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
Marcus P. Hayes, D.C.

Respondent Name
South San Antonio ISD

MFDR Tracking Number
M4-19-4412-01

Carrier's Austin Representative
Box Number 43

MFDR Date Received
June 7, 2019

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "In this particular case, the DD addressed MMI (with subsequent IR determination) and return to work status. Therefore, all were addressed as the treating doctor was in disagreement with the DD's findings of MMI/IR and return to work status. Therefore, the billing codes submitted reflected the issues addressed by the DD as per sections 408.0041 (f-2) and 408.0041 (h) of the Texas Labor Code & Rule 126.17."

Amount in Dispute: $1,000.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "In the instant case, the DD's certification was not the initial certification. The initial certification was given by the claimant's treating doctor … Therefore, the claimant was not entitled to an alternate rating and Dr. Hayes is due no reimbursement for same."

Response Submitted by: Thornton, Biechlin, Reynolds, & Guerra

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 30, 2019	Examination to Determine Maximum Medical Improvement and Impairment Rating	$500.00	$500.00
January 30, 2019	Examination to Determine Ability to of Injured Employee to Return to Work	$500.00	$0.00
	Total	$1,000.00	$500.00

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 §134.235 sets out the fee guidelines for examinations to determine the ability of injured employees to return to work.
3. 28 Texas Administrative Code §134.250 sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating.
4. Texas Labor Code §408.0041 sets out the guidelines for designated doctor examinations.
5. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
   - 219 – Based on extent of injury
   - 193 – Original payment decision is being maintained. Upon review it was determined that this claim was processed properly.
   - P14 – The benefit for this Service is included in the payment/allowance for another service/procedure that has been performed on the same day … To be used for Property and Casualty only.
   - Disputed claim
   - P13 – Payment reduced or denied based on workers' compensation jurisdictional regulations or payment policies, use only if no other code is applicable.

Issues

1. Is this dispute subject to dismissal based on extent of injury?
2. Is Dr. Hayes entitled to reimbursement of the examinations in question?

Findings

1. Dr. Hayes is seeking reimbursement for examinations performed on January 30, 2019. The examinations were to determine maximum medical improvement, impairment rating, and the injured employee's ability to return to work. Dr. Hayes was a doctor selected by the treating doctor acting in place of the treating doctor.

   The insurance carrier denied the compound, in part, based on extent of the compensable injury. A dispute regarding extent of injury must be resolved prior to a request for medical fee dispute.[1]

   The respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves compensability or liability. Review of the submitted documentation finds that Thornton, Biechlin, Reynolds, & Guerra failed to attach a copy of a related PLN on behalf of the insurance carrier to support a denial based on extent of the compensable injury.

   The dispute in question is not subject to dismissal as this denial reason was not sufficiently supported.

2. The insurance carrier also denied the disputed services citing the fee guidelines. In its position statement, Thornton, Biechlin, Reynolds, & Guerra argued that "the DD's certification was not the initial certification. The initial certification was given by the claimant's treating doctor."

   As a doctor selected by the treating doctor acting in place of the treating doctor, Dr. Hayes may perform an examination to determine maximum medical improvement and impairment rating in response to a designated doctor if:

   - **the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating**; and
   - the employee is not satisfied with the designated doctor's opinion.[2]

   Information available to the DWC supports that the designated doctor's opinion was the injured employee's first evaluation of maximum medical improvement and impairment rating. Therefore, Dr. Hayes is entitled to reimbursement for this examination.

   The submitted documentation supports that Dr. Hayes performed an evaluation of maximum medical improvement. Therefore, the maximum allowable reimbursement (MAR) for this examination is $350.00.[3]

[1] 28 Texas Administrative Codes §§133.305(b) and 133.307(c)(1)(B)(i)
[2] Texas Labor Code §408.0041(f-2)
[3] 28 Texas Administrative Code §134.250(3)(C)

The submitted documentation supports that Dr. Hayes provided an impairment rating performing a full physical evaluation with range of motion of the lumbar spine, classified as a musculoskeletal body area. Reimbursement is $300.00 for the first musculoskeletal body area if a full physical evaluation with range of motion is performed.[4]

The services in question include an examination to determine the ability of the injured employee to return to work billed using CPT code 99456 with modifier "RE." An examination to determine ability of the injured employee to return to work is billed using CPT code 99456 with modifier "RE" only when the examination was requested by the DWC or the insurance carrier.[5] No evidence was received to support that the examination in question was requested by the DWC or the insurance carrier. Dr. Hayes is not entitled to reimbursement for this examination.

The total reimbursement allowable for the disputed services is $500.00. This amount 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 $500.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the DWC has determined the requestor is entitled to additional reimbursement for the disputed services. The DWC hereby ORDERS the respondent to remit to the requestor $500.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

	Laurie Garnes	August 26, 2019
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 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 DWC within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the DWC 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.

[4] 28 Texas Administrative Codes §§134.250(4)(C)(ii)(II)(-a-)

[5] 28 Texas Administrative Code §134.235