

SOAH DOCKET NO. 454-13-2726.M4
DWC NO. _____

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| SHANNON MEDICAL CENTER, | § | BEFORE THE STATE OFFICE |
| Provider | § | |
| | § | |
| v. | § | OF |
| | § | |
| EMPLOYERS INSURANCE COMPANY | § | |
| OF WAUSAU, | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

Shannon Medical Center (Provider) seeks reimbursement for outpatient surgical services provided to a worker’s compensation claimant. Employers Insurance Company of Wausau (Carrier) denied reimbursement because the surgery was not preauthorized and was not provided pursuant to an emergency. Based on the lack of preauthorization, the Administrative Law Judge (ALJ) concludes that Provider is not entitled to reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. A hearing convened before ALJ Sarah G. Ramos on April 1, 2013, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas. Karen Lynch of Health Care Recovery Alliance, an organization that processes claims and resolves related issues for Provider, represented Provider via telephone. Attorney Steven Tipton appeared on behalf of Carrier.

II. DISCUSSION

A. Applicable Law

“An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed.”¹ Specifically, the employee is entitled to health care that: “(1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.”² This broad statement of coverage is limited by a Texas Department of Insurance, Division of Workers’ Compensation (Division) rule. The rule provides that an insurance carrier is liable for all reasonable and necessary medical costs of outpatient surgical services only when those services have been preauthorized, when the health care is required because of an emergency, or when ordered by the Commissioner of Workers’ Compensation.³ In another subpart, the rule reiterates that a requestor must obtain preauthorization from an insurance carrier prior to providing non-emergency surgical care.⁴

B. Evidence

The claimant, an injured worker, suffered a compensable injury on _____. On August ___, 2010, the claimant saw Robert C. Canby, M.D., who observed that the claimant had an “implantable cardioverter-defibrillator in situ, approaching elective replacement indications.”⁵ Dr. Canby did not indicate any reason that the surgery was required on an emergency basis.

Ms. Lynch testified that the claimant’s surgeon scheduled him for surgery at Provider’s facility and indicated that the claimant was covered by Medicare. Provider did not seek preauthorization for the surgery because Medicare does not require preauthorization and Provider did not know the claimant had workers’ compensation coverage.

¹ Tex. Lab. Code § 408.021(a).

² *Id.*

³ 28 Tex. Admin. Code §§ 134.600(c)(1)(B); 134.600(p)(2).

⁴ 28 Tex. Admin. Code § 134.600(f).

⁵ Carrier’s Ex. 4 at 16.

Sherry Rippen, an insurance adjuster with a third-party administrator associated with Carrier, testified that on Friday, October 15, 2010, the surgeon's office called her to obtain preauthorization. Ms. Rippen was not in the office that day, but her voice mail instructed persons who needed preauthorization in her absence to call another resource for assistance.

Provider did not know about the surgeon's call to Ms. Rippen. The surgeon did not contact the other resource or inform Provider that preauthorization had not been obtained. Instead, the surgeon proceeded with the surgery on October 18, 2010. Ms. Lynch testified that, during the surgery itself, the claimant's wife informed Provider about the workers' compensation coverage, and Provider requested preauthorization.

Not realizing the surgery had been completed, Carrier actually "preauthorized" the surgery on October 21, 2010. But Ms. Rippen testified that Carrier denied benefits because preauthorization was not obtained prior to the surgery.

C. Arguments

Provider argued that it could not obtain preauthorization because it was not informed about the workers' compensation coverage until the surgery began. Also, Provider asserted it was reasonable to rely on the surgeon's office for correct information about the claimant's coverage.

Carrier argued that it should not be held responsible for paying benefits because Provider failed to obtain preauthorization. According to Carrier, the Division's rule does not exempt a medical provider from compliance with the rule based on misunderstanding. As a result, Carrier is not responsible for paying benefits.

D. Analysis and Decision

Provider was placed in an untenable situation because of inadequate information about the claimant's workers' compensation injury. Nonetheless, the Division's rule requires preauthorization

for non-emergency outpatient surgery. Because Provider failed to obtain preauthorization, Carrier is not liable for paying benefits. Therefore, Provider's claim for reimbursement is denied.

III. FINDINGS OF FACT

1. An injured worker (the claimant) suffered a compensable injury on ____.
2. Shannon Medical Center (Provider) provided non-emergency outpatient surgical services to the claimant on October 2010.
3. Provider did not send a request to preauthorize the surgery to Employers Insurance Company of Wausau (Carrier) until the claimant's surgery had begun on October 2010.
4. Carrier denied Provider's claim for benefits because the surgery was not preauthorized before it was performed.
5. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
6. On November 12, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision and denied Provider's claim.
7. Provider timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
8. On February 26, 2013, the Division issued a notice of the 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 applicable statutory provisions.
9. A hearing convened before a SOAH administrative law judge on April 1, 2013, at 300 W. 15th Street, Austin, Texas. By telephone, Karen Lynch represented Provider. Attorney Steve Tipton appeared in person and represented Carrier.

IV. 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. Provider had the burden of proof in this proceeding.
4. To obtain reimbursement from Carrier, Provider was required to obtain preauthorization

before performing the procedure on the claimant. 28 Tex. Admin. Code §§ 134.600(c)(1)(B), 134.600(f), 134.600(p)(2).

5. Provider is not entitled to reimbursement from Carrier for the services provided to the claimant on October 2010.

ORDER

IT IS ORDERED that Shannon Medical Center's request for reimbursement from Employers Insurance Company of Wausau for medical services provided to the workers' compensation claimant on October 2010, is denied.

SIGNED May 20, 2013.



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS