



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

Thomas Pfeil, Jr., M.D.

Respondent Name

State Office of Risk Management

MFDR Tracking Number

M4-19-3295-01

Carrier's Austin Representative Box

BOX 45

Fee Dispute Request Received

February 27, 2019

Response Submitted by:

State Office of Risk Management

REQUESTOR POSITION SUMMARY

99456 W5 WP MMI = 350.00

Lumbar IR w/ ROM = 300.00

Hip IR = 150.00

Bladder IR = 150.00

Total Paid = 800.00

Balance Due = 150.00

RESPONDENT POSITION SUMMARY

"The Office performed an in-depth review of the requestor's appeal and determined that no additional payment is owed for the multiple **non-compensable** impairment ratings as these conditions have not been adjudicated nor determined to be compensable by the designated doctor for this workers' compensation injury."

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 23, 2018	Designated Doctor Examination	\$150.00	\$150.00

FINDINGS AND DECISION

Texas Labor Code §413.031 (c). In resolving disputes over the amount of payment due for medically necessary services for treatment of the compensable injury, the role of the medical fee dispute resolution program is to adjudicate the payment given the relevant statutory provisions and commissioner rules.

Rule at 28 Texas Administrative Code §133.307 sets out the process for medical fee dispute resolution applicable to requestors, respondents, and the division.

Background

Compensable Injury

“Compensable injury” is defined as “an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.”¹

28 TAC §130.1 sets out the procedures for assignment of an impairment rating. The preamble to 28 TAC §130.1, effective August 25, 2013, clarifies that the term “current compensable injury” was used to differentiate which compensable injury the assignment of impairment should include when there are previous compensable injuries for the same injured employee.²

No assertion was made by either party that a compensable injury does not exist in this case, only what that compensable injury extends to.

Disputes Regarding Extent of the Compensable Injury

When the extent of the compensable injury is in dispute, no final adjudication is determined until all available remedies have been pursued.

Until final adjudication has been reached, each party has an **equal voice** regarding the extent of the compensable injury. Neither the insurance carrier nor the injured employee is the presumptive authority for the disputed conditions.

The designated doctor’s opinion carries presumptive weight while the dispute is pending but is **not the final authority** in determining the extent of the compensable injury unless the designated doctor’s opinion is not disputed timely.³

Impairment Rating

All body areas are considered in the number of units for the determination of impairment rating, as any possible outcome considered by the designated doctor may be finally adjudicated as part of the compensable injury.

Impairment ratings are determined using the *AMA Guides to the Evaluation of Permanent Impairment* (AMA Guides), Fourth Edition.⁴ The fee guidelines for impairment ratings are subject to 28 TAC §134.250(4).

Findings

Dr. Pfeil is seeking additional reimbursement for a designated doctor examination performed on October 23, 2018. The insurance carrier reduced the medical bill citing the division’s fee guidelines.

No argument was made that the injury was not compensable. The argument made by the insurance carrier was based on the extent of the compensable injury and concerned what body areas the designated doctor could include in the unit count billed for impairment rating.

Because the designated doctor is required to determine an impairment rating for **all** body areas considered in the extent of injury dispute, the billing for the impairment rating shall include all body areas rated.

What is the total allowable reimbursement for the designated doctor examination in dispute?

The designated doctor is required to bill an examination to determine maximum medical improvement with CPT code 99456 and modifier “W5.”⁵ Reimbursement is \$350.00 for this examination.⁶ The submitted documentation supports that Dr. Pfeil performed an evaluation of maximum medical improvement. Therefore, the maximum allowable reimbursement (MAR) for this examination is \$350.00.

¹ Texas Labor Code §401.011(10)

² “In some cases, an injured employee has incurred more than one compensable injury in previous claims. The word ‘current’ is necessary to clarify which particular compensable injury is at issue.”

[https://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=273049&p_tloc=39348&p_ploc=19583&pg=3&p_reg=201303205&ti=&pt=&ch=&rl=&z_chk=49413](https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=T&app=2&p_dir=F&p_rloc=273049&p_tloc=39348&p_ploc=19583&pg=3&p_reg=201303205&ti=&pt=&ch=&rl=&z_chk=49413)

³ Texas Labor Code §408.0041(e)

⁴ 28 TAC §130.1(c)(2)

⁵ 28 TAC §§134.250(3)(C) and 134.240(1)(B)

⁶ 28 TAC §134.250(3)(C)

Review of the submitted documentation finds that Dr. Pfeil performed impairment rating evaluations of the lumbar spine, left hip, and bladder.

The examination of a lumbar spine is found in Chapter 3, Subsection 3.3 of the, which is considered one body area defined as the "spine and pelvis."⁷ The examination of a left hip is found in Chapter 3, Subsection 3.2 of the AMA Guides, which is considered one body area defined as "lower extremities (including feet)."⁸ The examination of a bladder is found in Chapter 11 of the AMA Guides labeled Urinary and Reproductive Systems, a body system which is considered one body area.⁹

The MAR for the evaluation of the lumbar spine, a musculoskeletal body area performed with range of motion is \$300.00.¹⁰ The MAR for the evaluation of subsequent musculoskeletal body area, the left hip, is \$150.00.¹¹ The MAR for the evaluation of the bladder, a non-musculoskeletal body area, is \$150.00.¹² The total MAR for the determination of impairment rating is \$600.00.

The total allowable reimbursement for the designated doctor examination in question is \$950.00. The insurance carrier reimbursed \$800.00. An additional reimbursement of \$150.00 is recommended.

Conclusion

For the reasons stated above, the DWC finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$150.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$150.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature

Laurie Garnes
Medical Fee Dispute Resolution Officer

April 18, 2019
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §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 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. **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.

⁷ 28 TAC §134.250(4)(C)(i)(I)

⁸ 28 TAC §134.250(4)(C)(i)(III)

⁹ 28 TAC §134.250(4)(D)(i)(I)

¹⁰ 28 TAC §134.250(4)(C)(ii)(II)(-a-)

¹¹ 28 TAC §134.250(4)(C)(ii)(II)(-b-)

¹² 28 TAC §134.250(4)(D)(v)