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| LIBERTY INSURANCE CORPORATION, | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| | § | |
| v. | § | OF |
| | § | |
| EAST HARRIS COUNTY ORTHOPEDICS, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

I. INTRODUCTION

Liberty Insurance Corporation (Carrier) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD). In that decision, MRD ordered the Carrier to reimburse East Harris County Orthopedics (Provider) for two medical services that it provided to ___ (Claimant).

The total maximum allowable reimbursement (MAR) amount in controversy is \$2,791.50 plus interest. The only issue is whether the documentation that the Provider furnished to the Carrier reasonably showed that the services were actually performed by the Provider to treat the Claimant's compensable injury. The Administrative Law Judge (ALJ) finds that it was medically impossible for the Provider to have furnished the services for which it seeks compensation, hence the ALJ denies the Provider's request for reimbursement.

II. FINDINGS OF FACT

1. ___ (Claimant) sustained a work-related injury on ___, while his employer was Thermon Heat Tracing Services and its workers' compensation insurer carrier was Liberty Insurance Corporation (Carrier).
2. As a result of his compensable injury, the Claimant sustained a rotator cuff tear.
3. On March 28, 2002, the Carrier pre-authorized Eric Scheffey, M.D., dba East Harris County Orthopedics (Provider) to furnish "arthroscopy, shoulder, surgical, decompress subacrom space" (Pre-authorized Services) to the Claimant.
4. The Carrier reimbursed the Provider for the Pre-authorized Services.
5. The Provider also timely sought reimbursement of the maximum allowable reimbursements (MARs) from the Carrier for the following services (Disputed Services) that it claimed to have provided to the Claimant to treat the compensable injury:

| CURRENT PROCEDURAL TERMINOLOGY (CPT) CODE | SERVICE | MAR | DATES |
|---|--|------------|---------|
| 23466 | Capsulorrhaphy with any type multi-directional instability | \$2,023 | 4/10/02 |
| 23412 | Repair of ruptured muscultendinous cuff (<i>e.g.</i> , rotator cuff); chronic | 768.50 | 4/10/02 |
| Total | | \$2,791.50 | |

1. The Carrier timely submitted an explanation of benefits (EOB) to the Provider denying the Provider reimbursement for the Disputed Services because the documentation submitted by the Provider to the Carrier did not reflect that the Disputed Services were performed.
2. The Provider furnished Dr. Scheffey's operative report and other medical documentation (Provider's Documents) to the Carrier.
3. The Provider's Documents indicate that the Claimant's left shoulder was not moving properly because the shoulder capsule was too tight and that Dr. Scheffey performed a capsulorrhaphy on that left shoulder.
4. A capsulorrhaphy tightens a shoulder capsule that is too loose.
5. The Provider could not have performed a capsulorrhaphy on the Claimant's excessively tight left shoulder.
6. The Provider's Documents indicate that the Claimant had a tear in his left rotator cuff and that Dr. Scheffey used electrothermal techniques to repair that rotator cuff tear.
7. To repair a rotator cuff tear, a surgeon must pull a tendon back into place and tack it to the muscle or bone from which it has detached.
8. Electrothermal techniques, which apply heat, shorten and tighten tendons.
9. A tendon cannot be tacked to a muscle or bone with an electrothermal technique.
10. Electrothermal techniques cannot be used to repair a rotator cuff tear.
11. The Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC), which referred it to an independent review organization (IRO).

1. The IRO reviewed the medical dispute and found that the capsulorrhaphy and rotator cuff repair were documented because the Provider's Documents said they had been performed.
2. After the MRD decision was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings Administrative Law Judge (ALJ) concerning the medical dispute.
3. Notice of a December 1, 2003, hearing in this case was faxed to the Provider and the Carrier on September 26, 2003.
4. On December 1, 2003, ALJ William G. Newchurch held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded and the record was closed that same day.
5. The Carrier appeared at the hearing through its attorney, Charlotte Salter.
6. The Provider telephonically appeared at the hearing through its designated representative, Sue Towne.

III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2003), the Carrier has the burden of proof in this case.
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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code § 408.021 (a).
5. Based on the above Findings of Fact, it was medically impossible for the Provider to have furnished the Disputed Services.
6. Based on the above Findings of Fact and Conclusions of Law, the documentation does not reasonably show the Provider performed the Disputed Services.
7. Based on the above Findings of Fact and Conclusions of Law, the Provider's request to be reimbursed \$2,791.50 for the Disputed Services should be denied.

ORDER

IT IS ORDERED THAT:

The Provider's request to be reimbursed \$2,791.50 for the Disputed Services is denied.

SIGNED January 15, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**