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| TEXAS MUTUAL INSURANCE | § | BEFORE THE STATE OFFICE |
| COMPANY, | § | |
| Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| BRICKEN & ASSOCIATES, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

ORDER GRANTING SUMMARY DISPOSITION

I. INTRODUCTION

Bricken & Associates (Respondent) billed Texas Mutual Insurance Company (Petitioner) for four units of CPT Code 90901 (biofeedback training) for dates of service September 5, October 6, and November 17 and 24, 2003. Texas Mutual reimbursed Respondent for one unit on each day and denied the remainder with Commission payment exception code “F,” indicating specifically that the reduction was because the charges exceeded the amounts permitted by the Texas Workers’ Compensation Commission’s Fee Guideline. Respondent requested dispute resolution from the Texas Workers’ Compensation Commission. On August 16, 2004, the Medical Review Division issued an order saying Petitioner was liable for an additional billing unit on each of the dates discussed above for CPT Code 90901.

Petitioner challenged a decision by the Medical Review Division of the Texas Workers’ Compensation Commission (Commission) ordering it to reimburse an additional one unit of CPT Code 90901 per day.

Petitioner now seeks summary disposition, contrary to the decision of the MRD, on grounds that as a matter of law, and in accordance with the 2002 Medical Fee Guidelines, it is only responsible for reimbursing one unit of CPT Code 90901 per day. The ALJ agrees for the reasons set out in the Findings of Fact and Conclusions of Law.

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction or notice.

The hearing in this docket was scheduled for February 16, 2005. Prior to the hearing, on January 10, 2005, Petitioner filed its Motion For Summary Disposition and represents it was delivered to Respondent via certified mail on January 12, 2005.

Under SOAH rules, Respondent is allowed 20 days after the filing of Petitioner's motion for summary disposition in which to submit a response to the motion, explaining his position on the issue, or in this case February 2, 2005. Respondent did not submit such a response and has not done so as of the date of this Decision and Order.

III. CONCLUSION

The ALJ takes Official Notice of the items requested in Petitioner's January 10, 2005, Motion For Official Notice. The ALJ admits Petitioner's Exhibits A and B filed contemporaneously with its motion for summary disposition. The ALJ finds that, under the record provided in this case, Petitioner is entitled to a summary disposition. Consequently, Respondent is not entitled to further reimbursement for the disputed services, contrary to the MRD's decision in the case. Petitioner has presented uncontroverted evidence that warrants summary disposition of this action in its favor.

IV. FINDINGS OF FACT

1. On ____, a claimant, ____, suffered a compensable injury under the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.*
2. Bricken & Associates (Respondent) provided biofeedback training to Claimant on September 5, October 6, and November 17, and 24, 2003, to treat his compensable injury.
3. Respondent billed Texas Mutual Insurance Company (Petitioner) for four units of CPT Code 90901 (biofeedback training) for dates of service September 5, October 6, and November 17, and 24, 2003.
4. Petitioner paid for only one unit of CPT Code 90901 for each date of service listed above using payment exception code "F," indicating specifically that the reduction was because the charges exceeded the amounts permitted by the Texas Workers' Compensation Fee Guideline.
5. Respondent made a timely request to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) for medical dispute resolution.
6. Respondent requested dispute resolution from the Commission.
7. The services in dispute occurred in 2003.
8. In a decision dated August 16, 2004, in dispute resolution docket No. M4-04-6971-01, the

MRD partially overruled Petitioner's denial of requests for payment of three additional CPT Code 90901 units per day, and ordered Petitioner to pay one additional unit per date of service in question.

9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision.
10. Petitioner submitted "Texas Mutual Insurance Company's Motion For Summary Judgment" on January 10, 2005. Respondent received a copy of the motion on January 12, 2005.
11. Respondent did not submit any response to the motion noted in Finding of Fact No. 9, either within 20 days of the motion's filing or as of the date of this Decision and Order.
12. 28 TAC § 134.202(b) states: "For coding, billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section."
13. 28 TAC § 134.202 contains no conditions or exceptions regarding the services described by CPT Code 90901.
14. Medicare Part B Newsletter No. 01-020, dated September 1, 2001, provides: "Procedure codes 90901 and 90911 are by definition "per session" codes and should not be billed more than once per day no matter how many modalities or how much time comprises a session."

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction related to this matter pursuant to § 413.031 of the Act.
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 § 413.031(k) of the Act 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. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.21(h).
5. 28 TAC § 134.1000, Mental Health Treatment Guideline was abolished effective January 1, 2002, and does not apply to these dates of services occurring in 2003.
6. The 2002 Medical Fee Guideline, 28 TAC § 134.202, Medical Fee Guideline, 2002, applies to dates of service on or after August 1, 2003, including the dates of service in dispute in this matter.
7. Medicare Part B Newsletter No. 01-020, dated September 1, 2001, applies to this dispute per 28 TAC § 134.202(b).

8. Consistent with 1 TAC § 155.57, Petitioner submitted pleadings and evidence entitling it to summary disposition in its favor with respect to the issues of preauthorization or reimbursement for the disputed services, and Respondent received his prescribed opportunity to oppose Petitioner's motion for summary disposition.
9. Based upon the foregoing Findings of Fact and Conclusions of Law, the Findings and Decision of the MRD, issued in this matter on August 16, 2004, are incorrect. Petitioner should not be required to make more than once reimbursement per day on CPT Codes 90901.

ORDER

IT IS THEREFORE, ORDERED that Bricken & Associates' request for additional reimbursement from Texas Mutual Insurance Company for the dates of service in question is denied.

SIGNED February 11, 2005.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS