

SOAH DOCKET NO. 454-12-1946.M4

_____,
Petitioner

v.

_____,
Respondent

§ **BEFORE THE STATE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

____ (Claimant) challenges the denial of reimbursement by _____ (_____) for services provided to an injured worker. The Administrative Law Judge (ALJ) concludes that Claimant did not timely file a request for medical fee dispute resolution. Consequently, Claimant is not entitled to reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

Claimant filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) on May 12, 2011, which concerned disputed dates of medical service from April 9, 2009, through December 21, 2010. On September 14, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision. On October 5, 2011, Claimant requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On October 31, 2011, the Division issued a Notice of Hearing. The hearing was held October 16, 2012, before ALJ Steven D. Arnold, at the SOAH offices located in Austin, Texas. Claimant was represented by Anthony Walker, Ombudsman. _____ was represented by attorney John V. Fundis. The record closed on January 11, 2013, following the submission of supplemental written briefs.

II. APPLICABLE LAW

Requests for medical fee dispute resolution, such as are involved in this case, are governed by 28 Tex. Admin. Code § 133.307. Because the medical fee dispute resolution in this case was filed before June 1, 2012, the current version of the rule does not apply; rather, the rule in effect at the time of the medical fee dispute resolution controls.¹

Under the version of Rule 133.307 in effect at the time of the medical fee dispute resolution, an injured employee may be the requestor in a medical fee dispute when the injured employee seeks reimbursement of medical expenses paid by the injured employee.² The rule then requires that requests for medical fee dispute resolution shall be filed in the form and manner prescribed by the Division.³ One of the mandatory requirements is that the request be filed in a timely manner.⁴ Rule 133.307 provides the following regarding the timeliness requirement:

- (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:
 - (1) 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;
 - (2) a medical fee dispute regarding medical necessity has been filed, the medical fee dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the carrier previously denied payment based on medical necessity; or

¹ 28 Tex. Admin. Code § 133.307(a)(1).

² 28 Tex. Admin. Code § 133.307(b)(3) (2007 version).

³ 28 Tex. Admin. Code § 133.307(c) (2007 version).

⁴ 28 Tex. Admin. Code § 133.307(c)(1) (2007 version).

- (3) the dispute relates to a refund notice issued pursuant to a Division audit or review, the medical fee dispute must be filed not later than 60 days after the date of the receipt of a refund notice.⁵

The Claimant has the burden of proving by a preponderance of the evidence in the record that he satisfies these requirements and is entitled to payment.

III. EVIDENCE AND ANALYSIS

A. Evidence

Claimant testified on his own behalf and offered two exhibits into evidence, both of which were admitted. _____ offered two exhibits, both of which were admitted.

Claimant filed a Medical Fee Dispute Resolution Request (Form DWC 060) on May 12, 2012.⁶ The Medical Fee Dispute Resolution Request concerned disputed dates of medical service from April 9, 2009, to December 21, 2010.⁷ On September 14, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (Decision), ordering that Claimant be reimbursed for the following dates of service totaling \$170.00: June 14, 2010; July 20, 2010; September 21, 2010; and December 21, 2010.⁸

The Decision also determined that Claimant was not entitled to reimbursement for dates of service from April 9, 2009, through April 12, 2010, because the Medical Fee Dispute Resolution Request was not timely filed for those dates of service as required by 28 Tex. Admin. Code § 133.307.⁹

Claimant presented evidence that he argues demonstrates that ___ claims management service, Sedgewick Claims Management Service, Inc. (Sedgewick), did not effectively or

⁵ 28 Tex. Admin. Code § 133.307(c)(1)(A) and (B) (2007 version).

⁶ Claimant Ex. 1 at 3.

⁷ Claimant Ex. 1 at 4-5.

⁸ Claimant Ex. 1 at 1-2.

⁹ Claimant Ex. 1 at 2.

efficiently process his claims and that Sedgewick contributed to the delay in filing the Medical Fee Dispute Resolution Request.¹⁰

Claimant also argues that there was a “related” dispute between the parties (*i.e.*, one that relates to the request for reimbursement) which could trigger the automatic extensions of time to file the Medical Fee Dispute Resolution Request. Claimant submitted a Final Decision, issued October 29, 2009, which dealt with a dispute regarding the extent of injury.¹¹ _____ argues that there was no dispute concerning the compensability (*i.e.*, whether Claimant sustained a compensable injury), as that was agreed by the parties,¹² and that any extension received as a result of the Final Decision would not impact the timeliness of filing for the disputed dates of service.

Finally, Claimant argues that he was entitled to a 60-day extension because he entered into a Benefit Dispute Agreement on March 11, 2011, concerning date of maximum medical improvement, impairment rating, and disability.¹³ _____ responds that the disputes resolved by the agreement do not concern whether the Claimant sustained a compensable injury (*i.e.*, was injured in the course and scope of employment), what is the proper extent of the compensable injury (*i.e.*, does the compensable injury extend to include certain diagnosed conditions), or whether _____ is or is not liable for payment of the compensation.¹⁴ Rather, the agreement concerns Claimant’s entitlement to income benefits. Thus, according to _____, because there is no related dispute regarding compensability, extent of injury, or liability, Claimant’s argument that the agreement grants him an additional 60 days is misplaced. Further, _____ argues, the matters involved in the agreement – disability, maximum medical improvement, and impairment rating – concern and impact only income benefits or the payment of temporary income benefits for the periods of disability and the payment of impairment income benefits for the impairment rating received by Claimant. According to _____, these are not matters at issue in this proceeding.

¹⁰ See generally, Claimant Ex. 1.

¹¹ Claimant Ex. 1 at 12.

¹² Claimant Ex. 1 at 16.

¹³ Claimant Ex. 2.

¹⁴ 28 Tex. Admin. Code § 133.307(c)(1)(B)(1) (2007 version).

_____ also argues that Claimant is not entitled to reimbursement in this proceeding because Claimant failed to present evidence of preauthorization of treatment as required,¹⁵ Claimant failed to establish that the health care was treatment for the compensable injury,¹⁶ and Claimant engaged in fraudulent conduct by submitting claims for non-medical expenses and attempting to receive double recovery for amounts spent. With respect to the first two grounds, Claimant responds that previous SOAH decisions prohibit a party, such as _____, from raising at SOAH grounds that were not raised before the Division. As to the third, Claimant testified that the non-medical expenses were either included by mistake or were intentionally included to test whether the submitted bills were actually being reviewed.

B. Analysis

Claimant failed to submit the Medical Fee Dispute Resolution Request within one year of the dates of the medical services in dispute as required by 28 Tex. Admin. Code § 133.307(c)(1)(A). That requirement is mandatory and the attempts to resolve the matter with _____ and its claims management service do not constitute grounds for extension of that deadline. To the extent that Claimant's October 29, 2009, Final Decision provides grounds for an extension does not provide Claimant solace – the extension would be 60 days and that period would have passed by the time Claimant filed his Medical Fee Dispute Resolution Request. Claimant's March 11, 2011, Benefit Dispute Agreement does not aid Claimant's cause. As _____ argued, that agreement concerned only income benefits and does not address matters related to compensability, extent of injury, or liability. Claimant is correct that _____ is barred from raising at hearing defenses that it failed to raise before the Division.¹⁷

¹⁵ 28 Tex. Admin. Code § 134.600.

¹⁶ 28 Tex. Admin. Code § 180.22(a).

¹⁷ *Stacy J. Meeks, D.C. v. Texas Workers' Compensation Commission, Medical Review Division, and American Casualty Company of Reading, PA*, SOAH Docket No. 453-99-0410.M2 (June 11, 1999); *Liberty Mutual Fire Insurance Company v. Texas Workers' Compensation Commission and Joseph Oei, M.D.*, SOAH Docket No. 453-96-0175.M2 (Aug. 5, 1996); *Connie S. Nipp and O.D. Ralston, M.D. v. Texas Workers' Compensation Commission, Medical Review Division, and Insurance Company of the State of Pennsylvania*, SOAH Docket No. 453-96-1022.M2 (July 24, 1996); *Stephen L. Wilson, M.D. v. Texas Workers' Compensation Commission and Travelers Insurance Company*, SOAH Docket No. 453-97-1189.M2 (Oct. 6, 1997); *Sylvia Lamas v. Texas Workers' Compensation Commission, Medical Review Division, and Security National Insurance Company*, SOAH Docket No. 453-97-1606.M2 (Mar. 17, 1998); *Texas Workers' Compensation Insurance Fund v. Texas Workers' Compensation Commission and Nervchek*, SOAH Docket No. 453-96-0720.M4 (Nov. 26, 1996).

Accordingly, the ALJ concludes that Claimant did not timely file a request for medical fee dispute resolution and is not, therefore, entitled to reimbursement.

IV. FINDINGS OF FACT

1. _____ (Claimant) challenges the denial of reimbursement by _____ (_____) for services provided to him as an injured worker.
2. Claimant filed a Medical Fee Dispute Resolution Request (Form DWC 060) on May 12, 2012.
3. The Medical Fee Dispute Resolution Request concerned disputed dates of medical service from April 9, 2009, to December 21, 2010.
4. On September 14, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (Decision), ordering that Claimant be reimbursed for the following dates of service totaling \$170.00: June 14, 2010; July 20, 2010; September 21, 2010; and December 21, 2010.
5. The Decision also determined that Claimant was not entitled to reimbursement for dates of service from April 9, 2009, through April 12, 2010, because the Medical Fee Dispute Resolution Request was not timely filed for those dates of service as required by 28 Tex. Admin. Code § 133.307.
6. Claimant did not submit a Medical Fee Dispute Resolution Request for dates of service from April 9, 2009, through April 12, 2010, within one year after the date the medical services were provided.
7. On October 5, 2011, Claimant requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
8. On October 31, 2011, 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 under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
9. The hearing was held October 16, 2012, before ALJ Steven D. Arnold, at the SOAH offices located in Austin, Texas. Claimant was represented by Anthony Walker, Ombudsman. _____ was represented by attorney John V. Fundis. The record closed on January 11, 2013, following the submission of supplemental written briefs.

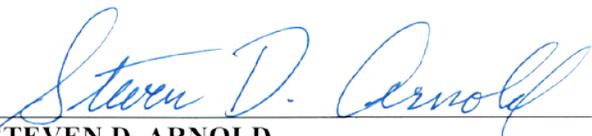
V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051 and 2001.052.
3. Subject to certain exceptions, failure of a claimant to timely submit a Medical Fee Dispute Resolution Request constitutes a forfeiture of the claimant's right to reimbursement for that claim for payment. 28 Tex. Admin. Code § 133.307(c)(1)(A).
4. Claimant had the burden of proof in this proceeding by a preponderance of the evidence.
5. Claimant did not prove he timely submitted a Medical Fee Dispute Resolution Request as required by 28 Tex. Admin. Code § 133.307(c)(1)(A).
6. Claimant did not prove he was entitled to reimbursement for services performed on the Claimant.

ORDER

_____ is not required to pay Claimant any reimbursement for services provided to the Claimant for dates of service from April 9, 2009, through April 12, 2010.

ISSUED March 11, 2013.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS