

SOAH DOCKET NO. 454-16-1182.M4-NP
MDR TRACKING NO. _____

STATE OFFICE OF RISK	§	BEFORE THE STATE OFFICE
MANAGEMENT	§	
	§	
v.	§	OF
	§	
MONZER YAZJI, M.D.	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The State Office of Risk Management (Carrier or SORM) sought a contested case hearing regarding a Medical Fee Dispute Decision (MFD Decision) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division). The MFD Decision ordered Carrier to reimburse Monzer Yazji, M.D. (Provider) the additional sum of \$600.00, plus interest, for services billed as chronic pain management. The Administrative Law Judge (ALJ) finds the MFD Decision is correct and that Carrier owes Provider additional compensation.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

After Carrier made a reduced payment of Provider's claim for reimbursement for the services in question, Provider filed a request for medical fee dispute resolution with the Division. On or about September 8, 2015, the Division issued the MFD Decision, in which it determined that Carrier owed Provider an additional \$600.00 in reimbursement for chronic pain management services.¹ Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFD Decision. On November 16, 2015, the Division issued a Notice of Hearing.

The hearing convened on February 8, 2016, at SOAH's Austin hearings facility. Carrier appeared through its attorney, J. Red Tripp. Provider appeared through Gloria Rivera, who participated by telephone. The record closed the same day.

II. APPLICABLE LAW

As the party seeking relief from the MFD Decision, Carrier has the burden of proof.² Unresolved disputes "over the payment due for services determined to be medically necessary

¹ _____ Ex. 7.

² 28 Tex. Admin. Code § 148.14(b).

and appropriate for treatment of a compensable injury” may be resolved by a contested case hearing at SOAH.³

Compensation for chronic pain management services is addressed by the Division’s Medical Fee Guideline for Workers’ Compensation Specific Services, at 28 Texas Administrative Code § 134.204(h)(5). The rule states that although accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) is not required for reimbursement, a chronic pain management program “should meet the specific program standards for the program as listed” in the most recent CARF manual.

III. DISPUTED SERVICES

The services at issue in this case consisted of:

- 1-22-15 A one-hour introduction to juicing.
- 1-22-15 A one-hour video about food (including such topics as vitamin supplements, organic foods, cholesterol control, and cancer).
- 1-22-15 A one-hour Pizza Hut lunch.
- 1-26-15 A one-hour period to consume juice made from kale, lemon, and Stevia.
- 1-26-15 A one-hour video about vegan eating, how meat production pollutes the planet, and the cruelty of slaughterhouses.
- 1-26-15 Lunch provided by Subway accompanied by a one-hour examination of the Subway menu, and in particular fat grams and calories.

IV. ANALYSIS

A. Parties’ Positions and MFD Decision

Carrier denied reimbursement due to insufficient information to demonstrate that the chronic pain management services at issue met applicable standards.⁴ In the MFD proceeding and at SOAH, Carrier argued that those standards are found in the Official Disability Guidelines (ODG) or the American Medical Association (AMA) guidelines.⁵ Provider argued that the services did meet the ODG because they were educational services aimed at promoting weight loss and health and decreasing pain.

³ Tex. Labor Code §§ 413.031(c), .0312(a), (e).

⁴ ___ Ex. 4.

⁵ ___ Exs. 2, 7.

The MFD Decision noted that the rule requires the services to meet CARF standards—but not the approved methods of treatment for chronic pain by the AMA or the ODG—and concluded that Carrier’s reason for denial was not supported.⁶

B. ALJ’s Analysis

Carrier has the burden of proof in this case because the MFD Decision was rendered in favor of Provider. According to the Medical Fee Guideline for Workers’ Compensation Specific Services, at 28 Texas Administrative Code § 134.204(h)(5), to qualify as a Division Return to Work Rehabilitation Program, a chronic pain management program “should meet the specific program standards for the program as listed” in the most recent CARF manual. Carrier argues that Provider should not be reimbursed at all for the services at issue because it failed to offer sufficient information to show that the services met ODG and AMA standards. While the services at issue appear of doubtful utility,⁷ Carrier failed to offer any evidence that they did not meet CARF standards, as required by the Division’s rule. The rule does not require such services to meet ODG or the AMA guidelines. Therefore, Carrier has failed to meet its burden of proof.

As to the amount in dispute, the parties agreed on the record: the maximum allowable reimbursement was \$1,600, and Carrier paid \$1,000; therefore, the additional amount in question is \$600. Accordingly, the ALJ determines that Carrier is required to reimburse Provider an additional \$600.00, plus interest.

V. FINDINGS OF FACT

1. A worker for the _____ suffered a compensable back injury covered by workers’ compensation insurance.
2. Monzer Yazji, M.D. (Provider) treated the worker, seeking reimbursement from the State Office of Risk Management (Carrier) for a total amount of \$1,600.00 for chronic pain management services rendered on January 22 and 26, 2015. The services consisted of videos, meals, juice, and food preparation lessons/discussions.
3. Following initial payment and reconsideration of Provider’s claim, Carrier’s total reimbursement for the disputed services was \$1,000.00. Carrier denied the remaining \$600.00, saying that the claim or service was unsupported by information needed for adjudication.

⁶ _____ Ex. 7 at 34.

⁷ To the extent Carrier is arguing that these services were not necessary and appropriate to treat the worker’s injury, such argument must be made through procedures to challenge medical necessity.

4. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) on July 22, 2015.
5. On or about September 8, 2015, the Division issued a Medical Fee Dispute Resolution Decision and Findings (MFD Decision), in which it determined that Carrier owed Provider an additional \$600.00 in reimbursement for chronic pain management services by Provider. Thus, the Division ordered Carrier to reimburse Provider the additional amount of \$600.00, plus applicable accrued interest pursuant to 28 Texas Administrative Code § 134.130, within 30 days of Carrier's receipt of the MFD Decision.
6. Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFD Decision.
7. On November 16, 2015, the Division referred the matter to SOAH and issued a Notice of Hearing.
8. 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 statutes and rules applicable to the matters to be considered.
9. The hearing convened on February 8, 2016, at SOAH's Austin hearings facility. Carrier appeared through its attorney, J. Red Tripp. Provider appeared through Gloria Rivera, who participated by telephone. The record closed the same day.
10. At the MRD and at SOAH, Carrier argued that the disputed services failed to meet standards in the Official Disability Guidelines or American Medical Association guidelines.
11. Carrier failed to offer any evidence that Provider's chronic pain management services at issue did not meet the specific program standards of the Commission on Accreditation of Rehabilitation Facilities (CARF) set forth in the most recent CARF manual.

VI. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Texas Labor Code § 413.0312 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 had the burden of proof in this proceeding, pursuant to 28 Texas Administrative Code § 148.14(b).

4. To qualify as a Division Return to Work Rehabilitation Program under the Division's Medical Fee Guideline for Workers' Compensation Specific Services, a chronic pain management program should meet the specific program standards for the program as listed in the most recent CARF manual. 28 Tex. Admin. Code § 134.204(h)(5).
5. Carrier failed to meet its burden to show that the disputed services are not compensable under the Medical Fee Guideline for Workers' Compensation Specific Services.

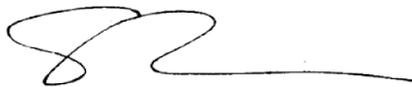
ORDER

THEREFORE, IT IS ORDERED THAT the State Office of Risk Management is required to pay the additional sum of \$600.00, plus applicable interest, to Monzer Yazji, M.D., 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, the State Office of Risk Management 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 March 4, 2016.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**