DOCKET NO. 453-03-0995.M4
MDR TRACKING NUMBER: M4-02-2695-01

KINGWOOD MEDICAL CENTER	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	
	§	
TEXAS WORKERS' COMPENSATION	§	**OF**
COMMISSION and TPCIGA FOR	§	
RELIANCE NATIONAL INSURANCE	§	
COMPANY	§	
Respondents	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case involves a dispute over whether reimbursement is appropriate for hospital services in connection with spinal surgery provided to ___, (Claimant) at Kingwood Medical Center (Provider). Provider billed Reliance National Insurance Company (Carrier) for the hospital services and Carrier denied payment. Provider asserted it is entitled to reimbursement for the hospital services in connection with spinal surgery. The amount in controversy is $14,443.59.

The Administrative Law Judge (ALJ) concludes the Provider is not entitled to reimbursement for services rendered in connection with the spinal surgery.

I.
JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of facts and conclusions of law without further discussion here.

Provider appealed the findings and decision of the Medical Review Division's (MRD) medical dispute resolution, which held Provider was not entitled to reimbursement in its docket number M4-02-2695-01, which was issued on October 2, 2002. A hearing convened before the State Office of Administrative Hearings (SOAH) on December 17, 2002, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and was represented by Leon Pegg, attorney. Carrier appeared through TPCIGA, and was represented by James Laughlin, attorney. The hearing concluded that same day and the record closed.

II.
DISCUSSION

2. Background Facts.

Claimant ___ sustained a compensable injury on ___. At some point during Claimant's treatment, Claimant was referred to Provider for spinal surgery. The treating doctor(s) who recommended spinal surgery did not submit a form TWCC-63, or obtain pre-authorization for the surgery. On February 12, 2002, Claimant underwent spinal surgery at Provider's facility. The surgeon, assistant surgeon, and anesthesiologist submitted invoices to Carrier and were paid for their services. The invoice submitted by Provider was not paid by Carrier.

The Texas Labor Code requires a provider obtain preauthorization for certain procedures before it can be entitled to reimbursement for those procedures.[1] A treating doctor who recommends spinal surgery must obtain preauthorization. The Labor Code has a special provision, a so-called second opinion process for a treating doctor that seeks preauthorization for spinal surgery.[2]

The spinal surgery second opinion process begins when a claimant's treating doctor submits a TWCC-63 to the Commission. The carrier then has the opportunity to request the claimant receive a second opnion. The Commission sends out a list of doctors to the carrier and the treating doctor. Each party chooses one doctor to examine the claimant. These doctors are commonly referred to as second opinion doctors. Each second opinion doctor forwards his opinion to the Commission. The Commission then notifies the treating doctor of the findings of the second opinion doctors.

If both second opinion doctors concur with the claimant's treating doctor, spinal surgery at the expense of the carrier is authorized. If both second opinion doctors disagree with the treating doctor, the carrier is not liable for payment of the surgery unless the Commission orders the carrier to pay for the spinal surgery. If one second opinion doctor concurs and one does not, the carrier is liable for payment but is entitled to request a hearing before the Commission to determine if the weight of the medical evidence calls for surgery.

B. Applicable Law.

Under the TEX. LAB. CODE ANN. § 408.021(a) an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury, (2) promotes recovery, or (3) enhances the ability of the employee to return to or retain employment.

Additionally, under the TEX. LAB. CODE ANN. § 133.206(b)(1), the carrier is liable for the reasonable and necessary costs of spinal surgery in the following situations: (A) medical emergencies; (B) carrier waiver of second opinion; (C) no carrier request within 14 days of acknowledgment date, for a second opinion; (D) concurrence by both second opinion doctors; (E) no timely appeal after two second opinions, only one of which is a concurrence; and (F) final and non-appealable commission order to pay.

Finally, under the TEX. LAB. CODE ANN. § 133.206(b)(2), the medically necessary care related to the spinal surgery generally includes the services of the surgeons and ancillary providers for the hospital admission, and the hospital services.

3. Arguments and Evidence.

1. Is preauthorization necessary in matters where compensability is in dispute?

[1] TEX. LAB. CODE ANN § 134.600, *et seq.*

[2] TEX. LAB. CODE ANN § 133.206, *et seq.*

Provider admitted the surgeons who performed the spinal surgery did not submit a form TWCC-63 to the Commission or otherwise comply with the second opinion process. Provider first argued it did not have to comply with the second opinion process because the issue of compensability was in dispute at the time Claimant's treating doctor(s) would have initiated the second opinion process. Indeed, both parties participated in a benefit review conference before the Commission on January 31, 2001. Neither party could agree on the compensability issues, so this matter was set for a contested case hearing in April, 2001. Prior to the contested case hearing, Claimant underwent spinal surgery at Provider's facility. Provider argued it was "highly unlikely the Carrier would have issued any authorization for any medical services relating to an injury" where the Carrier disputed compensability. In other words, Provider argued because the Carrier disputed compensability, denial of its pre-authorization was imminent, so why bother? Unfortunately for Provider it could not point to any statute that excuses any provider from seeking pre-authorization or initiating the second opinion process under these circumstances. Additionally, the Carrier argued Provider's position assumes what the Carrier would (or would not) do and allows the doctors to disregard the second opinion process, based on that assumption. The ALJ was not convinced the Provider in this case had justification to circumvent the rules just because it assumed Carrier would deny any request for preauthorization. Furthermore, Provider was unable to show the ALJ any statute that allowed Provider a free pass under these circumstances.

2. Is an ancillary provider entitled to reimbursement if the treating doctor fails to obtain preauthorization?

Provider next argued it should not be bound by the treating doctor's failure to begin the second opinion process because, as a hospital, it cannot initiate the process. Carrier pointed out this argument has already been addressed by the Commission and SOAH. In a proceeding before the Commission, an anesthesiologist argued it was entitled to reimbursement after it provided its services in connection with a surgical procedure. In that matter, the treating doctor failed to obtain preauthorization but the anesthesiologist asserted it provided its services in good faith and should not be denied reimbursement based on the treating doctor's failure to obtain preauthorization. The Commission held the anesthesiologist who failed to ascertain that treating doctor had not obtained preauthorization was not entitled to reimbursement. The Commission reasoned, "petitioner is now paying tuition in the school of experience with the realization that some quality assurance activity is necessary."[3]

In a hearing before SOAH, another ancillary provider was denied reimbursement after the treating doctor failed to obtain preauthorization for a service where preauthorization was required. In this case, the provider performed the required services in good faith that the treating doctor obtained preauthorization, but that was not the case. The treating doctor had not obtained preauthorization and the ancillary provider was denied reimbursement. The ALJ in that order held, "whether the Petitioner (ancillary provider) knew what services had been preauthorized at the time she was

[3] TWCC APA Hearing 95-00361-MR-AO/D (August 16, 1996, HO DeRuyter).

treating the claimant is irrelevant with respect to the carrier's liability."[4] The ALJ in that matter further held where preauthorization was required, the duty to know and to inquire is that of the provider and ancillary providers.[5] The ALJ in this matter is not persuaded the ancillary providers are entitled to reimbursement since the treating doctor did not obtain preauthorization.

3. Is Carrier liable for reimbursement after the Commission orders same?

Provider and Carrier participated in a contested case hearing before the Commission to decide the issue of compensability on April 3, 2001. In its order dated, April 5, 2001, the Commission found Claimant sustained a compensable injury and ordered the Carrier to pay medical benefits. Provider argued Carrier was liable for reimbursement of the spinal surgery in accordance with the Commission's order. Provider further argued Carrier was liable under TEX. LAB. CODE ANN. § 133.206(b)(1)(F), which says a carrier is liable for spinal surgery costs after a final and nonappealable Commission order to pay. Carrier argued the language contained in of the Commission's order was generic and did not mean Carrier was liable for the cost of spinal surgury because that was not the issue of the contested case hearing. The issue was whether or not Claimant sustained a compensable injury. Carrier argued the Commission's order to pay benefits was qualified by the following statement: "The Carrier is further ordered to pay medical benefits **in accordance with this decision, the Act and the implementing Rules.**" (Emphasis added)

Carrier argued Provider is not entitled to reimbursement in this matter, because although the Commission ordered Carrier to pay medical benefits, the Commission also stipulated those benefits be in accordance with the Act and implementing Rules. Part of the Act and Rules are TEX. LAB. CODE ANN. § 134.600, *et seq.,* and TEX. LAB. CODE ANN. § 133.206, *et seq.,* which outline the process for spinal surgery preauthorization. The ALJ finds Provider failed to comply with the applicable rules, and therefore, is not entitled to reimbursement under the Commission's order of April 5, 2001.

4. Can Carrier deny reimbursement to hospital after it paid other providers for same service that had not been preauthorized?

Provider finally asserted Carrier cannot deny reimbursement to the hospital after it paid the surgeon, assistant surgeon and anesthesiologist for their services. The Provider could not point to any statute or case law to support this position and the Carrier's arguments that Provider is not entitled to reimbursement are more persuasive. First, Carrier argued payment to other providers (intentional or accidental) does not cure another provider's failure to comply with the rules regarding preauthorization. Second, a carrier cannot, by its own initiative, waive a provider's failure to comply with the Commission's rules. Carrier argued the rules regarding preauthorization are in place to protect the injured worker and a carrier has no authority to waive a Commission rule that would

[4] SOAH Docket No. 453-99-1594.M4 (February 3, 2000, ALJ Pacey). Judge Pacey continued, "A health care provider who relies on another provider's preauthorization request is bound by the same conditions as the requesting provider. This is not a problem than can fairly be laid at the door of the carrier."

[5] *See id.*

allow a provider to circumvent the Commission's rules. The ALJ is not persuaded Carrier waived its right to deny reimbursement to Provider even though other providers were paid for their services in regard to Claimant's spinal surgery.

III.
FINDINGS OF FACT

1. Claimant, ___, sustained a compensable injury on _____.

2. Claimant's treating doctor recommended Claimant undergo spinal surgery.

3. Claimant's treating doctor did not submit a form TWCC-63 to the Commission, nor did he obtain preauthorization from Carrier to perform spinal surgery on Claimant.

4. On February 12, 2002, Claimant underwent spinal surgery at Kingwood Medical Center (Provider).

5. The surgeon, assistant surgeon, and anesthesiologist submitted invoices to Reliance National Insurance Company (Carrier). Carrier paid these providers for their services.

6. Provider requested reimbursement from Carrier and was denied based on no preauthorization was obtained before the spinal surgery was performed.

7. Provider filed a Request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission (Commission), seeking reimbursement for the spinal surgery.

8. On October 2, 2002, the Commission's Medical Review Division found Provider was not entitled to any reimbursement.

9. Provider filed a request for hearing before the State Office of Administrative Hearings (SOAH).

10. Notice of the hearing was sent November 6, 2002.

11. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

12. The hearing was held December 17, 2002, with ALJ Steven M. Rivas presiding and representatives of the Provider, and Carrier, participating. The hearing was adjourned and the record closed the same day.

13. None of the providers obtained preauthorization for the spinal surgery that was performed on Claimant on February 12, 2002.

14. No statute or other authority excuses Provider from obtaining preauthorization in this matter.

15. Provider is not entitled to any reimbursement.

IV.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq*.

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed in accordance with TEX. LAB. CODE ANN. § 408.021.

5. The request for preauthorization and the second opinion process was not performed in accordance with TEX. LAB. CODE ANN. § 133.206, *et seq*.

6. Pursuant to foregoing Findings of Facts and Conclusions of Law, Provider is not entitled to any reimbursement.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Kingwood Medical Center, is not entitled to any from the Carrier, Reliance National Insurance Company, for the spinal surgery performed on Claimant.

SIGNED this 6th day of June, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

_____

STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE