SOAH DOCKET NO. 454-13-0853.M4

LIBERTY INSURANCE CORP.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	
	§	**OF**
BAYLOR ORTHOPEDIC AND SPINE	§	
HOSPITAL,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Liberty Insurance Corporation (Carrier) challenges the order of reimbursement to Baylor Orthopedic and Spine Hospital (Provider) for outpatient surgical services provided to an injured worker (Claimant). The Administrative Law Judge (ALJ) concludes that Carrier met its burden of proof that the amount of reimbursement ordered was incorrect. Nevertheless, Carrier owes Provider $80.68 and will be ordered to reimburse that amount.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division). On October 3, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision. On October 26, 2012, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On November 6, 2012, the Division issued a Notice of Hearing. The Notice of Hearing was mailed to Provider's address, as set out in Provider's request. Carrier moved for a continuance, which was granted, and on December 20, 2012, an order resetting the hearing date was faxed to Provider's fax number. This fax number was also set out in Provider's request for a medical fee dispute resolution.

The hearing was held February 5, 2013, before ALJ Rebecca S. Smith, at SOAH's hearing facility in Austin, Texas. Carrier was represented by attorney Robert Josey. Provider did not appear. The record closed on February 8, 2013, following the submission of Carrier's written brief.

II. APPLICABLE LAW

The Texas Department of Insurance rule found at 28 Texas Administrative Code § 134.403 sets out how to calculate reimbursement for medical services provided in an outpatient acute care hospital. Under this rule, there are two possible multipliers used to determine the maximum allowable reimbursement (MAR), depending on whether implantables are separately billed:

> The reimbursement calculation used for establishing the [MAR] shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the Federal Register. The following minimal modifications shall be applied.
>
> (1) The sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by:
>
> (A) 200 percent; unless
>
> (B) a facility or surgical implant provider requests separate reimbursement in accordance with subsection (g) of this section, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 130 percent.[1]

Subsection (g) provides a method for reimbursing the separately-billed implantables, which are to be reimbursed at a rate of their cost plus ten percent.[2]

Carrier, as the party appealing the Medical Fee Dispute Resolution (MFDR) decision, has the burden of proving by a preponderance of the evidence that the decision is incorrect.[3]

III. EVIDENCE AND ANALYSIS

Provider billed $22,413.33 for facility fees related to outpatient surgery to repair a tear in Claimant's right shoulder. Carrier reimbursed Provider $10,198.53 in two installments. Carrier

[1] 28 Tex. Admin. Code § 134.403(f).
[2] *Id*. at § 134.403(g).
[3] 1 Tex. Admin. Code § 155.427.

calculated this amount by multiplying the Medicare facility specific reimbursement amount by 130 percent.

Access Mediquip (Access) directly billed Carrier $2,500 for implants (an Opus Smartstitch M-Connector and an Opus Magnum Wire plus knotless implant White Suture) used in the surgery. These bills were separate from Provider's bills, and correspondence between Access and Provider confirms that Access was to be paid separately.[4] This same correspondence also shows that the items Access provided were classified as implantable devices. Carrier paid Access $821.81.

Provider contested the $10,198.53 reimbursement amount by filing a request for a MFDR with the Division, in which it contended that Carrier owed it an additional $6,687.88. According to Provider's MDR request, this was because it should have been reimbursed at a rate of 200 percent of the Medicare facility specific reimbursement amount, rather than at the 130 percent rate Carrier used.

The MFDR decision concluded that Carrier must reimburse Provider the $6,687.88 it requested. In the decision, the MFDR Officer found, among other things, that the use and billing of implantables were insufficiently supported by the record, and that, accordingly, the 200% rate should be used. Additionally, the MFDR Officer, when calculating the amount owed, credited Carrier for only one of the two payments it made. As a result, the Officer deducted $8,944.45 instead of $10,198.53 for Carrier's payments from the total amount owed.

The ALJ agrees with Carrier that the 130% multiplier is the correct one. The evidence shows that Access separately billed for implantables, which limits Provider's reimbursement to 130% of the Medicare facility specific reimbursement amount.

As part of the MDR decision, the MFDR Officer calculated the Medicare facility specific reimbursement amounts for each of the CPT Codes in the Provider's bill. The Carrier does not challenge any of these calculations, which total $7,913.11.

[4] Ex. 1 at 6, 28.

Reimbursement with a 130% multiplier totals $10,279.21.[5] Carrier reimbursed Provider $10,198.53. Accordingly, Carrier still owes Provider $80.68 and will be ordered to pay that amount.

IV. FINDINGS OF FACT

1. Liberty Insurance Corporation (Carrier) challenges the order of reimbursement to Baylor Orthopedic and Spine Hospital (Provider) for outpatient surgical services provided to an injured worker (Claimant) on January 25, 2011.

2. Provider performed the procedures on Claimant and submitted requests for reimbursement to Carrier.

3. Claimant's surgery involved the use of implantable devices, and the Carrier was separately billed by Access Mediquip for those implantables.

4. Carrier reimbursed Provider $10,198.53, paid in two installments.

5. Provider submitted its request for Medical Fee Dispute Resolution before the Texas Department of Insurance, Division of Workers' Compensation (Division) on May 4, 2011, requesting an additional $6,687.88 from Carrier.

6. On October 3, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision finding that Provider was entitled to an additional $6,687.88 from Carrier.

7. On October 26, 2012, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.

8. On November 6, 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 Notice of Hearing was mailed to Provider at the address contained in its MFDR request.

10. On November 27, 2012, Carrier moved to continue the hearing. This motion was granted.

11. The Order resetting the hearing date was faxed to Provider at the fax number contained in its MFDR request.

[5] $26.09 of the $7,913.11 has a different code and is not subject to either the 200% or 130% reimbursement rate. Instead, this amount is payable without any multiplier.

12. The hearing was held February 5, 2013, before Administrative Law Judge Rebecca S. Smith, at SOAH's offices located in Austin, Texas. Carrier was represented by attorney Robert Josey. Provider did not appear. The record closed on February 8, 2013, following the submission of written briefs.

13. Applying the calculation method found in 28 Texas Administrative Code § 134.403(f) to the charges results in a maximum allowable reimbursement of $10,279.21 to Provider.

14. Deducting the $10,198.53 paid by Carrier from the $10,279.21 leaves $80.68 due to Provider.

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. Carrier had the burden of proof in this proceeding by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.

4. Under 28 Texas Administrative Code § 134.403(f), the maximum allowable reimbursement is calculated by multiplying the Medicare facility specific amount by 200 percent, unless a facility or surgical implant provider requests separate reimbursement, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 130 percent.

5. Provider was entitled to reimbursement at a rate of 130% of the Medicare facility specific reimbursement amounts.

ORDER

Carrier shall pay Provider additional reimbursement of $80.68 for services provided to the Claimant.

ISSUED April 4, 2013.

Rebecca S. Smith

REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS