

SOAH DOCKET NO. 454-16-0182.M4-NP

_____	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
TRANSPORTATION INSURANCE	§	
CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

_____ (Petitioner) seeks reimbursement from Transportation Insurance Co. (Carrier) for medical costs he allegedly incurred after being injured at work. Petitioner appeals the decision that Carrier is not required to reimburse him \$18,838.17 because, among other things, the request for Medical Fee Dispute Resolution (MFDR) was untimely filed. The Administrative Law Judge (ALJ) concludes that Petitioner’s MFDR was not timely filed and, thus, absolved Carrier of any liability for reimbursement.

I. JURISDICTION, 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.

On May 4, 2015, Petitioner filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers’ Compensation (Division). On June 26, 2015, the Division issued its MFDR Findings and Decision finding that Petitioner was entitled to no additional reimbursement. Petitioner requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division’s determination. On September 17, 2015, the Division issued a Notice of Hearing. A hearing convened before ALJ Steven D. Arnold on December 8, 2015, at SOAH’s facilities in Austin, Texas. Petitioner was represented by Ombudsman, Anthony Walker. Carrier was represented by its attorney, Lynda K. Burkhalter. The parties filed closing briefs on December 21, 2015, at which point the record closed.

II. APPLICABLE LAW

Section 417.002 of the Texas Labor Code provides:

- (a) The net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical benefits, that have been paid for the compensable injury.
- (b) Any amount recovered that exceeds the amount of the reimbursement required under Subsection (a) shall be treated as an advance against future benefits, including medical benefits, that the Requestor is entitled to receive under this subtitle.
- (c) If the advance under Subsection (b) is adequate to cover all future benefits, the insurance carrier is not required to resume the payment of benefits. If the advance is insufficient, the insurance carrier shall resume the payment of benefits when the advance is exhausted.

Under this provision, the carrier is liable for payments only to the extent that benefits exceed the amount of any third-party advance; there is no liability on the part of the carrier for payment of amounts covered by the third-party advance.

An injured employee may request an MFDR to seek an order requiring an insurance carrier to reimburse expenses that the employee paid for health care.¹ Health care is defined as:

all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

- (A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;
- (B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;
- (C) psychological services prescribed by a doctor;
- (D) the services of a hospital or other health care facility;
- (E) a prescription drug, medicine, or other remedy; and

¹ 28 Tex. Admin. Code § 133.307(b)(3).

- (F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.²

Medical benefit is defined as:

payment for health care reasonably required by the nature of a compensable injury and intended to:

- (A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;
- (B) promote recovery; or
- (C) enhance the ability of the employee to return to or retain employment.³

The pertinent rules set forth what a medical fee dispute involves:

(4) Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee that has been determined to be medically necessary and appropriate for treatment of that injured employee's compensable injury. The dispute is resolved by the division pursuant to division rules, including §133.307 of this title (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

- (A) a health care provider, or a qualified pharmacy processing agent as described in Labor Code §413.0111, dispute of an insurance carrier reduction or denial of a medical bill;
- (B) an injured employee dispute of reduction or denial of a refund request for health care charges paid by the injured employee; and
- (C) a health care provider dispute regarding the results of a division or insurance carrier audit or review which requires the health care provider

² Tex. Lab. Code § 401.011(19).

³ Tex. Lab. Code § 401.011(31).

to refund an amount for health care services previously paid by the insurance carrier.⁴

Generally, a request for an MFDR is waived if not filed within one year after the dates of the service in dispute.⁵ There are three exceptions to this one-year limitation period, only one of which requires discussion here. That exception reads:

A request may be filed later than one year after the date(s) of service if . . . a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability.⁶

III. EVIDENCE AND ANALYSIS

A. Evidence

Petitioner testified he was injured in ____ in a motor vehicle accident when, in the course and scope of his employment as an _____. Petitioner was driving and was struck by another vehicle. He brought suit against the negligent third party driver and he received settlement funds of \$16,666.67. Carrier then had a credit for this amount and was not required to resume paying medical expenses until Petitioner's out-of-pocket expenses for medical treatment exceeded that amount. Petitioner believed he had exceeded that amount in 2002 and requested a contested case hearing (CCH) on that issue. A CCH was held on January 21, 2003, to decide if Petitioner had out-of-pocket medical expenses that exceeded \$16,666.67 so that Carrier was required to resume payments. The Hearing Officer ruled that Petitioner had exhausted the advance from the third party action, thus requiring Carrier to resume payment of benefits.⁷ That decision was appealed by the Carrier into district court, but the Hearing Officer's decision was upheld in a final Take Nothing Judgment entered by the court on March 21, 2006.⁸ It is undisputed that the Carrier resumed payment of medical expenses and tendered to Petitioner a check in the amount of \$65,000, which Petitioner cashed.

Petitioner testified that he is seeking reimbursement of any medical expenses he paid out of his third party settlement advance as well as reimbursement of health insurance premiums he paid out of pocket when he was added to his wife's health insurance plan after losing his health insurance benefits after being terminated by his employer.

⁴ 28 Tex. Admin. Code § 133.305.

⁵ 28 Tex. Admin. Code § 133.307(c)(1)(A).

⁶ 28 Tex. Admin. Code § 133.307(c)(1)(B)(ii).

⁷ Carrier Ex. 1 at 26-31.

⁸ Carrier Ex. 1 at 35.

Petitioner failed to show what he paid out of pocket, and he provided no medical treatment records to establish that any of his out-of-pocket medical expenses were related to this accident. Petitioner's handwritten notes, letters, and testimony on out-of-pocket expenses for medical treatment were conflicting. He admitted into evidence a letter to Carrier dated February 23, 1998, stating that he had medical expenses totaling over \$25,000.⁹ That amount is not reflected in his later summary, which shows medical expenses were approximately \$13,626.38¹⁰ Further, a letter from Medicare recovery to Carrier regarding Medicare's recoupment shows Medicare, not Petitioner, was paying the medical bills.¹¹ This letter shows the amount Medicare paid was \$14,917.94 from 1998-2014.

Petitioner provided a document showing the premiums he paid for private health insurance coverage, with a handwritten note that states "Total charges of premium paid for Spouse _____ from 4/1993-8/2001-\$18,838.17."¹² This is the exact amount he originally requested in this fee dispute.¹³

There is no testimony that Petitioner was not paid for his out-of-pocket medical expenses or even his insurance premiums. Petitioner testified that he received a check from the Carrier for \$65,000, but he was not sure what this large check was for and did not know if that amount included reimbursement for out-of-pocket medical fees or premiums. According to Petitioner, he was contacted by an investigator, who advised him the large payment by the Carrier was made in error. Petitioner claims the investigator was asking that the money be returned, but he ignored all attempted contact by the investigator and testified that he never paid back the \$65,000.

B. Analysis

The Texas Labor Code provides that the carrier is liable for payments only to the extent that benefits exceed the amount of any third-party advance; there is no liability on the part of the carrier for payment of amounts covered by the third-party advance. Thus, Carrier is entitled to a credit for third-party payments received by Petitioner in the amount of \$16,666.67.

The evidence discloses that there was a dispute as to the extent of injury.¹⁴ The dispute was resolved in favor of Petitioner and appealed to district court, where the ruling was upheld in a Take Nothing Judgment on March 21, 2006.¹⁵ The medical bills at issue in this case are for treatment Petitioner states he received from 1993 to 2001 for treatment of his shoulders, back,

⁹ Petitioner Ex. 1 at 51.

¹⁰ Petitioner Ex. 1 at 91.

¹¹ Petitioner Ex. 1 at 75; Carrier Ex. 1 at 62-64.

¹² Petitioner Ex. 1 at 69.

¹³ Petitioner Ex. 1 at 9.

¹⁴ Carrier Ex. 1 at 26-37.

¹⁵ Carrier Ex. 1 at 35.

and knees. Petitioner testified at hearing that the 2003 CCH and 2006 judgment also dealt with the extent of the injuries to his shoulders, back, and knees. Therefore, Petitioner was required to file a medical fee dispute 60 days from entry of the final judgment, which was signed by the judge on March 21, 2006.¹⁶ He failed to do so, choosing to wait almost nine years before filing. In so doing, Petitioner waived his right to medical fee dispute resolution.

Petitioner did not produce proof of employee payment (including copies of receipts, health care provider billing statements, or similar documents), and he could not show what he actually spent on out-of-pocket medical fees. Petitioner also provided no medical treatment records to show that any of his out-of-pocket medical expenses were related to this accident. To the extent Petitioner is seeking reimbursement of insurance premiums, such a reimbursement is not allowed.

The ALJ concludes that Petitioner failed to prove he is entitled to any further reimbursement and the evidence shows that his request for reimbursement is waived because it was untimely filed. Therefore, Carrier is not required to pay him the disputed amount of \$18,838.47. Accordingly, the ALJ makes the following findings of fact and conclusions of law in support of this decision.

IV. FINDINGS OF FACT

1. In _____, _____ (Petitioner) was injured in a motor vehicle accident while in the course and scope of his employment as an _____.
2. Petitioner brought suit against the negligent third party driver and he received settlement funds of \$16,666.67.
3. Petitioner believed he had exceeded that amount in 2002 and requested a contested case hearing (CCH) on that issue.
4. A CCH was held on January 21, 2003, with the Hearing Officer holding that Petitioner had exhausted the advance from the third party action, thus requiring Transportation Insurance Co. (Carrier) to resume payment of benefits.
5. The CCH decision was appealed by the Carrier into district court but the Hearing Officer's decision was upheld in a final Take Nothing Judgment entered by the court on March 21, 2006.
6. Carrier resumed payment of medical expenses and tendered to Petitioner a check in the amount of \$65,000, which Petitioner cashed.

¹⁶ Carrier Ex. 1 at 35.

7. On May 4, 2015, Petitioner filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
8. On June 26, 2015, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MFDR) finding that Petitioner was entitled to no additional reimbursement.
9. Petitioner requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
10. On September 17, 2015, 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.
11. The hearing was held December 8, 2015, before Administrative Law Judge Steven D. Arnold, at the SOAH offices located in Austin, Texas. Petitioner was represented by Ombudsman, Anthony Walker. Carrier was represented by its attorney, Lynda K. Burkhalter. The parties filed closing briefs on December 21, 2015, at which point the record closed.
12. Petitioner did not produce proof of employee payment (including copies of receipts, health care provider billing statements, or similar documents), and he could not articulate what he actually spent on out-of-pocket medical fees.
13. Petitioner's request for MFDR was untimely filed and therefore is waived.

V. 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 ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051, .052.
3. An injured employee may request an MFDR to resolve his or her request for reimbursement from the insurance carrier for medical expenses he or she paid. 28 Tex. Admin. Code § 133.307(b)(3).
4. A request for an MFDR is waived if not timely filed. 28 Tex. Admin. Code § 133.307(c)(1).
5. Generally, a request for an MFDR must be filed no later than one year after the dates of service in dispute. 28 Tex. Admin. Code § 133.307(c)(1)(A).

6. If a related compensability, extent of injury, or liability dispute has been filed, the MFDR shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability. 28 Tex. Admin. Code § 133.307(c)(1)(B)(i).
7. Petitioner did not file his MFDR request within 60 days of his receipt of the final Order resulting from the CCH.
8. Petitioner did not timely file his MFDR request and therefore waived it.

ORDER

THEREFORE, IT IS ORDERED THAT Transportation Insurance Co. is not required to pay the disputed amount to _____.

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, _____ 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.

SIGNED February 19, 2016.



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