



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

Marcus Hayes, D.C.

**Respondent Name**

Markel Insurance Co.

**MFDR Tracking Number**

M4-23-0901-01

**Carrier's Austin Representative**

Box Number 17

**DWC Date Received**

December 20, 2022

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
8/8/2022	97750-FC, 8 units	\$503.36	\$387.11

### Requestor's Position

"As stated in my request for reconsideration, TDI-DWC Rule 134.203 (g) states, '...A maximum of 3 FCEs for each compensable injury shall be billed and reimbursed...' In this particular case, the 08/08/2022 FCE was the third FCE. The initial FCE was performed on 06/06/2022, the interim FCE performed on 07/19/2022 and the final FCE on 08/08/2022. A physical performance evaluation was performed on 06/29/2022, however, this claim was billed "97750-GO" and not with the "FC" modifier as it does not meet the criteria for a FCE and therefore, was not a FCE and not billed as a FCE. Therefore, AI&FATC requests Markel Ins. Co. to remit the balance due of \$503.36 for said procedure performed on said patient on said date."

**Amount in Dispute:** \$503.36

### Respondent's Position

The Austin carrier representative for Markel Insurance Co. is Downs Stanford PC. The representative was notified of this medical fee dispute on December 28, 2022. Per 28 Texas Administrative Code §133.307 (d)(1), if the DWC does not receive the response within 14 calendar days of the dispute notification, then the DWC may base its decision on the available

information. As of today, no response has been received from the insurance carrier or its representative. We will base this decision on the information available.

**Response Submitted by:** N/A

## 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 ([TAC](#)) [§133.307](#) sets out the procedures for resolving medical fee disputes.
2. [28 TAC §134.203](#) sets out the fee guideline for professional medical services.
3. [28 TAC §134.210](#) applied to fee guidelines for division-specific services.
4. [28 TAC §134.225](#) sets the reimbursement guidelines for FCEs.

### Denial Reasons

The insurance carrier reduced or denied the payment for the disputed services with the following claim adjustment codes:

- 281 – FUNCTIONAL CAPACITY EVALUATIONS ARE ALLOWED A MAXIMUM OF FOUR HOURS FOR AN INITIAL OR THREE TIMES FOR EACH INJURED WORKER.
- W3 – BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
- 790 - THIS CHARGE WAS REIMBURSED IN ACCORDANCE TO THE TEXAS MEDICAL FEE GUIDELINE.
- P12 - WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.

### Issues

1. Is Marcus Hayes, D.C. entitled to reimbursement for 8 units of 97750-FC rendered on August 8, 2022?

### Findings

1. Dr. Hayes is seeking reimbursement for a functional capacity evaluation (FCE) performed on August 8, 2022. The examination is identified as a division-specific service with billing code 97750-FC. The service was denied payment by the insurance carrier due to reason 281, defined above. Per review of submitted documentation, the division finds no evidence of three previous FCEs.

28 TAC §134.225 states: "The following applies to functional capacity evaluations (FCEs) ... 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."

Per 28 TAC §134.203 (b)(1), parties are required to apply Medicare payment policies, including

its coding, billing, correct coding initiatives (CCI) edits, modifiers, and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules to workers' compensation coding, billing, reporting, and reimbursement of professional medical services.

28 TAC §§134.203 (a)(7) and 134.210 (a) state that specific provisions contained in the Texas Labor Code or division rules shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program. However, no such conflict regarding billing or reimbursement was found that applies to a division-specific functional capacity evaluation. Therefore, Medicare reimbursement rules are applied to the examination in question.

Per [Medicare Claims Processing Manual \(cms.gov\)](#), Chapter 5, 10.7, effective February 6, 2019:

Medicare applies a multiple procedure payment reduction (MPPR) to the practice expense (PE) payment of select therapy services. The reduction applies to the HCPCS codes contained on the list of "always therapy" services ...

Many therapy services are time-based codes, i.e., multiple units may be billed for a single procedure ...

Full payment is made for the unit or procedure with the highest PE payment ... For subsequent units and procedures with dates of service on or after April 1, 2013, furnished to the same patient on the same day, full payment is made for work and malpractice and 50 percent payment is made for the PE for services submitted on either professional or institutional claims.

Procedure code 97550 is classified as "always therapy" in the 2022 Therapy Code List and Dispositions found in the [Annual Therapy Update | CMS](#). Therefore, the MPPR applies to the reimbursement of this code.

On the disputed date of service, the requestor billed CPT code 97550-FC X 8 units.

As described above, the multiple procedure discounting rule applies to the disputed service.

The MPPR Rate File that contains the payments for 2022 services is found at [www.cms.gov/Medicare/Billing/TherapyServices/index.html](http://www.cms.gov/Medicare/Billing/TherapyServices/index.html).

To determine the maximum allowable reimbursement (MAR) the following formula is used:

$(\text{DWC Conversion Factor} / \text{Medicare Conversion Factor}) \times \text{Medicare Payment} = \text{MAR}$ .

- MPPR rates are published by carrier and locality.
- The disputed date of service is August 8, 2022.
- The disputed service was rendered in zip code 77581, locality 09.
- The Medicare participating amount for CPT code 97750 at this locality is \$34.86 for the first unit, and \$25.66 for subsequent units.
- The 2022 DWC Conversion Factor is 62.46
- The 2022 Medicare Conversion Factor is 34.6062
- Using the above formula, the DWC finds the MAR is \$387.11.
- The respondent paid \$0.00
- Reimbursement of \$387.11 is recommended.

## 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.

The division finds that the requestor has established that reimbursement is due.

## **Order**

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to reimbursement for the disputed service.

It is ordered that Markel Insurance Co. must remit to Marcus Hayes, D.C. \$387.11 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

## **Authorized Signature**

_____	_____	_____ <u>May 16, 2023</u>
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](http://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](mailto: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](mailto:CompConnection@tdi.texas.gov).