



## Medical Fee Dispute Resolution Findings and Decision General Information

**Requestor Name**

EZ Scripts LLC

**Respondent Name**

Zurich American Insurance Co.

**MFDR Tracking Number**

M4-23-3140-01

**Carrier's Austin Representative**

Box Number 19

**DWC Date Received**

August 11, 2023

### Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
08/11/2022	NDC: 67877-0321-05 Ibuprofen 800mg	\$94.56	\$94.55
08/11/2022	NDC: 67877-0223-10 Gabapentin 300mg	\$153.74	\$153.70
09/09/2022	NDC: 67877-0223-10 Gabapentin 300mg	\$153.74	\$103.80
09/09/2022	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.38	\$64.37
10/11/2022	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.20	\$64.37
10/11/2022	NDC: 67877-0223-10 Gabapentin 300mg	\$153.00	\$153.00
11/09/2022	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.38	\$64.37
11/09/2022	NDC: 67877-0223-10 Gabapentin 300mg	\$153.74	\$153.70
12/08/2022	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.38	\$64.37
12/08/2022	NDC: 67877-0223-10 Gabapentin 300mg	\$153.74	\$153.70
12/13/2022	NDC: 71093-0122-05 Gabapentin 400mg	\$153.62	\$153.62
01/04/2023	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.38	\$64.37
01/11/2023	NDC: 71093-0122-05 Gabapentin 400mg	\$153.62	\$153.62
02/02/2023	NDC: 67877-0321-05 Ibuprofen 800mg	\$64.38	\$64.37
02/09/2023	NDC: 71093-0122-05 Gabapentin 400mg	\$153.62	\$153.62
<b>Total</b>		<b>\$1,679.48</b>	<b>\$1,659.53</b>

## Requestor's Position

"Zurich Insurance North America denied the bills, claiming treatment with Dr. Lenderman is denied per a peer review done on 01/17/2023."

**Amount in Dispute:** \$1,679.48

## Respondent's Position

"These bills are subject to the final determination of Extent of Injury in the attached Decision and Order. The Requestor presents 15 bill for drugs prescribed by Dr. Lenderman for purported [diagnosis description]. See attached report from Dr. Lenderman. In the attached D&O, the ALJ found the compensable injury does NOT extend to or include an [diagnosis description]. The treatment and services the subject of this Request for Medical Fee Dispute Resolution are not medically necessary and appropriate for the compensable injury... DWC's authority to adjudicate medical fee disputes is limited to resolving 'the amount due for services determined to be medically necessary and appropriate for treatment of a compensable injury.'... Medical fee dispute resolution is limited to determination of the amount of payment due for health care determined to be medically necessary and appropriate for treatment of the injured employee's compensable injury... There is no fee dispute to resolve; these services are not for the compensable injury."

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

## 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 \(TAC\) Code §133.307](#) sets out the procedures for resolving medical fee disputes (MFDR).
2. [28 TAC §134.503](#) sets out the fee guidelines for pharmaceutical services.
3. [28 TAC §§134.530](#) and [134.540](#) set out the preauthorization requirements for pharmaceutical services.
4. [28 TAC §134.240](#) sets out guidelines of medical bill processing and auditing by insurance carriers.
5. [28 TAC, Chapter 19](#) sets out the requirements for utilization review.

## **Denial Reasons**

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

- HEAL - PRECERTIFICATION/AUTHORIZATION/NOTIFICATION ABSENT.
- HEMD - These are non-covered services because this is not deemed a 'medical necessity' by the payer.
- P12 – The provider or a different provider has billed for the exact service on a previous bill where no allowance was originally recommended.
- HE75 - Prior Authorization required to process this bill.
- B20 - A reduction was made because a different provider has billed for the exact services on a previous bill.
- 60 (B13) – The provider has billed for the exact services on a previous bill.
- XD - This bill was submitted after the billing timeliness guidelines provided.

## **Issues**

1. Did the insurance carrier raise a new defense in its response?
2. Is the insurance carrier's denial of payment based on preauthorization supported?
3. Is the insurance carrier's denial of payment based on lack of medical necessity supported?
4. Is EZ Scripts, LLC entitled to reimbursement?

## **Findings**

1. In its position statement, Flahive, Ogden & Latson, on behalf of the insurance carrier, argued that the disputed services "are subject to the final determination of Extent of Injury." The response from the insurance carrier is required by 28 TAC §133.307 (d)(2)(F) to address only the denial reasons presented to the health care provider before the request for medical fee dispute resolution (MFDR) was filed with DWC. Any new denial reasons or defenses raised shall not be considered in this review.

The submitted explanation of benefit (EOB), do not support that a denial based on extent of injury was provided to EZ Scripts, LLC before this request for MFDR was filed. Therefore, DWC will not consider this argument in the current dispute review.

2. The requester is seeking reimbursement for drugs dispensed on multiple dates of service. Review of EOBs submitted finds that the insurance carrier denied the following drugs and dates of service based on lack of preauthorization:

Ibuprofen denied on 8/11/2022, 9/9/2022, 10/11/2022, 11/9/2022, and 1/4/2023.

Gabapentin denied on 8/11/2022, 9/9/2022, 10/11/2022, and 11/9/2022.

Per 28 TAC §134.530 (b)(1) and §134.540 (b), preauthorization is only required for:

- drugs identified with a status of "N" in the current edition of the ODG Appendix A;
- any compound prescribed before July 1, 2018, that contains a drug identified with a status of "N" in the current edition of the ODG Appendix A;
- any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and
- any investigational or experimental drug.

DWC finds that the drugs in question, ibuprofen, and gabapentin, were not identified with a status of "N" in the applicable edition of the ODG, *Appendix A* for the dates of service reviewed in this dispute. Therefore, these drugs did not require preauthorization for this reason.

The submitted documentation does not support that the disputed drugs were compounds. Therefore, the drugs did not require preauthorization for this reason.

The submitted documentation does not support that the disputed drugs were experimental or investigational. Therefore, the drugs did not require preauthorization for this reason.

DWC concludes that the insurance carrier's denial of payment of the disputed drugs, ibuprofen, and gabapentin, based on lack of preauthorization, is not supported for the dates of service in question.

3. The requestor seeks reimbursement for drugs dispensed on multiple dates of service. Review of EOBs submitted finds that the insurance carrier denied the following drugs and dates of service based on lack of medical necessity:

Ibuprofen denied on 12/8/2022, and 2/2/2023.

Gabapentin denied on 12/8/2022, 12/13/2022, 1/11/2023, and 2/9/2023.

DWC Rule 28 TAC §137.100 (e) states, "An insurance carrier may retrospectively review, and if appropriate, deny payment for treatments and services not preauthorized under subsection (d) of this section when the insurance carrier asserts that health care provided within the Division treatment guidelines is not reasonably required. The assertion must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established by Labor Code §413.017."

Retrospective utilization review is defined in 28 TAC §19.2003 (b)(31) as, "A form of utilization review for health care services that have been provided to an injured employee. Retrospective utilization review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted."

Additionally, 28 TAC §133.240 (q) states, in relevant part, “when the insurance carrier is questioning the medical necessity or appropriateness of the health care services, the insurance carrier shall comply with the requirements of §19.2010 of this title..., including the requirement that prior to issuance of an adverse determination the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor ...”

28 TAC §133.307 (d)(2)(I) which sets out the procedures for medical fee dispute resolutions, states in pertinent part, “Response. On receipt of the request, the respondent must provide any missing information not provided by the requestor and known to the respondent. The respondent must also provide the following information and records: ... (I) If the medical fee dispute involves medical necessity issues, the insurance carrier must attach documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning General Standards of Utilization Review).”

Submitted documentation does not support that the insurance carrier followed the appropriate procedures for a retrospective review denial of the disputed services outlined in §19.2003 (b)(31) or §133.240 (q). DWC finds that the insurance carrier did not appropriately raise lack of medical necessity for the services in this dispute. As a result, the insurance carrier’s denial reason, based on “services not deemed a medical necessity”, is not supported. Therefore, the disputed services are reviewed pursuant to the applicable rules and guidelines.

4. The requestor is seeking reimbursement in the total amount of \$1,679.48 for drugs billed on disputed dates of service August 11, 2022, through February 9, 2023. Because the insurance carrier failed to support its denial reasons for the disputed drugs, DWC finds that EZ Scripts LLC, is entitled to reimbursement.

DWC finds that 28 TAC §134.503(c) applies to the reimbursement for the drugs in dispute, which states, “(c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of: (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

(A) Generic drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;

(B) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount; ...”

<b>Date of Service (DOS)</b>	<b>Drug</b>	<b>NDC #</b>	<b># Units Billed</b>	<b>Price/ Unit</b>	<b>Generic (G)</b>	<b>AWP Formula</b>	<b>Lesser of AWP and Billed = MAR</b>
8/11/22	Ibuprofen 800mg	67877032105	90	0.80490	G	\$94.55	\$94.55
8/11/22	Gabapentin 300mg	67877022310	90	1.33070	G	\$153.70	\$153.70
9/9/22	Gabapentin 300mg	67877022310	60	1.33070	G	\$103.80	\$103.80
9/9/22	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
10/11/22	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
10/11/22	Gabapentin 300mg	67877022310	90	1.33070	G	\$153.70	\$153.00
11/9/22	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
11/9/22	Gabapentin 300mg	67877022310	90	1.33070	G	\$153.70	\$153.70
12/8/22	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
12/8/22	Gabapentin 300mg	67877022310	90	1.33070	G	\$153.70	\$153.70
12/13/22	Gabapentin 400mg	71093012205	90	1.33000	G	\$153.63	\$153.62
1/04/23	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
1/11/23	Gabapentin 400mg	71093012205	90	1.33000	G	\$153.63	\$153.62
2/2/23	Ibuprofen 800mg	67877032105	60	0.80490	G	\$64.37	\$64.37
2/9/23	Gabapentin 400mg	71093012205	90	1.33000	G	\$153.63	\$153.62
<b>MAR</b>							<b>\$1,659.53</b>

DWC finds the MAR is \$1,659.53, as shown in calculations above, therefore this amount 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.

DWC finds the requester has established that reimbursement in the amount of \$1,659.53 is due.

## **Order**

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to reimbursement for the disputed services. It is ordered that Zurich American Insurance Co., must remit to EZ Scripts LLC, \$1,659.53 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

## **Authorized Signature**

October 5, 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](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).