

**SOAH DOCKET NO. 453-05-4937.M4
MR NO. M4-04-2859-01**

TEXAS EVALUATION AND MANAGEMENT SPECIALISTS	§	BEFORE THE STATE OFFICE
<i>Petitioner,</i>	§	
	§	
VS.	§	OF
	§	
LUMBERMEN’S UNDERWRITING ALLIANCE,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

____, the worker’s compensation claimant in this case, was injured on _____. The provider, a clinic associated with Texas Evaluation and Management Specialists (TEAM), administered a required medical examination on October 24, 2002, and billed for it under CPT Code 99499-L1. The carrier, Lumberman’s Underwriting Alliance (Carrier), declined to pay because the wrong code was used. The Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (TWCC or Commission)¹ determined that no reimbursement was warranted because of the wrong coding.² The parties agree that the proper billing code was 99499-L3, but TEAM asserts that it did not re-submit a corrected bill because it understood that Carrier was going to correct the coding.

A chiropractor with TEAM, Gwendolyn Whigham, D.C., testified that TEAM had relied on a telephone conversation with a representative of Carrier in which the representative indicated Carrier would change the coding on its own. This testimony, however, is hearsay and uncorroborated by any documentation,³ including TEAM’s own Table of Disputed Services. In that document, TEAM

¹ Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (Department).

² The 1996 Medical Fee Guideline (1996 MFG) applies to this service, which was rendered prior to August 1, 2003, when the new Medical Fee Guideline became applicable. 28 TEX. ADMIN. CODE § 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App-Austin 2004). Under the 1996 MFG, reimbursement for required medical examinations was based on the amount of time that had elapsed since the date of the injury, with reimbursement amounts increasing over time. The L3 modifier was to be used for examinations performed less than one year from the date of injury. *See* 1996 MFG, Evaluation and Management Ground Rules, Section XXIV-C.

³ A fax cover sheet offered by TEAM and dated October 16, 2003, evidences nothing about the contents of any telephone conversation. Provider Exhibit 1.

stated that it had received no response to its bill under the 99499-L1 code.⁴ Further, the applicable rules contemplate submission of a correct and complete bill by the provider.⁵ For these reasons, the Administrative Law Judge determines that no reimbursement is warranted.⁶

I. FINDINGS OF FACT

1. Lumberman's Underwriting Alliance (Carrier) is the workers' compensation insurer with respect to the claim at issue in this case.
2. The worker's compensation claimant in this case was injured on ____.
3. The provider, a clinic associated with Texas Evaluation and Management Specialists (TEAM), administered a required medical examination on October 24, 2002, and billed for it under CPT Code 99499-L1.
4. The proper code for the October 24, 2002 examination was 99499-L3.
5. The carrier, Lumberman's Underwriting Alliance, declined to pay because the wrong code was used.
6. TEAM requested medical dispute resolution.
7. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission issued a decision on February 17, 2005, in which it determined that no reimbursement was warranted because of the wrong coding.
8. TEAM requested a hearing.
9. Notice of the hearing was issued March 29, 2005.
10. 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.
11. The hearing was convened on October 27, 2005, before State Office of Administrative

⁴ Carrier Exhibit 2. There was, however, an explanation of review from the carrier stating that the billing code was incorrect and suggesting use of the L3 modifier. Carrier Exhibit 1 at 1.

⁵ 29 TEX. ADMIN. CODE §§ 133.300, 133.304.

⁶ The carrier argued that dismissal, rather than a decision on the merits, would be the proper disposition of this case. According to the carrier, the MRD should have dismissed this matter because TEAM never provided a complete bill. However, this case came to the State Office of Administrative Hearings as an appeal of a final Commission decision under the Department's rules, *see* 28 TEX. ADMIN. CODE § 133.307, and the ALJ will therefore rule on the merits.

Hearings (SOAH) Judge Shannon Kilgore. Dr. Wigham, a chiropractor, appeared by telephone for TEAM. Steve Tipton, attorney, appeared for Carrier. The hearing adjourned, and the record closed, the same day.

II. CONCLUSIONS OF LAW

1. The Texas Labor Code gives the Commission jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (the Department).
3. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
5. TEAM has the burden of proof in this matter. 28 TEX. ADMIN. CODE § 148.14; TEX. LABOR CODE § 413.031.
6. The 1996 Medical Fee Guideline (1996 MFG) applies to the services in question. 30 TEX. ADMIN. CODE § 134.201(Commission's rule adopting the Medical Fee Guideline by reference). For services provided after August 1, 2003, the 2002 Medical Fee Guideline is applicable. 28 TEX. ADMIN. CODE § 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App-Austin 2004).
7. Under the 1996 MFG, reimbursement for required medical examinations was based on the amount of time that had elapsed since the date of the injury, with reimbursement amounts increasing over time. The L3 modifier was to be used for examinations performed less than one year from the date of injury. 1996 MFG, Evaluation and Management Ground Rules, Section XXIV-C.
8. The Department's rules contemplate submission of a correct and complete bill by the provider. 29 TEX. ADMIN. CODE §§ 133.300, 133.304.
9. No reimbursement for the October 24, 2002 examination is warranted because TEAM billed for the service under the wrong CPT code.

ORDER

IT IS THEREFORE ORDERED that Lumberman's Underwriting Alliance need not pay Texas Evaluation and Management Specialists for the October 24, 2002 examination of claimant ___.

SIGNED December 21, 2005.

**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**