

**DOCKET NO. 453-03-2260.M4
MDR TRACKING NO. M4-02-4758-01**

**FIREMAN'S FUND
INSURANCE COMPANY,**
Petitioner

v.

ATLANTIS HEALTHCARE CLINIC,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Fireman's Fund Insurance Company (Carrier) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Worker's Compensation Commission ordering reimbursement to Atlantis Healthcare Clinic (Provider) in the amount of \$1,006 for treatment of a compensable injury. The Administrative Law Judge (ALJ) concludes the Carrier should not reimburse the Provider for treatment, but should not itself be reimbursed for payment already made.

II. PROCEDURAL HISTORY, EVIDENCE, AND BASIS FOR DECISION

The ALJ convened a hearing on April 10, 2003. Carrier was represented by Alain P. Collins, attorney. The Provider appeared *pro se* via telephone. At the conclusion of the hearing, the record was closed.

The documentary record in this case consisted of explanations of review, printouts of computer records showing payment, and copies of canceled checks. Additionally, oral testimony was given by April Gutierrez of Gallagher Bassett Services, a third party administrator, and Ben Hibgee, D.C., for the Provider.

The issue presented is whether the Petitioner is relieved of any responsibility to reimburse the Provider because payment has already been made. Additionally, the Carrier requested that the Provider be ordered to make reimbursement for accidental overpayments.

The Carrier did not present the latter issue to the MRD for consideration. Additionally, the issue was not raised in the hearing request dated January 23, 2003. This issue was previously discussed in Docket No. 453-02-0249.M5:

Essentially, it offered a trial amendment of its pleadings, adding a claim for refund of the amounts it paid to its request for relief from the award made by the MRD. The Carrier provided no rationale for why i[t] failed to present its refund claim to the MRD for consideration, and/or to plead it in its request for a contested case hearing. 1 TEX. ADMIN CODE (TAC) § 155.29. It provided no authority for the proposition that a party in a TWCC fee dispute can bring an entirely new claim for the first time in the contested case hearing. Further, even if a new claim can be raised here, since it was not raised when the hearing was requested, the Notice of Hearing issued by the Commission on September 26, 2001, did not provide notice to the Provider of this claim. 28 TAC § 148.4(b). Based on the scheme for contested-case review of medical fee disputes set forth in TEX. LABOR CODE ANN. § 413.031 and 28 TAC § 148.1, *et. seq.*, the ALJ concludes that the Carrier did not properly and timely raise the issue of refund of amounts it paid for the initial two hours of physical therapy service. The ALJ cannot consider it in this contested case. 1 TAC § 155.25(a). The only issue in this case will be the additional reimbursement ordered by the MRD.

The ALJ agrees with the Carrier that overpayments should be refunded because no party should be unjustly enriched at the expense of another party. However, as stated above, the ALJ cannot consider the issue in this contested case.

Based on the evidence, the ALJ concludes that the Petitioner's appeal should be granted; however reimbursement for overpayments will not be ordered. The particular facts, reasoning, and legal analysis in support of this decision are set forth below in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. On ____, the Claimant suffered a compensable injury to her fingers.
2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Fireman's Fund Insurance Company (Carrier).
3. The Claimant was treated for the compensable injury by Ben Higbee, D.C. of Atlantis Healthcare Clinic (Provider).

4. The Provider treated the Claimant's injury with various medical procedures billed under CPT Codes 99213 (office visit), 97110 (therapeutic procedure) 97250 (myofascial release), and 97265 (joint mobilization) from August 7, 2001, to August 22, 2001.¹
5. The Carrier paid the Provider \$1,211 for the treatment referred to in Finding of Fact No. 4.
6. The Provider timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).
7. On January 13, 2002, the Commission's Medical Review Division issued its Findings and Decision ordering the Carrier to reimburse the Provider \$1,006 for the treatment referred to in Finding of Fact No. 4.²
8. On January 23, 2003, the Carrier filed a request for hearing to contest the order for reimbursement referred to in Finding of Fact No. 7.
9. The Commission sent notice of the hearing to the parties on March 4, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
10. The hearing was held on April 10, 2003, and all parties appeared and participated.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ch. 2003.
3. The Notice of Hearing issued by the Commission conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.

¹ Dates of service prior to August 7, 2001, were not considered by the MRD and are not at issue in this appeal.

² The ALJ believes that the correct date for the decision is January 13, 2003.

4. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. § 413.031.
5. Based on Finding of Fact No. 5 and Conclusion of Law No. 4, the Carrier is not required to reimburse Provider.
6. The Carrier is not entitled to reimbursement for overpayments. TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE § 148.1, *et seq.*

ORDER

IT IS, THEREFORE, ORDERED that the Fireman's Fund Insurance Company shall not be required to reimburse Atlantis Healthcare Clinic for the amount claimed.

ISSUED this 23rd day of May, 2003.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**