

**SOAH DOCKET NO. 454-09-3458.M4
MR DOCKET NO. M4-09-4544-01**

CHARLES OSBORN, M.D.,	§	BEFORE THE STATE OFFICE
Petitioner,	§	
	§	
VS.	§	OF
	§	
ACE AMERICAN INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Charles Osborn, M.D., Petitioner, seeks reimbursement of \$12,000 in unreimbursed expenses for a chronic pain management program provided the Claimant, _____. The Administrative Law Judge (ALJ) concludes Dr. Osborn should be reimbursed an additional \$8,000. This decision so orders.

I. HISTORY, JURISDICTION, AND NOTICE

The Claimant sustained a compensable injury on____. Respondent, Ace American Insurance Company (Ace) is the workers' compensation carrier responsible for paying the Claimant's reasonable and necessary workers' compensation benefits.

On April 11, 2006, the Division of Workers' Compensation (DWC or the Division) of the Texas Department of Insurance (TDI) resolved a dispute between the Claimant and Ace, determining that the Claimant's compensable injury extended to and included lumbar disc bulges at L1/2, L2/3, L4/5, and L5/S1.¹ DWC subsequently issued decisions, on __, and __, regarding the Claimant's impairment rating and disability status, in which the Claimant and Ace stipulated that lumbar disc bulges were part of the compensable injury.²

Dr. Osborn provided a preauthorized chronic pain program to the Claimant for her lumbar disc disorder from November 26, 2007, through March 6, 2008. Ace declined to reimburse Dr. Osborn for those services. The written explanations stated by Ace for the denials were:

¹ Carrier Ex. 1, pages 8-11.

² Carrier Ex. 1, pages 212-226.

W12 extent of injury. Not fully adjudicated.

(880-125) DENIED PER INSURANCE: NC (NON-COVERED) PROCEDURE OR SERVICE. 100%.³

On March 4, 2008, Dr. Osborn filed suit against Ace in _____, where his office is located. He testified that suit was dismissed for lack of jurisdiction, a decision that is currently on appeal.

Dr. Osborn filed the request for medical dispute resolution that is the subject of this case on December 23, 2008.⁴ Dr. Osborn testified he filed it earlier, on December 3, 2008, which is the date shown on his position statement. However, the date-stamp on the document shows it was received by DWC on December 23rd. Under the Division's rule at 28 TEX. ADMIN. CODE (TAC) § 33.307(c)(1), a request is deemed to have been filed on the date it was received by the Medical Review Division (MRD). Dr. Osborn requested reimbursement of \$20,000 (20 dates x 8 hours x \$125 per hour).

In responding to the request, Ace continued to take the position that the requests for reimbursement should be denied based on extent of injury.⁵

In its Findings and Decision, the MRD concluded Dr Osborn had waived reimbursement for ten dates of service from November 26, 2007, through December 13, 2007, pursuant to 28 TAC § 133.307(c)(1)(A), by filing his request more than one year after those dates of service. It ordered reimbursement for the other ten dates at the non-CARF-accredited rate of \$100.00 per hour, for total ordered reimbursement of \$8,000.

Dr. Osborn filed a timely request for a hearing before the State Office of Administrative Hearings. He seeks reimbursement of \$12,000, in addition to the \$8,000 reimbursement ordered by the MRD. After adequate and timely notice, the hearing was held June 29, 2009, before the undersigned ALJ. The record was closed on that date.

Although he filed the request for medical dispute resolution, Dr. Osborn contends the

³ Carrier Ex. 1, pages 44-58.

⁴ Carrier Ex. 1, pages 17, and 65-69.

⁵ Carrier Ex. 1, page 18.

Division, and therefore SOAH, does not have jurisdiction over this matter, because the benefits in question were network rather than non-network benefits. Ace disputes that characterization. The Division's rule at 28 TAC §133.307(a) states it applies to requests for "non-network" health care.

Dr. Osborn, who has the burden of proof in this proceeding,⁶ did not present any documentary evidence that this case involves network health benefits. The Division concluded it had jurisdiction over this matter; the ___ concluded it did not. The ALJ concludes SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

The relevant portions of 28 TAC § 133.307(c) state:

c) Requests. Requests for medical dispute resolution (MDR) shall be filed in the form and manner prescribed by the Division. Requestors shall file two legible copies of the request with the Division.

(1) Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request.

(A) A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

(B) A request may be filed later than one year after the date(s) of service if:

(i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability; . . .

In this case, despite the ___, decision, Ace continued to dispute whether the services provided were within the scope of the compensable injury. It refused to reimburse Dr. Osborn for that reason and reasserted that claim in response to the request for medical dispute resolution itself. It abandoned the extent-of-injury claim only after the MRD's decision, which concluded that the extent-of-injury had already been resolved. Under those circumstances, the ALJ concludes that Dr.

⁶ See 28 TAC § 148.14(a).

Osborn did not waive his right to medical dispute resolution under 28 TAC § 133.307 for the ten dates of service from November 26, 2007, through December 13, 2007.

Dr. Osborn contended that the MRD had no right to reduce the reimbursement level for the remaining claims from \$125 per hour to \$100 per hour, because that issue was not raised by Ace in its Explanations of Benefits. The ALJ disagrees. Ace denied all reimbursement. It cannot be expected to have cited reduced reimbursement levels for claims it was not paying at all. Moreover, the MRD was obligated to set reimbursement at the appropriate levels. The MRD's thorough Findings and Decision clearly and correctly explained the reason for the reduction in the hourly rate. Dr. Osborn presented no convincing evidence to the contrary. Therefore, the ALJ concludes Dr. Osborn should be reimbursed \$8,000, plus interest as appropriate, for the ten dates of services from January 14, 2008, through March 6, 2008, as determined by the MRD.⁷ In addition, Dr. Osborn should be reimbursed \$8,000, plus interest as appropriate, for the ten dates of service from November 26, 2007, through December 13, 2007.

III. FINDINGS OF FACT

1. Claimant ____ (Claimant) sustained a compensable injury on ____.
2. Respondent, Ace American Insurance Company (Ace) is the workers' compensation carrier responsible for paying the Claimant's reasonable and necessary workers' compensation benefits.
3. On ____, the Division of Workers' Compensation (DWC or the Division) of the Texas Department of Insurance (TDI) resolved a dispute between the Claimant and Ace, determining that the Claimant's compensable injury extended to and included lumbar disc bulges at L1/2, L2/3, L4/5, and L5/S1.
4. DWC subsequently issued decisions, on ____, and ____, regarding the Claimant's impairment rating and disability status, in which the Claimant and Ace stipulated that lumbar disc bulges were part of the compensable injury.
5. Charles Osborn, M.D., Petitioner, provided a preauthorized chronic pain program to the Claimant for her lumbar disc disorder from November 26, 2007, through March 6, 2008.

⁷ According to the parties at the hearing, that amount has been paid.

6. Ace declined to reimburse Dr. Osborn for those services.
7. The written explanations stated by Ace for the denials were:

W12 extent of injury. Not fully adjudicated.

(880-125) DENIED PER INSURANCE: NC (NON-COVERED)
PROCEDURE OR SERVICE. 100%.
8. On March 4, 2008, Dr. Osborn filed suit against Ace in ____, where his office is located.
9. The ____ lawsuit was dismissed for lack of jurisdiction, a decision that is currently on appeal.
10. Dr. Osborn filed the request for medical dispute resolution that is the subject of this case on December 23, 2008.
11. Dr. Osborn requested reimbursement of \$20,000 (20 dates x 8 hours x \$125 per hour).
12. In responding to the request, Ace continued to take the position that the requests for reimbursement should be denied based on extent of injury.
13. In its Findings and Decision, the DWC Medical Review Division (MRD) concluded Dr Osborn had waived reimbursement for ten dates of service from November 26, 2007, through December 13, 2007, pursuant to 28 TAC § 133.307(c)(1)(A), by filing his request more than one year after those dates of service. It ordered reimbursement for the other ten dates at the non-CARF-accredited rate of \$100.00 per hour, for total ordered reimbursement of \$8,000.
14. Dr. Osborn filed a timely request for a hearing before the State Office of Administrative Hearings SOAH).
15. Notice of the hearing was provided to the parties April 3, 2009.
16. 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.
17. After a request for continuance was granted, the parties were notified that the hearing was set for June 29, 2009.
18. The hearing was held June 29, 2009, before Administrative Law Judge (ALJ) Henry D. Card. Dr. Osborn and Ace participated in the hearing. The record was closed on that date.
19. Despite the ____, decision, Ace continued to dispute whether the services provided were within the scope of the compensable injury. It refused to reimburse Dr. Osborn for that reason and reasserted that claim in response to the request for medical dispute resolution itself.

20. Ace abandoned the extent-of-injury claim only after the MRD's decision, which concluded that the extent-of-injury had already been resolved.
21. Dr. Osborn's hourly reimbursement rate should be reduced from the requested \$125 per hour to \$100 per hour.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Dr. Osborn was did not waive his right to medical dispute resolution under 28 TAC § 133.307 for the ten dates of service from November 26, 2007, through December 13, 2007.
4. Dr. Osborn should be reimbursed \$8,000, plus interest as appropriate, for the ten dates of services from January 14, 2008, through March 6, 2008, as determined by the MRD.
5. Dr. Osborn should be reimbursed \$8,000, plus interest as appropriate, for the ten dates of service from November 26, 2007, through December 13, 2007.

ORDER

It is, therefore, ordered that Ace American Insurance Company shall reimburse Charles Osborn, M.D., \$8,000, plus interest as appropriate, for the services provided Claimant ____ from November 26, 2007, through December 13, 2007. If it has not already done so, Ace American Insurance shall also reimburse Dr. Osborn \$8,000, plus interest as appropriate, for the services provided Claimant ____ from January 14, 2008, through March 6, 2008.

SIGNED August 27, 2009.

HENRY D. CARD

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