



Medical Fee Dispute Resolution Findings and Decision General Information

Requestor Name

Jasso Gabriel, PHD

Respondent Name

Cherokee Insurance Co.

MFDR Tracking Number

M4-24-0316-01

Carrier's Austin Representative

Box Number 16

DWC Date Received

October 6, 2023

Summary of Findings

Date(s) of Service	Disputed Services	Amount in Dispute	Amount Due
June 16, 2023	96116	\$0.00	\$0.00
June 16, 2023	96121	\$0.00	\$0.00
June 16, 2023	96132	\$0.00	\$0.00
June 16, 2023	96133	\$954.93	\$954.93
June 16, 2023	96136	\$0.00	\$0.00
June 16, 2023	96137	\$150.87	\$150.87
Total		\$1,105.80	\$1,105.80

Requestor's Position

“DESIGNATED DOCTOR REFERRED TESTING/PRE-AUTHORIZATION:

Per Rule 127.10 (c), the Designated Doctor shall perform additional testing when necessary to resolve the issue in question. The Designated Doctor may also refer an injured employee to other health care providers when the referral is necessary to resolve the issue(s) in question and the Designated Doctor is not qualified to fully resolve the issue in question. Any additional testing or referral required for the evaluation is NOT subject to pre-authorization requirements or retrospective review requirements. Therefore, NO PRE-AUTHORIZATION IS REQUIRED. The provider IS NOT required to be in the insurance carrier's network for Designated Doctor referred testing.”

Amount in Dispute: \$1,105.80

Respondent's Position

The Austin carrier representative for Cherokee Insurance Co., is Adami Shuffield Scheihing & Burns. The representative was notified of this medical fee dispute on October 17, 2023. 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. [Texas Labor Code §413.014](#) sets out the requirements of medical necessity review and certification of healthcare.
4. [28 TAC §134.600](#) sets out the procedures for preauthorization requirements of healthcare services.

Adjustment Reasons

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

- 641 – THE MEDICALLY UNLIKELY EDITS (MUE) FROM CMS HAS BEEN APPLIED TO THIS PROCEDURE CODE.
- 97 – THE BENEFIT FOR THIS SERVICE IS INCLUDED IN THE PAYMENT/ALLOWANCE FOR ANOTHER SERVICE/PROCEDURE THAT HAS ALREADY BEEN ADJUDICATED.
- W3 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.

Issues

1. Are the insurance carrier's reduction adjustment reasons supported?
2. Is the requestor entitled to additional reimbursement for CPT Code 96133?
3. Is the requestor entitled to additional reimbursement for CPT Code 96137?

Findings

1. The dispute concerns medical professional services of neuropsychological evaluation and testing rendered on June 16, 2023. The insurance carrier reduced the reimbursement allowance for CPT codes 96133 x 12 units and 96137 x 13 units, using reason codes 641 and 97 described above.

CPT code 96133 is described as neuropsychological testing evaluation services provided by a physician or other qualified healthcare professional, used for each additional hour spent on administering the test, interpreting results, preparing the report, and providing feedback. It is billed in addition to the primary code 96132 used for the initial hour of service.

CPT code 96137 is described as the administration and scoring of two or more psychological or neuropsychological tests by a physician or other qualified healthcare professional, used when the provider spends an additional 30 minutes beyond the initial 30 minutes administering and scoring these tests. The tests are designed to measure a psychological function linked to a particular brain structure or pathway. It is billed in addition to the primary code 96136 used for the first 30 minutes.

The insurance carrier reduced reimbursement for CPT codes 96133 and 96137 in part due to a medically unlikely edit (MUE) reduction reason code. MUE's were implemented by Medicare in 2007. MUE's set a maximum number of units for a specific service that a provider would report under most circumstances for a single patient on a single date of service. Medicare developed MUE edits to detect potentially medically unnecessary services.

Although DWC adopts Medicare payment policies by reference in applicable Rule §134.203, paragraph (a)(7) of that rule states that specific provisions contained in the Division of Workers' Compensation rules shall take precedence over any conflicting provision adopted by the Medicare program. The Medicare MUE payment policy is in direct conflict with Texas Labor Code §413.014 which requires that all determinations of medical necessity shall be made prospectively or retrospective through utilization review; and with Rule §134.600 which sets out the procedures for preauthorization and retrospective review of professional services such as those in dispute here.

DWC concludes that Labor Code §413.014 and 28 TAC §134.600 take precedence over Medicare MUE's; therefore, the respondent's reduction reason based on MUE is not supported.

The insurance carrier also used reimbursement reduction reason 97, stating that the benefit for the service is included in the payment of another service. DWC completed National Correct Coding Initiative (NCCI) edit checks and found no bundling relationships or edit conflicts with any of the CPT codes billed on the disputed date of service. Therefore, the respondent's reduction reason based on the service being included in the payment of another service, is not supported.

2. The requestor is seeking additional reimbursement in the amount of \$954.93 for 12 units of CPT code 96133 rendered on June 16, 2023. Because the insurance carrier's reimbursement reduction reason was not supported, the disputed services will be reviewed for adjudication.

DWC finds that 28 TAC §134.203 applies to the reimbursement of CPT code 96133.

28 TAC §134.203(b)(1) states, "For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules."

28 TAC §134.203(c) states in pertinent part, "To determine the maximum allowable reimbursement (MAR) for professional services, system participants shall apply the Medicare payment policies with minimal modifications. (1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83. For Surgery when performed in a facility setting, the established conversion factor to be applied is \$66.32. (2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors and shall be effective January 1st of the new calendar year."

To determine the MAR the following formula is used:

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

- The disputed date of service is June 16, 2023.
 - The disputed service was rendered in zip code 75230, locality 11, Dallas; carrier 4412.
 - The Medicare participating amount for CPT code 96133 in 2023 at this locality is \$100.22 per hour (unit).
 - The 2023 DWC Conversion Factor is 64.83
 - The 2023 Medicare Conversion Factor is 33.8872.
 - Using the above formula, DWC finds the MAR is \$2,300.78 for 12 units of CPT code 96133 on the disputed date of service.
 - The respondent paid \$1,342.11.
 - The difference between the MAR and the amount paid is \$958.67.
 - The requestor is seeking \$954.93.
 - Additional reimbursement in the amount of \$954.93 for CPT code 96133 rendered on June 16, 2023, is recommended.
3. The requestor is seeking additional reimbursement in the amount of \$150.87 for CPT code 96137 rendered on June 16, 2023. Because the insurance carrier's reimbursement reduction reason was not supported, the disputed services will be reviewed for adjudication.

DWC finds that 28 TAC §134.203, as quoted in finding number 1 above, applies to the reimbursement of CPT code 96137.

To determine the MAR the following formula is used:

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

- The disputed date of service is June 16, 2023.
- The disputed service was rendered in zip code 75230, locality 11, Dallas; carrier 4412.

- The Medicare participating amount for CPT code 96137 in 2023 at this locality is \$39.87 per half hour (unit).
- The 2023 DWC Conversion Factor is 64.83
- The 2023 Medicare Conversion Factor is 33.8872.
- Using the above formula, DWC finds the MAR is \$991.58 for 13 units of CPT code 96137 on the disputed date of service.
- The respondent paid \$839.08.
- The difference between the MAR and the amount paid is \$152.50.
- The requestor is seeking \$150.87.
- Additional reimbursement in the amount of \$150.87 for CPT code 96137 rendered on June 16, 2023, 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 DWC finds the requestor has established that additional reimbursement is due in the total amount of \$1,105.80.

ORDER

Under Texas Labor Code §§413.031, the DWC has determined the requestor is entitled to additional reimbursement for the disputed services rendered on June 16, 2023. It is ordered that the Respondent, Cherokee Insurance Co., must remit to the Requestor, Jasso Gabriel, PhD., \$1,105.80 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

		December 19, 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.