

SOAH DOCKET NO. 454-15-1586.M4-NP

_____, § **BEFORE THE STATE OFFICE**
Petitioner §
§ **OF**
v. §
§ **ADMINISTRATIVE HEARINGS**
TEXAS HEALTH HUGULEY, §
Respondent §

DECISION AND ORDER

_____, a self-insured party, appeals the approval of reimbursement to Texas Health Huguley (Provider) for services provided to an injured worker because the Provider failed to obtain required preauthorization. The Administrative Law Judge (ALJ) concludes that Provider was not required to obtain preauthorization. Consequently, Provider is entitled to reimbursement.

I. PROCEDURAL HISTORY, NOTICE, AND PROCEDURAL HISTORY

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

Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division). On July 23, 2014, the Division issued its Medical Fee Dispute Resolution Findings and Decision finding that Claimant's injury and the resulting surgery met the definition of emergency. On December 5, 2014, (Self-Insured) requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On December 11, 2014, the Division issued a Notice of Hearing. A hearing convened before ALJ Steven D. Arnold on March 9, 2015, at SOAH's facilities in Austin, Texas. The record closed the same day. (Self-Insured) was represented by attorney Rebecca M. Strandwitz. Provider was represented by its attorney, P. Matthew O'Neil.

II. 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

An insurance carrier is liable for all reasonable and necessary medical costs of outpatient surgical or ambulatory surgical services when those services have been preauthorized.³ If the outpatient surgical or ambulatory services are the result of an emergency, however, preauthorization is not required.⁴ A medical emergency is “the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in: (i) placing the patient's health or bodily functions in serious jeopardy, or (ii) serious dysfunction of any body organ or part.”⁵

III. EVIDENCE AND ANALYSIS

Evidence

Claimant, an injured worker, suffered a compensable injury on _____. Dr. John Thomas (the surgeon) examined Claimant on _____, and wrote: “This is a lady who fell on the job and sustained an injury to her wrist. She was found to have a comminuted intra-articular distal radius fracture. She was then cleared from a medical standpoint for operative intervention.”⁶ Prior to the surgery, Provider and the surgeon contacted Starr Comprehensive Solutions, Inc. (Starr Comp), (Self-Insured)’s Utilization Review Agent, and explained the situation to them. Each was told that pre-authorization was not required because the surgery was an emergency.⁷ With these assurances, the surgery was performed on May 3, 2013, with no pre-authorization.

After the surgery, (Self-Insured) argued that pre-authorization was required and, as a result, denied payment to the Provider. The Medical Fee Dispute Resolution Findings and

¹ Tex. Labor 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(c)(1)(A); 134.600(p)(2).

⁵ 28 Tex. Admin. Code § 133.2(5)(A).

⁶ Petitioner Ex. 5 at 1.

⁷ Respondent Ex. A.

Decision found that the surgery was an emergency and found that Provider was entitled to payment of the requested \$9,715.95.⁸

At hearing, (Self-Insured) offered the testimony of Dr. Peter Garcia, Jackie Beauchamp, R.N., and Georgia Brailif and submitted Exhibits 1-12, of which all except Exhibits 9 and 11 were admitted into evidence. Provider offered the testimony of ___ and submitted four exhibits, all of which were admitted into evidence.

Dr. Garcia, a certified orthopedic surgeon, testified about his conclusions regarding the injury suffered by Claimant and whether the injury constituted an emergency based on his review of medical records. Dr. Garcia stated that he did not believe the injury and the resulting surgery constituted an emergency but conceded that such an injury and attendant surgery could constitute an emergency. Ms. Beauchamp testified primarily about the coding of the surgery and, like Dr. Garcia, conceded that the codes used for the injury and resulting surgery could constitute an emergency, but she stated that it is not uncommon for a provider to call regarding authorization in an emergency situation. Ms. Brailif, an adjuster with Edwards Risk Management (who represents (Self-Insured)), testified that, based on her review of the medical records, she would not have declared the surgery an emergency. She conceded, however, that Edwards Risk Management did not provide pre-authorizations for (Self-Insured). According to Ms. Brailif, only Starr Comp performed that service.

Analysis

(Self-Insured) has the burden of proof in this proceeding. It offered little to meet that burden. The testimony of Dr. Garcia did not establish that Claimant's injury and resulting surgery were not an emergency. In fact, Dr. Garcia acknowledged that, in general, such injuries and surgeries could be emergencies. Similarly, Ms. Beauchamp did nothing to refute the proof offered by Provider that both it and the surgeon had contacted (Self-Insured) Utilization Review Agent and had been told that no preauthorization was required because the injury presented an emergency situation. (Self-Insured) failed to meet its burden of proof in this proceeding and, as a consequence, is ordered to pay Provider \$9,715.95 plus applicable interest.

IV. FINDINGS OF FACT

1. Claimant, an injured worker, suffered a compensable injury on _____
2. Claimant was employed by _____, a self-insured party.

⁸ Petitioner Ex. 1.

3. Prior to surgery for the injury to Claimant, Texas Health Huguley (Provider) and the surgeon contacted Starr Comprehensive Solutions, Inc., (Self-Insured) Utilization Review Agent, and explained the situation to them and were told that pre-authorization was not required because the surgery was an emergency.
4. On May 3, 2013, Dr. John Thomas performed surgery on Claimant at Provider.
5. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
6. On July 23, 2014, the Division issued its Medical Fee Dispute Resolution Findings and Decision finding that Claimant's injury and the resulting surgery meet the definition of emergency.
7. (Self-Insured) timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
8. On December 11, 2014, 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 hearing was held March 9, 2015, before Administrative Law Judge Steven D. Arnold, at the SOAH offices located in Austin, Texas (Self-Insured) was represented by attorney Rebecca M. Strandwitz. Provider was represented by its attorney, P. Matthew O'Neil. The record closed that same day.

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 § 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. (Self-Insured) had the burden of proof in this proceeding.
4. Provider was not required to obtain preauthorization before performing surgery because Provider and the surgeon were told by (Self-Insured) Utilization Review Agent that Claimant's injury and the resulting surgery was an emergency situation. 28 Tex. Admin. Code §§ 134.600(c)(1)(A) and 134.600(p)(2).
5. Provider is entitled to reimbursement by (Self-Insured) of \$9,715.95, plus applicable interest.

ORDER

THEREFORE, IT IS ORDERED THAT (Self-Insured) is required to pay the sum of \$9,715.95, plus any applicable interest, to Texas Health Huguley as compensation for the services at issue in this case.

NON-PREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the non-prevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the non-prevailing party and any costs for services provided by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, (Self-Insured) is the non-prevailing party. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

ISSUED April 28, 2015.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS