

Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Glenn Robinson, D.C.

Respondent Name

Liberty Mutual Fire Insurance

MFDR Tracking Number

M4-23-0166-01

Carrier's Austin Representative

Box Number 01

DWC Date Received

September 21, 2022

Summary of Findings

| Dates of Service | Disputed Services | Amount in Dispute | Amount Due |
|------------------|--|-------------------|------------|
| March 29, 2022 | Designated Doctor Examination 99456-W5-WP | \$800.00 | \$800.00 |

Requestor's Position

Per our records, the bill was submitted to the insurance carrier on: 04/15/2022. As of today, we have not received an Explanation of Benefits from the carrier.

Amount in Dispute: \$800.00

Respondent's Position

The injured worker settled on 02/04/2022 and Liberty Mutual has a dollar-for-dollar holiday on future workers compensation benefits owed. If a medical bill is received for date of service after 02/04/2022, we are not required to pay future benefits until the employee can prove that net recovery of \$78,669.01 from the third-party settlement is fully exhausted.

Response Submitted by: Liberty Mutual Insurance

Findings and Decision

Authority

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

Statutes and Rules

1. 28 Texas Administrative Code §127.140 sets out the disqualifying associations for designated doctor examinations.
2. 28 TAC §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 TAC §134.250 sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating.
4. Texas Labor Code §401.011 defines terms used in the Texas Labor Code, Title 5, Texas Workers' Compensation Act.
5. TLC §408.0041 sets out the requirements for designated doctor examinations.
6. TLC, Chapter 417 outlines the process for recovery in third-party settlements.

Denial Reasons

The insurance carrier submitted explanations of benefits for the disputed services with the following claim adjustment codes:

- 100 – Payment made to patient/insured/responsible party/employer.
- 309 – The charge for this procedure exceeds the fee schedule allowance.
- P12 – Workers' compensation jurisdictional fee schedule adjustment.
- 4150 – An allowance has been paid for a designated doctor examination as outlined in 134.204(j) for attainment of maximum medical improvement. An additional allowance is payable is a determination of the impairment caused by the compensable injury was also performed.
- 5791 – The injured employee is paying medical benefits under requirements of DWC Advisory 2004-02. Pricing by the carrier will be according to the medical policies and fee guidelines established by the Commission. The insurance carrier has submitted the medical bill and explanation of benefits to the injured employee for prompt payment of the adjusted amount in accordance with DWC Advisory 2004-02. Health care providers must continue to submit requests for preauthorization and to submit their medical bills to the insurance carrier as required by Commission rules.

Issues

1. Is Glenn Robinson, D.C. entitled to reimbursement from Liberty Mutual Fire Insurance?

Findings

1. Dr. Robinson seeks reimbursement for a designated doctor examination to determine maximum medical improvement and impairment rating performed on March 29, 2022.

Liberty Mutual Fire Insurance provided explanations of benefits dated May 12, 2022, and October 18, 2022, stating,

The injured employee is paying medical benefits under requirements of DWC Advisory 2004-02. Pricing by the carrier will be according to the medical policies and fee guidelines established by the Commission. The insurance carrier has submitted the medical bill and explanation of benefits to the injured employee for prompt payment of the adjusted amount in accordance with DWC Advisory 2004-02. Health care providers must continue to submit requests for preauthorization and to submit their medical bills to the insurance carrier as required by Commission rules.

Under Texas Labor Code §417.001, injured employees or their legal beneficiaries may seek damages from a third party who is or becomes liable to pay damages for a compensable injury or death.

Under Texas Labor Code §417.002, the amount recovered by the injured employee in the third-party action shall be used to reimburse the workers' compensation insurance carrier for **benefits, including medical benefits** that have been paid for the compensable injury, up to the amount of the insurance carrier's subrogation interest.

In addition, if the amount recovered exceeds the amount of the insurance carrier's subrogation interest, then the injured employee is responsible for paying the remaining amounts for future **benefits, including medical benefits** that the injured employee is entitled to receive. The workers' compensation carrier shall resume benefit payments when the amount of the insurance carrier's subrogation interest has been paid by the injured employee according to these requirements.

Texas Labor Code §401.011 (31) defines "medical benefit" as a payment for health care reasonably required by the nature of a compensable injury and intended to:

- Cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment;
- Promote recovery; or
- Enhance the ability of the employee to return to or retain employment.

Within the Texas Workers' Compensation Act, as indicated in 28 TAC §127.140, the designated doctor serves as an objective medical expert who DWC selects and orders to answer specific questions about the injured employee's medical status. The designated doctor does not recommend or provide treatment to the injured employee.

Because a designated doctor examination does not cure or relieve the effects of a compensable injury, promote recovery, or enhance that ability of the employee to return to work, the designated doctor examination cannot be construed as a "medical benefit" paid for the compensable injury as defined by Texas Labor Code §401.011 (31).

Texas Labor Code §408.0041 (h)(1) requires the insurance carrier to pay for designated doctor

examinations “unless otherwise prohibited by this subtitle or by an order or rule of the commissioner.” DWC finds that payment is not prohibited by Advisory 2004-02 or TLC, Chapter 417, which is the basis for the Advisory.

Because the insurance carrier failed to overcome the requirement to reimburse designated doctor examinations, DWC finds that Dr. Robinson is entitled to reimbursement from Liberty Mutual Fire Insurance.

Per explanations of benefits dated May 12, 2022, and October 18, 2022, Liberty Mutual Fire Insurance determined that \$800.00 is due for the designated doctor examination in question. This is the full amount requested by Dr. Robinson. DWC recommends reimbursement of the agreed amount by the parties.

Conclusion

The outcome of this medical fee dispute is based on the evidence presented by the requestor and the respondent at the time of adjudication. Though all evidence may not have been discussed, it was considered.

DWC finds the requestor has established that reimbursement of \$800.00 is due from Liberty Mutual Fire Insurance.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to additional reimbursement for the disputed services. It is ordered that Liberty Mutual Fire Insurance must remit to Glenn Robinson, D.C. \$800.00 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

| | | |
|-----------|--|------------------|
| | | January 24, 2023 |
| 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 under 28 TAC §133.307, which applies to disputes filed on or after **June 1, 2012**.

A party seeking review must submit DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)* and follow the instructions on the form. You can find the form at www.tdi.texas.gov/forms/form20numeric.html. DWC must receive the request within **20 days** of when you receive this decision. You may fax, mail, or personally deliver your request to DWC using the contact information on the form or the field office handling the claim. If you have questions about DWC Form-045M, please call CompConnection at 1-800-252-7031, option 3 or email CompConnection@tdi.texas.gov.

The party seeking review of the MFDR decision must deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** with any other required information listed in 28 TAC §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, opción 3 o correo electrónico CompConnection@tdi.texas.gov.