



# Medical Fee Dispute Resolution Findings and Decision

## General Information

**Requestor Name**

Milton E. Kirkwood, D.O.

**Respondent Name**

Mitsui Sumitomo Insurance Co. of America

**MFDR Tracking Number**

M4-23-2649-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

June 16, 2023

## Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
March 7, 2023	Designated Doctor Examination 99456-W5-NM	\$0.00	\$0.00
	Designated Doctor Examination 99456-RE-W6	\$0.00	\$0.00
	Designated Doctor Examination 99456-RE-W7	\$0.00	\$0.00
	Designated Doctor Examination 99456-RE-W8	\$0.00	\$0.00
	Work Status Report 99080-73	\$15.00	\$0.00
	Multiple Impairment Ratings 99456-W5-MI	\$100.00	\$0.00
<b>Total</b>		<b>\$115.00</b>	<b>\$0.00</b>

## Requestor's Position

"Review of submitted documentation finds that the doctor performed an evaluation in the amount of \$1,340.00. The insurance carrier has failed to submit full payment for the Medical Fee Guidelines allowable for a State issued Designated Doctors Evaluation. I am requesting for a reimbursement of \$115.00. The claim was billed in accordance to rule 134.202 Medical Fee Guidelines (C)(iii)(D)(II)(III) for the **State of Texas**.

**Amount in Dispute:** \$115.00

## **Respondent's Position**

"The provider billed \$15 for the issuance of the DWC 73 work status report. However, that report would be included in the \$125 that the provider was paid for the ability to return to work exam. Rule 134.239 provides that when billing for a work status report that is not conducted as a part of the exams outlined in rules 134.240 and 134.250, the medical fee is based upon rules 129.5. However, the DWC 73 work status report was produced as a result of the ability to return to work exam which is one of the exams that is identified under 134.240, specifically subsection(1)(E). Accordingly, the provider is not entitled to payment of \$15 for the work status report.

Rules 134.210(e)(5) and 134.250(4)(B) address the question of whether the provider is entitled to payment for the two additional DWC 69s that he completed. The provider prepared three DWC 69s but he never provided an impairment rating because he opined that for each of them, the claimant had not reached MMI. The reimbursement language in rules 134.210 and 134.250 is based upon impairment ratings being assigned. However, all the provider did was to opine that the claimant had not reached MMI ... Yet the reimbursement under rules 134.210 and 134.250 apply to multiple impairment ratings NOT multiple DWC 69s of non-certification of mmi. The provider is not entitled to payment for the two additional DWC 69s ..."

**Response Submitted by:** Flahive, Ogden & Latson

## **Findings and Decision**

### Authority

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

### Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §127.10](#) effective November 4, 2018, sets out the procedures for designated doctor examinations.
2. [28 TAC §133.307](#) sets out the procedures for resolving medical fee disputes.
3. [28 TAC §134.210](#) sets out the fee guidelines for workers' compensation specific services.
4. [28 TAC §134.239](#) sets out billing guidelines for work status reports.
5. [28 TAC §134.240](#) sets out billing guidelines for designated doctor examinations.
6. [28 TAC §134.250](#) sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating examinations.

## Denial Reasons

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

- 234 – This procedure is not paid separately.
- R09 – CCI: CPT Manual and CMS coding manual instructions
- 236 – This procedure or procedure/modifier combination is not compatible with another procedure or procedure/modifier combination provided on the same day according to the National Correct Coding Initiative or workers compensation state regulations/fee schedule requirements.
- Notes: "HCP isn't paid for determining IR of the compensable injuries when they are not at MMI. It is unclear how the provider expects payment when the EOI injuries are not at IR either. No IR was determined for any of the injuries."
- Notes: "When a DD is asked to determine RTW status, the payment for 99080-73 is included in the W8 reimbursement."
- Notes: "Per rule 134.204, modifier MI is billed when the DD is completing multiple impairment ratings calculations. However, the non-compensable injuries are not at MMI: therefore, no addtl IR occurred."

## Issues

1. What are the services reviewed in this dispute?
2. Is Milton E. Kirkwood, D.O. entitled to additional reimbursement?

## Findings

1. Dr. Kirkwood submitted a request for medical fee dispute resolution of a designated doctor examination that addressed maximum medical improvement, extent of the compensable injury, whether disability was related to the compensable injury, and ability to return to work.

Dr. Kirkwood is seeking \$0.00 for these services. Therefore, reimbursement for these services will not be considered in this dispute.

Dr. Kirkwood is seeking \$15.00 for a work status report, represented by procedure code 99080-73, and \$100.00 for multiple impairment calculations, represented by procedure code 99456-W5-MI. These are the services considered in this dispute.

2. The insurance carrier denied payment for the work status report, stating, in part, "when a DD is asked to determine RTW status, the payment for 99080-73 is included in the W8 reimbursement." 28 TAC §134.239 states, "When billing for a work status report that is not conducted as a part of the examinations outlined in §134.240 and §134.250 of this title, refer to §129.5 of this title." Because the examination in question was performed as part of a designated doctor examination as outlined in 28 TAC §134.240, DWC finds that this service is not reimbursable.

The submitted documentation indicates that Dr. Kirkwood was asked to address maximum

medical improvement, impairment rating, and extent of injury. The insurance carrier denied payment, in part, with denial code 234 stating, "This procedure is not paid separately."

28 TAC §127.10(d), effective on the date of service, states, in relevant part, "If a designated doctor is simultaneously requested to address MMI or impairment rating and the extent of the compensable injury in a single examination, the designated doctor shall provide multiple certifications of MMI and impairment ratings that take into account each reasonable outcome for the extent of the injury."

28 TAC §134.250(4)(B) states that when multiple impairment ratings are required as a component of a designated doctor examination, the designated doctor shall be reimbursed \$50.00 for each additional impairment rating calculation.

Documentation supports that Dr. Kirkwood found that the injured employee was not at maximum medical improvement, so no impairment rating calculations were provided. Therefore, a charge for additional impairment calculations is not supported. DWC does not recommend reimbursement for this charge.

### 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 not established that additional reimbursement is due.

### **Order**

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

August 23, 2023  
\_\_\_\_\_  
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 three 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 tres o correo electrónico [CompConnection@tdi.texas.gov](mailto:CompConnection@tdi.texas.gov).