



Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

EZ Scripts LLC

Respondent Name

AIU Insurance Co.

MFDR Tracking Number

M4-23-3143-01

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
September 30, 2022	Diclofenac Sodium 3% Gel NDC 68462035594	\$1,478.38	\$1,478.33
October 14, 2022	Diclofenac Sodium 3% Gel NDC 68462035594	\$1,478.38	\$446.30
October 26, 2022	Diclofenac Sodium 3% Gel NDC 68462035594	\$1,478.38	\$1,478.33
November 10, 2022	Diclofenac Sodium 3% Gel NDC 51672136307	\$1,478.38	\$1,478.33
December 12, 2022	Diclofenac Sodium 3% Gel NDC 00472178310	\$1,478.38	\$1,478.33
December 27, 2022	Diclofenac Sodium 3% Gel NDC 45802011101	\$143.50	\$143.46
January 10, 2023	Diclofenac Sodium 3% Gel NDC 51672136307	\$1,478.38	\$1,478.33
March 7, 2023	Meloxicam 15 mg NDC 29300012510	\$179.45	\$0.00
Total		\$9,193.23	\$7,981.39

Requestor's Position

"Sedgwick Claims Management Services denied payment for Diclofenac SOD Gel 3%. The only PBM issued a payment of \$6.24 for 30 units of Meloxicam 15 MG, NDC 29300-0125-10 filled on 03/07/2023. The fee schedule price for this medication is \$185.69."

Amount in Dispute: \$9,193.23

Respondent's Position

"These bills are predominantly for diclofenac topical gel 3%, which is not in the Closed Formulary. Carrier has denied coverage for this topical drug for the use in this compensable injury, The ODG does not address any formulation beyond 1%, which is not recommended for the conditions consistent with the compensable injury. It is also not recommended with concomitant use of NSAIDs...such as meloxicam in this case."

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 \(TAC\) §133.307](#) sets out the procedures for resolving medical fee disputes.
2. [28 TAC §134.500](#) defines terms found in the rules for pharmaceutical services.
3. [28 TAC §134.503](#) sets out the fee guidelines for pharmaceutical services.
4. [28 TAC §134.530](#) sets out the preauthorization requirements for pharmaceutical services.
5. [28 TAC, Chapter 19](#) sets out the requirements for utilization review.

Denial Reasons

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

- HE83 – Duplicate Paid/Captured Claim
- B20:N3 – Procedure/service was partially or fully furnished by another provider.
- P12:ZR – Workers' compensation jurisdictional fee schedule adjustment.
- N3(B20) – A reduction was made because a different provider has billed for the exact services on a previous bill.

- ZR(P12) – The provider or a different provider has billed for the exact service on a previous bill where no allowance was originally recommended.
- CMR – Payment disallowed: Billing error: Line item service previously processed electronically and reimbursement/denial decision previously rendered.
- B13:60 – Previously paid. Payment for this claim/service may have been provided in a previous payment.
- 60(B13) – The provider has billed for the exact services on a previous bill.
- HEMD – These are non-covered services because this is not deemed a “medical necessity” by the payer.
- HE70 – Product/Service Not Covered.
- VPEB – Denied-Based on entitlement of benefits.
- P12:D3 – Workers’ compensation jurisdictional fee schedule adjustment.
- D3(P12) – The charge for the prescription drug is greater than the maximum reimbursement for a generic drug.

Issues

1. What are the services considered in this dispute?
2. Is a denial based on entitlement to benefits supported?
3. Are the drugs in question covered services?
4. Is AIU Insurance Co.’s denial based on medical necessity supported?
5. Is AIU Insurance Co.’s denial that services were provided by another provider supported?
6. Is EZ Scripts entitled to reimbursement for the services in this dispute?

Findings

1. EZ Scripts is seeking reimbursement for dispensing Diclofenac Sodium 3% on dates of service from September 30, 2022, through January 10, 2023, and Meloxicam 15 mg on March 7, 2023.

EZ Scripts billed \$185.69 for Meloxicam. Records submitted to the DWC indicate that the insurance carrier paid \$6.24 on March 20, 2023, and \$179.45 on May 10, 2023 for this drug. The total reimbursement was \$185.69. Because the insurance carrier paid this drug in full, it will not be considered in this dispute.

The DWC will consider reimbursement for Diclofenac Sodium 3% on dates of service from September 30, 2022, through January 10, 2023.

2. Per explanation of benefits dated January 24, 2023, reimbursement for date of service January 10, 2023, was denied based, in part, on entitlement to benefits. Per 28 TAC §133.307 (d)(2)(H), the respondent is required to attach a copy of any related Plain Language Notice (PLN) if the medical fee dispute involves compensability, extent of injury, or liability.

Review of the submitted documentation finds that the respondent failed to attach a copy of a related PLN on behalf of the insurance carrier to support a denial based on compensability, extent of injury, or liability.

3. AIU Insurance Co. denied dates of service October 26, 2022, and December 27, 2022, in part, with code VPEB, "Denied-Product/Service Not Covered." In its position statement, the respondent stated, "These bills are predominantly for diclofenac topical gel 3%, which is not in the Closed Formulary."

28 TAC §134.500(3) states: "Closed formulary--All available Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use, but excludes:

- (A) drugs identified with a status of "N" in the current edition of the Official Disability Guidelines Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;
- (B) any prescription drug created through compounding prescribed before July 1, 2018 that contains a drug identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;
- (C) any prescription drug created through compounding prescribed and dispensed on or after July 1, 2018; and
- (D) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a)."

The DWC finds that Diclofenac Sodium is not excluded from the pharmacy formulary as defined in 28 TAC §134.500(3). The DWC concludes that this drug is a covered service. Therefore, the insurance carrier's denial for this reason is not supported.

4. Per explanation of benefits dated December 28, 2022, the insurance carrier denied date of service December 12, 2022, in part, stating, "These are non-covered services because this is not deemed a 'medical necessity' by the payer."

Per 28 TAC §133.240, "(q) When denying payment due to an adverse determination under this section, the insurance carrier shall comply with the requirements of §19.2009 of this title ... Additionally, in any instance where 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 ..."

The DWC finds no evidence that a utilization review was performed in accordance with 28 TAC, Chapter 19, for the drugs in question. This denial reason is not supported.

5. The drugs in question were also denied, in part, indicating that they may have been provided by a different provider. No evidence was found to support this denial reason.
6. Because the insurance carrier failed to support its denial of payment for the services in question, EZ Scripts is entitled to reimbursement.

The reimbursement considered in this dispute is calculated according to 28 TAC §134.503(c)(a), with relevant formula for generic drugs: $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount.

Date	Drug	NDC	AWP per Unit	Billed Units	Multiplier	Dispensing Fee	Total
9/30/2022	Diclofenac Sodium 3% Gel	68462035594	11.7946	100	1.25	\$4.00	\$1,478.33
10/14/2022	Diclofenac Sodium 3% Gel	68462035594	11.7946	30	1.25	\$4.00	\$446.30
10/26/2022	Diclofenac Sodium 3% Gel	68462035594	11.7946	100	1.25	\$4.00	\$1,478.33
11/10/2022	Diclofenac Sodium 3% Gel	51672136307	11.7946	100	1.25	\$4.00	\$1,478.33
12/12/2022	Diclofenac Sodium 3% Gel	00472178310	11.7946	100	1.25	\$4.00	\$1,478.33
12/27/2022	Diclofenac Sodium 3% Gel	45802011101	1.1157	100	1.25	\$4.00	\$143.46
1/10/2023	Diclofenac Sodium 3% Gel	51672136307	11.7946	100	1.25	\$4.00	\$1,478.33
						Total	\$7,981.39

The total allowable reimbursement is \$7,981.39. 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 requestor has established that reimbursement of \$7,981.39 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 AIU Insurance Co. must remit to EZ Scripts \$7,981.39 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

November 15, 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. 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.

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 electronico CompConnection@tdi.texas.gov.