

SOAH DOCKET NO. 454-12-7136.M4
DWC NO. _____

BRECKENRIDGE SURGERY CENTER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
_____,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Breckenridge Surgery Center (Provider) challenges the denial of reimbursement by _____, a self-insured entity, for services provided to an injured worker because the Provider failed obtain preauthorization. The Administrative Law Judge (ALJ) concludes that Provider did not obtain preauthorization for the procedure. Consequently, Provider is not entitled to reimbursement from _____ for the services provided.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).¹ On June 18, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision. On June 27, 2012, Provider requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On July 12, 2012, the Division issued a Notice of Hearing. A hearing convened before ALJ Wendy Harvel on August 13, 2012, at SOAH's facilities in Austin, Texas. The record closed the same day. Appearing telephonically, Provider was represented by Joan Gillham. Carrier

¹ Provider also filed a dispute to be reviewed by an Independent Review Organization (IRO), but the Division dismissed the dispute before the IRO because the denial was not based on medical necessity.

was represented by its legal counsel, Gregory Solcher.

II. DISCUSSION

A. Applicable Law

“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.”² Specifically, the employee is entitled to health care that: “(1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.”³

An insurance carrier is liable for all reasonable and necessary medical costs of outpatient surgical or ambulatory surgical services when those services have been preauthorized.⁴ Surgical services performed without preauthorization are not reimbursable.

If preauthorization is denied, the provider may submit a reconsideration request to the insurance carrier.⁵

B. Summary of the Evidence

Claimant, an injured worker, suffered a compensable injury on October 6, 2010. Provider sought preauthorization for an outpatient surgical procedure on Claimant’s wrist. On December 13, 2010, an adverse determination letter was sent to Provider denying preauthorization for the surgery. The adverse determination letter also indicated that on December 13, 2010, a phone call was made to Dr. Denton Watamull (the surgeon), and the case was reviewed with an individual named Glenda.⁶ On December 27, 2010, Dr. Watamull spoke with Dr. Peter Garcia, the reviewing physician.

² Tex. Lab. Code § 408.021(a).

³ *Id.*

⁴ 28 Tex. Admin. Code §§ 134.600(c)(1)(B); 134.600(p)((2).

⁵ 28 Tex. Admin. Code § 134.600(o).

⁶ _____ Ex. 2.

Dr. Garcia declined to authorize the surgery because of the discrepancy between Dr. Watamull's statement that he would perform an arthroscopy and the written request for preauthorization that sought an open surgical procedure.⁷

Dr. Watamull testified at the hearing about the standard of care for the type of injury suffered by Claimant and his understanding of the status of the preauthorization request. He stated that the surgery is performed arthroscopically to look inside the wrist and determine the degree of damage. If there is an incomplete tear or perforation, the surgery is continued arthroscopically. However, if there is a complete tear or perforation, the surgery needs to be performed by opening the wrist to perform the repair. Thus, he testified that when he requested preauthorization, he requested both the arthroscopic procedure to open and look at the extent of damage, and possibly to repair it, and the open procedure in case he had to switch to perform the repair. He remembers talking to Dr. Garcia on December 27, 2010, and he remembers Dr. Garcia agreeing over the telephone to that course of action. Based on that conversation, Dr. Watamull performed the surgery on December 29, 2010.

Dr. Watamull also testified that he did not receive the adverse determination letter dated December 28, 2010, until January 3, 2011 _____ disputes the date of receipt and was able to show a fax confirmation sheet showing that the adverse determination letter was faxed on December 28, 2010, at 3:06 p.m. and was received.⁸

C. Analysis and Decision

Provider essentially makes two arguments: the surgery was effectively preauthorized during the phone call with Dr. Garcia; and Provider did not receive the denial of preauthorization until after the surgery was performed. Neither argument succeeds. The procedure that Dr. Watamull performed on Claimant requires preauthorization before being performed. The only documentation Provider had received before surgery was a denial of preauthorization and a denial of reconsideration. Although Dr. Watamull may have had a misunderstanding with Dr. Garcia about whether the procedure was preauthorized, the second letter confirmed the preauthorization denial

⁷ _____ ISD Ex. 4.

after Provider's request for reconsideration. Regardless of the misunderstanding, or the date the letter was received, Provider was required to have preauthorization before performing the surgery, which Provider did not have. The surgery should have been postponed until Provider had written documentation of preauthorization.

Provider is not entitled to payment from _____ for the services provided to Claimant.

III. FINDINGS OF FACT

1. Claimant, an injured worker, suffered a compensable injury on _____.
2. Breckenridge Surgery Center (Provider) performed services on Claimant on December 29, 2010.
3. To obtain reimbursement for the services provided to Claimant, Provider was required to obtain preauthorization.
4. On December 13, 2010, _____ sent Provider a denial for preauthorization of the surgery to be performed on Claimant.
5. On December 27, 2010, the surgeon, Dr. Watomull spoke on the telephone with Dr. Garcia, the reviewing physician about the case.
6. On December 28, 2010, a letter denying the request for reconsideration of preauthorization was faxed to Provider and was received.
7. On December 29, 2010, Provider performed surgery on Claimant.
8. Provider did not have written preauthorization to perform the surgery.
9. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
10. On June 18, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision.
11. Provider timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
12. On July 12, 2012, the Division issued a Notice of Hearing. The notice informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority

⁸ _____ Ex. 5.

under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

13. A hearing convened before on August 13, 2012, at SOAH's facilities in Austin, Texas. Appearing telephonically, Provider was represented by Joan Gillham. Carrier was represented by its legal counsel, Gregory Solcher.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Tex. Gov't Code §§ 2001.051 and 2001.052.
3. Provider had the burden of proof in this proceeding.
4. To obtain reimbursement from _____, Provider was required to obtain preauthorization before performing the procedure on Claimant. 28 Tex. Admin. Code §§ 134.600(c)(1)(B); 134.600(p)(2).
5. Provider is not entitled to payment from Carrier for the services provided to Claimant on the date of service in dispute.

ORDER

IT IS ORDERED that Breckenridge Surgery Center is not entitled to reimbursement from _____.

SIGNED September 12, 2012.



WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS