

**SOAH DOCKET NO. 454-13-0881.M4**  
**DWC NO. \_\_\_\_\_**

_____ <b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>DALLAS AREA RAPID TRANSIT</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

\_\_\_\_\_ challenges the denial of reimbursement by Dallas Area Rapid Transit (DART) for homecare she provided. DART denied reimbursement based on its conclusion, among other reasons, that \_\_\_\_\_ was, at the time of the disputed services, neither a licensed certified health care practitioner nor a non-licensed individual who provides or renders healthcare under the direction or supervision of a doctor. The Administrative Law Judge (ALJ) finds \_\_\_\_\_ is not entitled to reimbursement. Accordingly, her request for reimbursement is denied.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

\_\_\_\_\_ filed a request for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division). On October 1, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying \_\_\_\_\_ any additional reimbursement. \_\_\_\_\_ requested a hearing at the State Office of Administrative Hearings (SOAH) to contest MRD's determination. A hearing convened before ALJ Stephen J. Pacey on January 7, 2013, at SOAH's facilities in Austin, Texas. \_\_\_\_\_ represented herself. DART was represented by attorney Robert R. Graves Jr. Upon receipt of DART'S electronic brief, the record closed on January 25, 2013.

On March 15, 2013, the ALJ reopened the record in an effort to resolve the dispute with mediation. The mediation was unsuccessful, and the case was referred back to the ALJ on April 9, 2013. After tender of further documentation by \_\_\_\_\_, the record was closed on April 15, 2013.

## II. DISCUSSION

### A. Background

On \_\_\_\_, \_\_\_\_ was injured while working for \_\_\_\_\_. Initially, \_\_\_\_ was in a coma. He then underwent bilateral total hip replacements. He previously underwent fusions of the neck, spine, and lower back. As a result of these conditions, \_\_\_\_ was incapable of the activities of daily living (ADL). He needed constant care of 15-to-18 hours a day.<sup>1</sup> Previously, home healthcare was provided by \_\_\_\_ mother-in-law until she died. DART reimbursed \_\_\_\_ mother-in-law for those services up until May 21, 2010.

\_\_\_\_ had been helping in \_\_\_\_ house when Carol Gallimore, who was a workers' compensation specialist for DART'S third party administrator, ESIS, called to ask her to help care for \_\_\_\_\_. \_\_\_\_ agreed and moved into his house to better care for him. The homecare consisted of the ADLs such as bathing, dressing, exercising, feeding, grooming, travel to doctors, assistance with medicine, etc. On July 12, 2010, Ms. Gallimore wrote a letter \_\_\_\_ indicating that DART would reimburse \_\_\_\_ \$309.00 per week for care she rendered from May 22, 2010, to July 11, 2010. \_\_\_\_ rejected the offer and responded that she worked 17 hours a day and should earn at least minimum wage.

On September 10, 2010, \_\_\_\_ sent an invoice to ESIS for services provided from March 9, 2010, through September 3, 2010. In a September 16, 2010 letter, Ms. Gallimore informed \_\_\_\_ that she could not process the reimbursement request because it was not on the proper form and did not have the proper coding. She told \_\_\_\_ to submit the billing on the correct form with the correct billing code.

In 2011, \_\_\_\_ wrote a letter to Ms. Gallimore confirming \_\_\_\_ employment and requesting payment for her services. Jose Fuentes, M.D., \_\_\_\_ doctor, wrote a letter in July of 2011 that indicated \_\_\_\_ had been working 15-to-16 hours a day and had not been paid. Dr.

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<sup>1</sup> Carrier's Ex. 6.

Fuentes also said her work was meticulous and diligent.<sup>2</sup> After attempting to get compensation for over a year, \_\_\_ filed a Medical Dispute Resolution request with the Division on October 29, 2011, seeking payment for her homecare services provided from March 9, 2010, through April 30, 2011. The MRD found that she failed to prove she was entitled to any compensation. \_\_\_ has received no compensation for her services.

## **B. Applicable Law**

The Division’s rules define the amount of time allowed to complete certain tasks. For instance, a request for medical fee dispute resolution must be timely filed or it is waived.<sup>3</sup> The Division shall deem a request to be filed on the date the MRD receives it<sup>4</sup>, and it shall be filed no later than one year after the date of service in dispute.<sup>5</sup> Accordingly, reimbursement for dates of service that are outside the one year deadline are banned by rule and are waived.

Section 401.011(20) of the Labor Code defines “healthcare facility” as a hospital, emergency clinic, outpatient clinic, or other facility providing healthcare.<sup>6</sup> Section 401.011(22) defines a “healthcare provider” as a healthcare facility or healthcare practitioner.<sup>7</sup> “Healthcare practitioner” is defined under section 401.011(21) of the Labor Code as: (a) an individual who is licensed to provide or render and provides or renders healthcare; or (b) a non-licensed individual who provides or renders healthcare under the direction or supervision of a doctor.<sup>8</sup> To receive money for healthcare services, the person must either be licensed or be under a doctor’s supervision.

## **III. ANALYSIS**

In her request for reimbursement presented to DART, \_\_\_ requested \$60,570.18 for the services she provided to \_\_\_. Although \_\_\_ made some equitable arguments, she cannot be reimbursed because she was not a certified healthcare provider. The MRD, applied the proper

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<sup>2</sup> Carrier’s Ex. 6.

<sup>3</sup> 28 Tex. Admin. Code (TAC) § 133.307(c)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 28 TAC § 133.307(c)(1)(A).

<sup>6</sup> Texas Labor. Code (Labor Code) § 401.011(20).

<sup>7</sup> Labor Code § 401.011(22).

<sup>8</sup> Labor Code § 401.011(21).

Division rules and statutes and determined that \_\_\_ was not entitled to reimbursement. The ALJ concurs with the MRD decision.

While the MRD denied reimbursement for numerous reasons, the primary reason was that, when the services were provided,<sup>9</sup> \_\_\_ was neither a certified health care provider or practitioner nor was she under the supervision of a licensed physician. DART also prevailed on the various miscellaneous grounds asserted by \_\_\_ in support of her reimbursement claim, and they are discussed in this Decision. \_\_\_ argued that she was under Dr. Fuentes' supervision. But other than his letter indicating that home healthcare was necessary and that \_\_\_ should be paid, there is no evidence that \_\_\_ was under his supervision. Consequently, she failed to meet this requirement for home healthcare workers.

\_\_\_ request for payment was received by MRD on October 29, 2011. Based on that date, the MRD correctly determined that she had waived her right to request reimbursement for her service provided from March 9, 2010, to October 28, 2010, because these dates of service preceded her request for medical dispute resolution by more than one year. Thus, the only dates of service that can be considered are October 29, 2010, to April 30, 2011.

\_\_\_ was not certified to provide or render healthcare, and she failed to establish that she was providing healthcare under the direction or supervision of a physician. Claimant cannot be legally defined as a "healthcare practitioner," or a "healthcare provider." Therefore, Claimant is not entitled to reimbursement. This Decision and Order applies only to the disputed dates of service contained in the MRD decision.

#### **IV. FINDINGS OF FACT**

1. From March 9, 2010, to April 30, 2011, \_\_\_ lived in the home of and provided homecare services for a workers' compensation patient who was incapable of performing activities of daily living.
2. Dallas Area Rapid Transit (DART) was the responsible workers' compensation insurer for the injured worker.

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<sup>9</sup> \_\_\_ obtained her certification later.

3. \_\_\_ billed DART \$60,570.18 for the homecare services.
4. \_\_\_ was not compensated for her homecare services.
5. On October 29, 2011, \_\_\_ filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Worker's Compensation (Division).
6. The dates of service for which \_\_\_ seeks reimbursement occurred from March 9, 2010, through April 30, 2011.
7. On October 1, 2012, the Division's Medical Review Division (MRD) issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision) and found that no reimbursement was owed to \_\_\_.
8. \_\_\_ timely requested a hearing at State Office of Administrative Hearings (SOAH) to contest the MRD Decision.
9. A Notice of Hearing 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.
10. A hearing convened before Administrative Law Judge Stephen J. Pacey on January 7, 2013, at SOAH's facilities in Austin, Texas. \_\_\_ represented herself. DART was represented by attorney Robert R. Graves Jr. The record closed on January 25, 2013. The record was reopened on March 15, 2013, and again closed April 15, 2013.
11. At the time \_\_\_ provided the homecare services, she was not a certified health care provider or practitioner.
12. At the time \_\_\_ provided the homecare services, she was not under the supervision of a physician.
13. \_\_\_ waived her right to seek dispute resolution for services provided from March 9, 2010, through October 28, 2010, because those dates preceded her request for medical fee dispute resolution by more than one year.
14. \_\_\_ failed to prove under the facts of this case that that reimbursement is due.

## V. 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 Texas Labor Code (Labor Code) § 413.031 and Texas Government Code ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051 and 2001.052.
3. \_\_\_ had the burden of proof in this proceeding by a preponderance of the evidence.
4. \_\_\_ is neither qualified as a healthcare practitioner nor a healthcare provider and is not entitled to compensation for the homecare services within the meaning of Labor Code § 413.011.
5. \_\_\_ did not qualify for reimbursement because she failed to with the applicable criteria for reimbursement. 28 Tex. Admin. Code § 133.20(d)(2).
6. In this case, \_\_\_ is not entitled to payment from DART for the services provided to the injured worker.

### ORDER

**IT IS ORDERED** that DART is not required to pay \_\_\_ for homecare services she provided to the injured worker.

**SIGNED June 17, 2013.**

  
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STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS