

**SOAH DOCKET NO. 454-13-2363.M4
DWC NO. _____**

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|------------------------------|---|--------------------------------|
| PARKER CITY PHARMACY, | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| v. | § | |
| | § | OF |
| CONTINENTAL CASUALTY | § | |
| INSURANCE COMPANY, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

Parker City Pharmacy (Provider) seeks reimbursement of \$3,269.55 from Continental Casualty Insurance Company (Carrier) for prescription medications it dispensed to an injured worker (Claimant) on December 27, 2004, and January 24, 2005. The Administrative Law Judge (ALJ) finds the Provider is not entitled to reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

On August 22, 2005, Provider filed a request for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (DWC, known in 2005 as the Texas Workers' Compensation Commission). On December 28, 2012, the MRD issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision) ordering no reimbursement for the prescribed medications. On January 10, 2013, Provider timely requested a medical fee dispute hearing before the State Office of Administrative Hearings (SOAH) to contest MRD's determination.

A hearing convened before ALJ Steven M. Rivas on March 18, 2013, at SOAH's facilities in Austin, Texas. Provider's president, Douglas Parker, appeared on behalf of Provider. Carrier was represented by attorney James Loughlin. The record closed the same date.

II. DISCUSSION

A. Applicable Law

This case is governed by Texas Labor Code (Labor Code) § 401.001 *et seq.*, also known as the Texas Workers' Compensation Act (Act). The workers' compensation insurance program created by the Act covers all medically necessary health care.¹ A health care provider is entitled to review of a medical service provided if it is denied payment for the service.²

A provider that is dissatisfied with a carrier's denial of reimbursement of a medical bill shall send a copy of the medical bill to the carrier clearly marked "REQUEST FOR RECONSIDERATION" for further consideration.³ All provider requests for medical dispute resolution (MDR) shall include a copy of each explanation of benefits (EOB) or, if no EOB was received, convincing evidence that the carrier received the provider's request for an EOB.⁴

B. Evidence

1. Background Facts

¹ Tex. Lab. Code (Labor Code) § 401.011.

² Labor Code § 413.031(a)(1) and 28 Tex. Admin. Code § 133.307.

³ When Provider's reimbursement claim was denied, the Division rule in effect was found at Texas Administrative Code title 28, § 133.304(k)(1)(A). The current rule regarding requests for reconsideration, § 133.250, no longer requires a provider to mark "REQUEST FOR RECONSIDERATION" on its medical bills.

⁴ The Division rule in effect at the time the services were provided was found at Texas Administrative Code title 28, § 133.307(e)(2)(B). The current rule requiring a provider to submit explanation of benefits (EOB) with its request for medical dispute resolution (MDR) is found at § 133.307(c)(2)(K).

Claimant sustained a work-related injury on ____, and at some point sought treatment with ____ Marmel, M.D., in San Antonio, Texas. Dr. Marmel prescribed medication to treat Claimant's pain. Provider, a pharmacy, began filling the prescriptions in October 2002 on a regular basis. Mr. Parker testified that, from October 2002 to November 2004, Carrier reimbursed Provider \$72,712.49 for prescribed medications that were dispensed to Claimant. However, Carrier denied a \$1,670.35 reimbursement claim for a prescription that was filled on December 27, 2004, for oxycodone and hydrocodone/APAP (commonly referred to as Vicodin). Carrier also denied a \$1,599.30 reimbursement claim for a prescription of oxycodone that Provider filled on January 24, 2005. Provider stopped filling prescriptions for Claimant following these denials. The total disputed amount is \$3,269.65.

Provider received Carrier's TWCC-62 Explanation of Benefits (EOB) form, which reflected "extent of injury" as the reason for the denial.⁵ On May 23, 2005, Provider's bookkeeper, D, submitted Provider's initial request for MDR with the MRD. On June 14, 2005, the MRD advised Provider that the MDR request was incomplete because Provider had not resubmitted the denied claims to Carrier for reconsideration.⁶

On June 16, 2005, Ms. D resubmitted the request for MDR with the MRD,⁷ and was notified on June 27, 2005, that the request was again incomplete because it failed to provide proof that Provider resubmitted the claims to Carrier for reconsideration.⁸ In response, Ms. D wrote a letter to the MRD on July 22, 2005, indicating she had been assured by Carrier representative Theresa Borzik that the claims would be paid.⁹

⁵ Provider's Exhibit No. 2, page 17. The undated EOB refers only to the prescription filled on January 24, 2005.

⁶ *Id.* at page 22. The letter stated no "Request for Reconsideration" was stamped on the TWCC-66a, Statement for Pharmacy Services.

⁷ *Id.* at page 26. Ms. D submitted Form TWCC-66a with the words "Request for Reconsideration" handwritten in red ink to the MRD but apparently did not submit this form to Carrier for reconsideration.

⁸ *Id.* at page 30.

⁹ *Id.* at page 33. The letter was mostly illegible but the ALJ was able to discern some of its contents.

On August 12, 2005, the MRD again notified Provider that its request for MDR remained incomplete and could not be processed because Provider had not submitted two copies of the MDR request to the MRD and still had not forwarded a request for reconsideration to Carrier for the denied claims. In response, on August 19, 2005, Ms. D submitted two copies of the request for MDR to the MRD as well as another copy of form TWCC-66a with the words “request for reconsideration” handwritten on the form in red ink.

The MRD received and accepted Provider’s request for MDR on August 22, 2005. Provider’s request for MDR indicated the matter was a fee dispute.¹⁰ On September 6, 2005, the MRD informed Provider that it had evaluated Provider’s request for MDR and determined that, despite the Carrier’s “extent of injury” challenge on its EOB, the issues in dispute were related to reimbursement based on fee issues only.

The MRD Decision was issued several years later, on December 12, 2012.¹¹ The MRD found that Provider failed to file its request for MDR in accordance with applicable rules. Specifically, the MRD found Provider failed to resubmit the denied claims to the Carrier for reconsideration pursuant to Texas Administrative Code title 28, § 133.304. Additionally, the MRD found that Provider failed to include a copy of the EOBs to the MRD with its request for MDR as required by Texas Administrative Code title 28, § 133.307. For these reasons, the MRD concluded Provider was not entitled to reimbursement.

2. Provider

Mr. Parker testified that, in 2005, he contacted Ms. Borzik in an effort to determine why Carrier denied reimbursement for the prescriptions in question. She offered no explanation, and merely informed Mr. Parker that treatment rendered (medications dispensed) did not guarantee reimbursement. Next, Mr. Parker discussed the matter with Claimant’s treating physician, Dr. Marmel, who contended that the medications were medically necessary to manage

¹⁰ Provider’s Exhibit No. 2 at page 27. The box labeled “Fee Reimbursement” was checked on the MDR request form.

¹¹ Carrier’s Exhibit No. 1.

Claimant's pain. But having no understanding of why the claims were denied, Provider's former bookkeeper, Ms. D, initiated a request for MDR.

Provider's current bookkeeper, S. E., testified that, although she did not work on this claim, she is familiar with the file. Ms. E believes Provider submitted all documents that were requested by the MRD, including all documents in Provider's possession regarding this claim. However, Ms. E could not specifically identify which documents were submitted to the MRD as part of Provider's request for MDR.

3. Carrier

Carrier did not present any witness testimony but instead pointed out, as did the MRD Decision, Provider failed to submit any EOBs to the MRD with its request for MDR. Carrier asserted that, although Provider offered an EOB (Page 17 of Provider's Exhibit No. 2) to the ALJ, the EOB should have been previously provided to the MRD. Carrier also noted that no EOBs were included in Provider's Exhibit No. 1 identified as "document submitted to MDR." Carrier argued that, because Provider did not submit the required EOBs with its request for MDR, it did not comply with MRD's § 133.307 of DWC's rules. As such, it should not be reimbursed for its claims.

C. Analysis and Conclusion

The Carrier's EOB clearly indicates payment was denied based on "extent of injury." Yet, despite Carrier's initial "extent of injury" challenge, this matter progressed through MRD as a fee dispute even though Carrier's extent of injury challenge should have been resolved before the MRD considered any fee dispute. Under Texas Administrative Code title 28, § 133.305(b), if a dispute regarding extent of injury exists for the same service for which there is a medical fee dispute, the dispute regarding extent of injury shall be resolved prior to the submission of a medical fee dispute for the same services. Because neither party raised this issue with the MRD, it progressed as a fee dispute. Likewise, the ALJ considered this matter on the basis of a fee

dispute. Hence, the issue for the ALJ to determine is whether Provider complied with applicable fee dispute rules in its request for MDR with the MRD. Although Provider offered a copy of one EOB to the ALJ at the hearing, it failed to comply with § 133.307 by failing to submit any EOBs to the MRD with its request for MDR.

Provider also failed to submit its medical bills to the Carrier for reconsideration, which is a requirement under § 133.304(k)(1)(A) as noted in the MRD Decision. The applicable form TWCC-66a was submitted to the MRD marked “request for reconsideration” in red ink, but it was not submitted to the Carrier prior to Ms. D initial request for MDR. Ms. E candidly admitted that, although she is familiar with Claimant’s file, she was not Provider’s bookkeeper in 2005 and does not know precisely how Ms. D processed this claim.

The evidence sufficiently supports the MRD Decision that no EOBs were submitted and that Provider failed to request reconsideration. Provider has the burden to prove it is entitled to reimbursement, but it failed to demonstrate that it properly sought reimbursement under the MRD’s rules in effect at the time. Hence, the ALJ finds Provider is not entitled to the reimbursement it seeks.

III. FINDINGS OF FACT

1. On ____, a workers’ compensation claimant suffered a work-related injury and, at some point, sought treatment with R M, M.D.
2. Dr. M prescribed pain medications for the claimant.
3. Parker City Pharmacy (Provider) filled the claimant’s prescriptions for several years.
4. Continental Casualty Insurance Company (Carrier) was the responsible workers’ compensation insurer for the claimant.
5. Carrier denied Provider reimbursement of \$1,670.35 and \$1,599.30 for prescriptions filled on December 27, 2004, and January 24, 2007.
6. Following Carrier’s denials of reimbursement, Provider filed a request for medical dispute resolution (MDR) with the Texas Department of Insurance, Division of Workers’ Compensation (DWC), known in 2005 as the Texas Workers’ Compensation

Commission.

7. After several incomplete requests for MDR, the DWC's Medical Review Division (MRD) accepted Provider's request for MDR on August 22, 2005.
8. On December 28, 2012, the MRD issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), finding that no reimbursement was owed to Provider.
9. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD Decision.
10. 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.
11. A hearing convened before Administrative Law Judge Steven M. Rivas on March 18, 2013, at SOAH in Austin, Texas. Provider was represented by its president, Douglas Parker. Carrier was represented by attorney James Loughlin. The record closed the same date.
12. Provider did not submit its denied medical bills to the Carrier for reconsideration.
13. Provider did not submit any EOBs to the MRD as part of its request for MDR.

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. 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. Provider failed to comply with the Division's rule at Texas Administrative Code title 28, § 133.304(k)(1)(A) by not submitting its denied medical bills to the Carrier for reconsideration.
4. Provider failed to comply with the Division's rule at Texas Administrative Code title 28, § 133.307(e)(2)(A) by not submitting any EOBs to the MRD as part of its request for MDR.
5. Provider is not entitled to reimbursement from Carrier for the prescriptions that were filled for the Claimant on December 27, 2004, and January 24, 2005.

ORDER

IT IS ORDERED that Parker City Pharmacy's request for additional reimbursement from Continental Casualty Company is denied.

SIGNED May 17, 2013.

A handwritten signature in black ink, appearing to read 'SMR', followed by a long horizontal line extending to the right.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**