SOAH DOCKET NO. 454-13-2593.M4
DWC NO. _____

TPCIGA FOR RELIANCE NATIONAL INDEMNITY COMPANY, AN IMPAIRED CARRIER,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
v.	§	
	§	
GARLAND COMMUNITY HOSPITAL,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

TPCIGA for Reliance National Indemnity Company, an Impaired Carrier (Carrier), challenges the Texas Department of Insurance, Division of Workers' Compensation (DWC) Medical Fee Dispute Resolution Findings and Decision of December 28, 2012 (Decision) requiring additional reimbursement of $6,125.75 to Garland Community Hospital (Provider). The Administrative Law Judge (ALJ) finds that Carrier has failed to show that Provider should not receive the additional reimbursement ordered by DWC. Further, the ALJ finds that Carrier is not entitled to a refund of any amounts previously paid. Therefore, the ALJ orders Carrier to reimburse Provider the amount of $6,125.75.

I. PROCEDURAL HISTORY

This case arises out of the admission on ____ 1997, of an injured worker (Claimant) whose workers' compensation insurance was provided by Carrier. Claimant suffered a spine injury for which he was scheduled to have surgery. However, upon his admission for spine surgery, Claimant had an infection that required treatment before surgery could be safely performed. Claimant was hospitalized due to complications from his infection and received treatment, including sinus surgeries, from ____ 1997, through ____ 1997. Provider billed Carrier $22,800.97 for the treatment. Carrier requested additional documentation from the

hospital as early as November 1997, to be able to conduct utilization review of the services.[1] An additional request for the hospital records was made in December 1997.[2] The utilization review file was closed on January 5, 1998, when the hospital records still had not been obtained.[3] On January 31, 1998, Carrier paid $6,172.25 to Provider, indicating that the hospital bill was "being paid at 50% pending review on the medical necessity of the sinus surgery."[4]

On March 13, 1998, the hospital records were provided to Carrier and submitted for utilization review. Carrier determined through the utilization review that the services provided were not medically necessary treatment for Claimant's lumbar spine injury. Thereafter, on April 20, 1998, Carrier provided notice of the refused/disputed claim.[5]

After conducting medical fee dispute resolution, DWC approved Provider's request for additional reimbursement, finding that Carrier had not denied the claim within the time allowed by the applicable rules. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Decision. An evidentiary hearing was convened before ALJ Craig R. Bennett on September 16, 2013, at SOAH's facilities in Austin, Texas. Provider appeared and was represented by attorney P. Matthew O'Neil. Carrier appeared and was represented by attorney Steve Tipton. The record closed upon conclusion of the hearing on September 16, 2013.

II. DISCUSSION

This case involves a dispute over treatments provided to Claimant for an infection he suffered prior to having lumbar spine surgery. Carrier argues that the treatments were not medically necessary for Claimant's compensable spine injury and were not preauthorized;

[1] Carrier Ex. 7, at 25.

[2] Carrier Ex. 7, at 26.

[3] Carrier Ex. 7, at 28.

[4] Carrier Ex. 2, at 7.

[5] Carrier Ex. 8, at 37.

therefore, Carrier argues it should not have been required to reimburse Provider for them. Further, Carrier argues it is entitled to a refund of the reimbursement previously paid.

Provider argues that Carrier failed to preserve its dispute by not challenging the bill for the services within the time period allowed by the applicable rules at the time. Specifically, those rules required a carrier to either pay or dispute services within 45 days from receiving the complete bill. If the carrier could not do this, it could pay half the amount in issue within 45 days, and proceed with an audit of the bill. But, even in this situation, the carrier was required to pay the remainder of the bill or dispute it within 60 days from receiving the complete bill.

Carrier argues that it did not have a complete bill until the requested operative reports and related hospital records were provided to it. Therefore, according to Carrier, the 60-day deadline began to run on March 13, 1998, when it received the hospital records. Thus, the dispute filed on April 20, 1998, was timely. Further, Carrier argues that, despite the deadlines in the rules at the time, it is never liable for reimbursing health care that is not medically necessary for a claimant's compensable injury.

The ALJ disagrees with Carrier. The bill submitted to Carrier initially was sufficiently complete for purposes of the applicable rules at the time. The bill clearly identified the services, the provider, the patient, the diagnoses, and all other necessary elements of the billing. Carrier's reimbursement of January 31, 1998, noted that the bill was being paid at 50% pending review of the medical necessity of the sinus surgery. So, Carrier was clearly aware of the procedures in issue and was essentially attempting to review their medical necessity and relatedness to the injury. Based on these facts, it cannot be said that Carrier did not have a "complete bill." Thus, it was incumbent on Carrier to complete its review and make a final decision within 60 days of receiving the complete bill (which, in this case, was received prior to January 31, 1998). Carrier could have denied the services within that time period on the grounds that they were not medically necessary or related to the compensable injury—especially if Carrier is contending that Provider did not cooperate and provide documents necessary for the review. But, it was incumbent on Provider to either pay or dispute the bill within 60 days. By failing to initiate its

dispute of the bill until April 20, 1998, Carrier failed to comply with the applicable rules and failed to preserve its right to challenge the billing.

Further, the ALJ disagrees that Carrier can never be required to pay for services that are not medically necessary, regardless of its timeliness in challenging the bills for such services. The ALJ finds no precedent for such a contention and concludes that Carrier was obligated to comply with the deadlines in the applicable rules or else risk waiving its right to dispute the bills. While the Texas Labor Code sets out the statutory scheme (including the parameters for reimbursement), authority was vested in the Texas Workers' Compensation Commission to establish procedures for implementing the statutory scheme. It did so, and the applicable rules it adopted set out timelines for resolving such matters. Carrier did not comply with those deadlines and, therefore, has waived its right to dispute the bills or to seek refund of any payments already made.[6]

Accordingly, the ALJ concludes that DWC correctly found that Carrier was liable for additional payment to Provider in the amount of $6,125.75 and orders Carrier to pay that sum to Provider. In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Garland Community Hospital (Provider) provided hospital surgical services to an injured worker (Claimant) from ____ 1997, through ___ 1997.

2. TPCIGA for Reliance National Indemnity Company, an Impaired Carrier (Carrier), is responsible for the workers' compensation insurance coverage in issue in this case.

3. Claimant suffered a compensable injury requiring lumbar spine surgery.

4. Upon his admission for lumbar spine surgery, Claimant had a sinus infection that required treatment before surgery could be safely performed on him.

5. Claimant had complications from his sinus infection and received treatment, including sinus surgeries, from ____ 1997, through ____ 1997.

[6] To the extent Carrier argues a separate ground for a refund under the Texas Labor Code that DWC did not directly address in its decision, that request is not within the scope of review and is not before the ALJ.

6. Provider billed Carrier $22,800.97 for the treatment.

7. Provider submitted a complete bill to Carrier by January 31, 1998.

8. Carrier requested additional documentation as early as November 1997, to be able to conduct utilization review of the services.

9. On January 31, 1998, Carrier paid $6,172.25 to Provider, indicating that the hospital bill was being paid at 50% pending review of the medical necessity of the sinus surgery.

10. On April 20, 1998, Carrier provided notice to Provider that it was refusing to pay or otherwise disputing the claim.

11. The Texas Department of Insurance, Division of Workers' Compensation (DWC) conducted Medical Fee Dispute Resolution (MFDR) regarding the disputed services.

12. DWC issued its MFDR Findings and Decision on December 28, 2012 (Decision).

13. The Decision required additional reimbursement of $6,125.75 to Provider.

14. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Decision.

15. A Notice of Hearing was issued informing 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.

16. An evidentiary hearing convened on September 16, 2013, before Administrative Law Judge Craig R. Bennett at SOAH's facilities in Austin, Texas. Carrier appeared and was represented by attorney Steve Tipton. Provider appeared and was represented by attorney P. Matthew O'Neil. The record closed at the conclusion of the hearing on September 16, 2013.

17. Carrier failed to pay the totality of Provider's bill or dispute the bill within 60 days from receiving the complete bill.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Texas Labor Code § 413.031 and Texas Government Code chapter 2003.

2. Adequate and timely notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051 and 2001.052.

3. Carrier has the burden of proving by a preponderance of the evidence that Provider is not entitled to additional reimbursement.

4. Carrier failed to prove by a preponderance of the evidence that Provider is not entitled to additional reimbursement from Carrier for the services provided to the Claimant.

5. Carrier failed to establish a right to any refund for payments already made to Provider for the services in issue.

6. Because Carrier failed to timely pay or dispute Provider's bill for the services in issue, Carrier is liable to reimburse Provider for those services and may not request a refund.

7. Provider is entitled to additional reimbursement from Carrier in the amount of $6,125.75 for the services provided to the Claimant, as ordered in the decision issued by DWC on December 28, 2012.

ORDER

IT IS ORDERED that TPCIGA for Reliance National Indemnity Company, an Impaired Carrier, shall pay Garland Community Hospital additional reimbursement of $6,125.75 for the services provided to the injured worker.

SIGNED November 13, 2013.

CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS