
6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
8. The documentation submitted to the division does not include explanations of benefits.

Issues

1. Did Zurich American Insurance Company (Zurich) take final action to pay, reduce, or deny the disputed services?
2. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the drugs in question?

Findings

1. Memorial is seeking $188.00 for Acetaminophen/Codeine #4 tablets and Gabapentin 200 mg capsules dispensed on September 1, 2017.

   According to Texas Labor Code Sec. 408.027(b), Zurich was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

   > Final action on a medical bill—
   > (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
   > (B) denying a charge on the medical bill.

   Zurich was not relieved of its requirement to pay, reduce, or deny the disputed services in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

   > (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill…not later than the 45th day after the insurance carrier received a complete medical bill…
   > (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title…The explanation of benefits shall be sent to:
   > (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill…

   Flahive, Ogden & Latson argued on behalf of Zurich that "The Carrier has no liability for this claimed injury. The claim was denied from the beginning." 28 Texas Administrative Code §133.307(d)(2)(F) states that:

   > The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review…

   Absent any evidence that Zurich raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Flahive, Ogden & Latson's position statement shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F). Therefore, the drugs in question will be reviewed in accordance with applicable fee guidelines.

2. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

   > (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

(1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
   (A) **Generic drugs: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee per prescription = reimbursement amount** [emphasis added];
   (B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + $4.00 dispensing fee per prescription = reimbursement amount;
   (C) When compounding, a single compounding fee of $15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or

(2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
   (A) health care provider; or
   (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The division finds that the reimbursement for the disputed drugs is calculated as follows:

- Acetaminophe/Codeine #4 tablets (0.55186 x 60 x 1.25) + $4.00 = $45.39
- Gabapentin 200 mg Capsules (1.3296 x 30 x 1.25) + $4.00 = $53.86

The total reimbursement amount is $99.25. This amount is 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 $99.25.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $99.25, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

	Laurie Garnes	March 16, 2018
Signature	Medical Fee Dispute Resolution Officer	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, 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 MFDR 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.