

**DOCKET NO. 454-11-2791.M4
MR NO. M4-10-2486-01**

TROPHY CLUB MEDICAL CENTER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
NETHERLANDS INSURANCE	§	
COMPANY,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Trophy Club Medical Center (Provider) requested a hearing to contest the Medical Fee Dispute Resolution decision of the Texas Department of Insurance, Division of Workers' Compensation (Division) ordering additional payment of only \$12,849.85. Provider contends it is entitled to payment of another \$25,000 for reimbursement for medical implantables. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Netherlands Insurance Company (Carrier) is required to reimburse Provider the additional \$25,000.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

This proceeding presented no contested issues of notice or jurisdiction. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here.

On April 14, 2011, ALJ Craig R. Bennett convened the hearing in this matter at the Austin offices of the State Office of Administrative Hearings (SOAH). Provider was represented by Steve LeWinter. Carrier was represented by its attorney, Steven M. Tipton. The record closed the same day.

II. DISCUSSION

A. Arguments and Evidence

Provider is a medical center at which injured worker ___ (Claimant) obtained in-patient back surgery (a lumbar and lumbosacral fusion) in ____ for a compensable, work-related injury. As a result of the procedure, Provider billed Carrier more than \$75,000 for the room, medications, and medical supplies for the surgery, including implants. Carrier reimbursed \$36,985.67. When Provider was dissatisfied with the amount Carrier reimbursed, it filed a request for medical dispute resolution (MDR) with the Division, seeking additional reimbursement of \$42,597.74. The Division, through MDR, determined that Carrier owed an additional \$12,849.85 and ordered Carrier to pay that amount. Provider was dissatisfied with this amount and sought review through a hearing at SOAH.

At the SOAH hearing, the parties agreed that they were only continuing to dispute over the outstanding amount of \$25,000, which has not been reimbursed by Carrier and for which the MDR decision did not require reimbursement. This amount is for implants, specifically caging that was implanted in Claimant's back. Carrier denied reimbursement on the basis that Provider had not complied with the Hospital Facility Fee Guideline that requires that implants—when billed separately by a facility—must be supported by the manufacturer's invoice amount and also by a certification that the costs reflected on the invoice represent the actual costs of the implants to the facility.¹ Carrier argues that the necessary invoice and certification were not provided with the billing or in a timely manner after the billing.

The MDR order does note (in regard to the implants) that “No Invoice from Manufacturer Provided” and, elsewhere, “No Implant Description or Invoice from Manufacturer Provided.”² Because the invoice and certification must be provided with the billing or, at the latest, in the MDR process, Carrier argues that Provider cannot now seek reimbursement.

¹ 28 TEX. ADMIN. CODE § 134.404(g).

² Carrier Ex. 1, at 3.

At the hearing, provider submitted a package of documents that included an invoice from TC Surgical Enterprises for the \$25,000 in implants, as well as a certification that the prices for the items provided as part of Claimant’s surgery were the actual costs of the items provided to Claimant by Provider.³ Further, Provider submitted a letter from Sharp Medical indicating that it is the owner and distributor of the implants used in this case and that the entity that billed Provider—TC Surgical Enterprises—is a division of Sharp Medical.⁴ Also among the documents provided was the actual canceled check showing payment by Provider to TC Surgical Enterprises for all of the implants.⁵ Based on these documents, Provider argues that it has complied with the requirements for certifying the billing and providing the appropriate invoice, and should be reimbursed for the implants.

Carrier disputes that the certification offered into evidence by Provider sufficiently indicates that it is for the implants in issue. Moreover, Carrier argues that Provider cannot rely on documents submitted now, when the applicable rules require that the documents be submitted with the original billing, or at least subsequently to the MDR final determination. Therefore, even if the documents were sufficient, Carrier claims they are untimely and will not justify reimbursement.

B. ALJ’s Analysis

After considering the evidence and arguments, the ALJ finds that Provider has shown itself entitled to reimbursement. First, the ALJ finds that the documentation provided does satisfy the requirements of the rules. Under Rule 134.404(g), a facility billing for implantables is entitled to be reimbursed only “the lesser of the manufacturer’s invoice amount or the net

³ Provider Ex. 1, at unmarked pp. 5 and 12-17.

⁴ Provider Ex. 2.

⁵ Provider Ex. 1, at unmarked p. 45.

amount (exclusive of rebates and discounts) plus 10 percent”⁶ The rule further provides that the facility “shall include with the billing a certification that the amount billed represents the actual costs (net amount, exclusive of rebates and discounts) for the implantables. The certification shall include the sentence: ‘I hereby certify under penalty of law that the following is the true and correct actual cost to the best of my knowledge.’”

In this case, Provider submitted just such a certification.⁷ Although Carrier disputes that it is clearly intended to reflect the costs in issue, the ALJ disagrees. The certification contains the specific language required by the rule, is dated October 21, 2009, and is followed by an itemized listing (with costs) of all of the services, medications, and medical supplies provided by Provider to Claimant as part of the surgery. This itemized listing is dated the same day as the certification.⁸ It is clear that it intends to accompany the certification, and the cover letter to the corrected claim reflects this as well.⁹ When taken together, the documents clearly meet the requirements of Rule 134.404(g)(1).

As to the issue of timeliness, the ALJ finds that the preponderant evidence indicates that the certification and supporting documents were timely submitted. It is not clear why Carrier claims to have never received the certification, but the evidence indicates it was provided. First, the certification itself reflects it was executed on October 21, 2009.¹⁰ This is just a few months after the surgery and is before the Carrier’s explanation of benefits and before reimbursement was made by Carrier. Further, Provider’s corrected claim was submitted to Carrier at the same time—on October 21, 2009—and the cover letter reflects that, among other things, it contained the “Implant Invoices” and the “Implant Certification.”¹¹

⁶ 28 TEX. ADMIN. CODE § 134.404(g).

⁷ Provider Ex. 1, at unmarked p. 12.

⁸ Provider Ex. 1, at unmarked pp. 13-17.

⁹ Provider Ex. 1, at unmarked p. 45.

¹⁰ Provider Ex. 1, at unmarked p. 12.

¹¹ Provider Ex. 1, at unmarked p. 58.

Moreover, in a letter to the Division on February 3, 2010, Provider notes that Carrier had claimed to have not received the proper certification, but Provider disagreed, stating “Implant invoices in addition to implant certification have been provided on multiple occasions, however due to carrier’s inability in reviewing documentation, we have attached proof of payment for the invoice in question of \$25,000 showing payment made and cleared to the appropriate vendor.”¹² While it would not be unusual for someone to lie after the fact to conceal a mistake, in this case Provider could have remedied any concerns about the certification if it had not provided it previously. If Provider’s statements were false—and the certification had never been provided—then Provider could have easily remedied it at that time, thus curing any issues. But, instead, Provider notes that the certification had been provided on “multiple occasions.” And, at the hearing, such a certification was offered into evidence, and it is dated well prior to Provider’s letter. This evidence supports a finding that the certification had, in fact, been provided properly to Carrier.

Further, the MDR decision did not challenge the certification, but rather simply indicated that an invoice from the manufacturer had not been provided. The invoice in the record is somewhat vague and does not clearly establish the vendor’s role, so the ALJ can understand why—based on that invoice alone—the MDR decision did not uphold payment for the implants. But, the additional letter offered by Provider at the hearing shows that the vendor was a division of the owner and distributor of the implants used in this case, and that the \$25,000 was the cost charged to Provider. Accordingly, the letter coupled with the invoice satisfy the documentation requirements for the Provider to show what the manufacturer’s invoice amount was, and the certification establish that the invoice amount and the actual amount paid are the same. The rules do not require any greater documentation.

Given the totality of the evidence, then, the ALJ finds that Provider has shown that the implants in issue were provided for Claimant’s surgery and has properly submitted all of the necessary documentation to entitle it to reimbursement. Moreover, the evidence indicates that

¹² Provider Ex. 1, at unmarked p. 41.

\$25,000 is the actual cost to Provider for the implants, so that is the appropriate amount to be reimbursed. Carrier is liable for this amount. In support of this conclusion, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Trophy Club Medical Center (Provider) is a medical center at which an injured worker (Claimant) obtained in-patient back surgery (a lumbar and lumbosacral fusion) in ___ for a compensable, work-related injury.
2. Following the surgery, Provider submitted a bill for reimbursement to Netherlands Insurance Company (Carrier).
3. As a result of Claimant's surgery, Provider billed Carrier more than \$75,000 for the room, medications, and medical supplies for the surgery, including implants.
4. Carrier reimbursed Provider the sum of \$36,985.67.
5. When Provider was dissatisfied with the amount Carrier reimbursed, it filed a request for medical dispute resolution (MDR) with the Texas Department of Insurance, Division of Workers' Compensation (Division), seeking additional reimbursement of \$42,597.74.
6. The Division, through the MDR, determined that Carrier owed an additional \$12,849.85, and ordered Carrier to pay that amount.
7. In response to the MDR decision, Provider requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent to the parties on January 28, 2011. The notice informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
9. On April 14, 2011, ALJ Craig R. Bennett convened the hearing in this matter at the Austin offices of SOAH. Provider was represented by Steve LeWinter. Carrier was represented by its attorney, Steven M. Tipton. The record closed the same day.
10. The parties stipulated at the hearing that the sole issue remaining is the unreimbursed amount of \$25,000 for implants used in Claimant's surgery.

11. Under the applicable portion of 28 TEX. ADMIN. CODE § 134.404(g), a facility billing for implantables is entitled to be reimbursed only “the lesser of the manufacturer’s invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent”
12. The rule further states that the facility “shall include with the billing a certification that the amount billed represents the actual costs (net amount, exclusive of rebates and discounts) for the implantables. The certification shall include the sentence: ‘I hereby certify under penalty of law that the following is the true and correct actual cost to the best of my knowledge.’”
13. On October 21, 2009, Provider submitted a certification to Carrier that contained the specific language required by the rule and an itemized listing (with costs for each) of all of the services, medications, and medical supplies provided by Provider to Claimant as part of the surgery.
14. In a letter to the Division on February 3, 2010, Provider noted that “Implant invoices in addition to implant certification have been provided on multiple occasions, however due to carrier’s inability in reviewing documentation, we have attached proof of payment for the invoice in question of \$25,000 showing payment made and cleared to the appropriate vendor.”
15. The vendor of the implants in issue is a division of the owner and distributor of the implants.
16. The amount billed by Provider—\$25,000—is the actual cost to Provider for the implants, as reflected on the invoice from the owner/distributor of the implants.

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 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. Provider had the burden of proving by the preponderance of the evidence that it was entitled to reimbursement for the disputed services. 1 TEX. ADMIN. CODE § 155.427; 28 TEX. ADMIN. CODE § 148.14(a).
4. Provider met the documentation requirements of 28 TEX. ADMIN. CODE § 134.404(g) in regard to the implants for which it now seeks reimbursement.

5. Carrier is liable to reimburse Provider the sum of \$25,000 for the implants that are now in issue in this case.

ORDER

THEREFORE, IT IS ORDERED that Netherlands Insurance Company is to reimburse Trophy Club Medical Center \$25,000, plus interest, for the previously-unreimbursed implantables.

SIGNED April 26, 2011.

A handwritten signature in black ink, appearing to read "CRAIG R. BENNETT", written over a horizontal line.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**