

SOAH DOCKET NO. 454-16-5262.M4-NP
MR NO. _____

INSURANCE COMPANY OF THE	§	BEFORE THE STATE OFFICE
STATE OF PENNSYLVANIA,	§	
Petitioner	§	
	§	
v.	§	OF
	§	
PHYSICIANS SURGICAL CENTER,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The Insurance Company of the State of Pennsylvania (Carrier) challenges the Medical Fee Dispute Findings and Decision of the Texas Department of Insurance, Division of Worker’s Compensation (Division or DWC), that ordered Carrier to pay an additional \$1,572.45 to Physicians Surgical Center (Provider) for implantables used by Provider during surgery performed on an injured worker, _____. The Administrative Law Judge (ALJ) concludes that Carrier met its burden of proving that it should not be required to reimburse any additional amount to Provider for the services at issue in this case.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues regarding jurisdiction. Therefore, that matter is set out in the Conclusions of Law without further discussion here.

_____ underwent shoulder surgery on July 2, 2015. The surgery required implanted hardware. Carrier reimbursed Provider \$2,013.55 for the implantables. After Carrier denied Provider’s request for additional reimbursement, Provider filed a request for medical fee dispute resolution with DWC, seeking additional reimbursement of \$2,241.24. In its Medical Fee Dispute Resolution Findings and Decision (Findings and Decision), issued May 18, 2016, DWC found Provider was entitled to additional reimbursement of \$1,572.45. Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division’s determination.

The Division sent notice of the hearing to both parties on July 22, 2016. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters

asserted. Specifically, the notice informed the parties that the hearing would be held at 9:00 a.m. on October 19, 2016, at SOAH, William P. Clements Bldg., 300 West 15th Street, 4th Floor, Austin, Texas 78711-3025. Although the notice stated that sanctions may be imposed for failure to appear, it did not contain the specific language required for default proceedings under SOAH's procedural rules at 1 Texas Administrative Code (TAC) § 155.501.

The hearing was convened at 9:00 a.m. on October 19, 2016, by ALJ Henry D. Card, at SOAH's offices at the address set out in the notice of hearing. Carrier appeared and was represented by attorney James Sheffield. Provider did not appear.¹ Carrier presented documentary evidence and testimony, after which the hearing was adjourned.

After the hearing was adjourned, the ALJ was informed that Provider's representative had emailed SOAH to state that the representative had been sent to the wrong address for the hearing. The ALJ therefore issued Order No. 1, which allowed Provider to file a motion to reopen the hearing with SOAH within 5 days. No such motion was filed, and the record closed on October 25, 2016.

II. DISCUSSION

A. Evidence

The Division's rule at 28 TAC § 134.402 sets out the reimbursement guidelines for ambulatory surgical care services such as those provided by Provider in this case. Under that rule, implantables may be reimbursed separately. The reimbursement formula applicable to this proceeding is the invoice amount of the implantables plus ten percent.²

Carrier offered various documents into evidence, along with testimony from Gus Tschaar, Chief Bill Review Officer of Foresight Medical, LLC (Foresight). Mr. Tschaar testified that his company originally reviewed Provider's claim on behalf of Carrier. That initial claim included handwritten pricing information, but no invoices for the implantables. Reviewing the operative report, Foresight determined that five implantables were used in _____ surgery. Although the operative report generally identified the types of implantables, it did not state which specific hardware was used. Foresight determined that a fair and reasonable cost for the

¹ Provider did not file a request to participate by telephone under 1 Tex. Admin. Code (TAC) § 155.405.

² Carrier Ex. 1 at 4-5, Carrier Ex. 6.

implantables, plus 10 percent, was \$2,013.55, and recommended reimbursement to the Provider of that amount. Carrier reimbursed Provider \$2,013.55 for the implantables.³

Provider later submitted additional information, including consign issue invoices from Arthrex, the manufacturer of the implantables. Relying on the invoices and the operating room implant record list,⁴ which showed six implantables, the Division determined that the total amount due for implantables was \$3,260.00 plus 10 percent, or \$3,586.00. The Division subtracted the amount already paid, \$2,013.55, from \$3,586.00 to determine that Carrier owed an additional \$1,572.45 to Provider.⁵

When the six items listed on the operating room implant record are cross-referenced with the invoices, the amount adds up to \$3,260.00, as found by the Division. Mr. Tschaar pointed out, however, that only the top two implantables on that implant record, an AR-2324BCCTT suture anchor and an AR-2324BCCT suture anchor, were used in _____ operation. The other four implantables listed were for surgery on another patient, _____, performed by a different surgeon and invoiced on a different date.⁶ There is no documentation of the cost of the other implantables used in _____ surgery.

The cost of the two implantables used in _____ surgery for which documentation was supplied was \$1,344.00. That amount plus 10 percent equals \$1,478.40, which is less than the amount already reimbursed to Provider by Carrier. Therefore, Mr. Tschaar testified, Provider was not entitled to additional reimbursement.

B. ALJ's Analysis

The operative report shows that five implantables were used in _____ surgery. Carrier is correct, however, that the evidence documents the cost of only two of those implantables. The other four implantables erroneously used by the Division to calculate the reimbursable amount were for a different operation for a different patient.

The cost of the two implantables for which documentation was provided, plus ten percent, is less than the amount already reimbursed to Provider by Carrier. Therefore, the Division's Findings and Decision should be reversed, and Carrier should not be required to make any additional reimbursement to Provider for implantables used in _____ surgery.

³ Carrier Ex. 5 at 19.

⁴ The invoices are part of Carrier Ex. 8 at 32-33. The operating room implant record is part of Carrier Ex. 8 at 37.

⁵ Carrier Ex. 1 at 5.

⁶ The invoice for _____ surgery is at Carrier Ex. 8 at 33; the invoice for _____ surgery is at Carrier Ex. 8 at 32.

III. FINDINGS OF FACT

1. Workers compensation Claimant _____ underwent shoulder surgery on July 2, 2015, at Physicians Surgery Center (Provider).
2. _____ surgery required implanted hardware.
3. The Insurance Company of the State of Pennsylvania (Carrier) reimbursed Provider \$2,013.55 for the implantables.
4. After Carrier denied Provider's request for additional reimbursement, Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Worker's Compensation (Division or DWC), seeking additional reimbursement of \$2,241.24.
5. In its Medical Fee Dispute Resolution Findings and Decision (Findings and Decision), issued May 18, 2016, DWC found Provider was entitled to additional reimbursement of \$1,572.45.
6. Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
7. The Division sent notice of the hearing to both parties on July 22, 2016.
8. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. Specifically, the notice informed that parties that the hearing would be held at 9:00 a.m. on October 19, 2016, at SOAH, William P. Clements Bldg., 300 West 15th Street, 4th Floor, Austin, Texas 78711-3025.
9. The hearing was convened at 9:00 a.m. on October 19, 2016, by Administrative Law Judge (ALJ) Henry D. Card, at SOAH's offices at the address set out in the notice of hearing. Carrier appeared and was represented by attorney James Sheffield. Provider did not appear. Carrier presented documentary evidence and testimony, after which the hearing was adjourned.
10. After the hearing was adjourned, the ALJ was informed that Provider's representative had emailed SOAH to state that the representative had been sent to the wrong address for the hearing. The ALJ therefore issued Order No. 1, which allowed Provider to file a motion to reopen the hearing with SOAH within 5 days. No such motion was filed, and the record closed on October 25, 2016.

11. The operative report shows that five implantables were used in _____ surgery.
12. The evidence documents the cost of only two of the implantables used in _____ surgery, an AR-2324BCCTT suture anchor and an AR-2324BCCTT suture anchor.
13. The other four implantables listed on the operating room implant record were for surgery on another patient, _____, performed by a different surgeon and invoiced on a different date.
14. The evidence contains no documentation of the cost of the other implantables used in _____ surgery.
15. The cost of the two implantables used in _____ surgery for which documentation was supplied was \$1,344. That amount plus 10 percent equals \$1,478.40, which is less than the amount already reimbursed to Provider by Carrier.
16. Provider is not entitled to additional reimbursement.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.0312 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052
3. Carrier has the burden of proof in this proceeding by a preponderance of the evidence. 1 Tex. Admin. Code (TAC) § 155.427.
4. Carrier does not owe additional reimbursement to Provider for implantables under 28 TAC § 134.402(f)(1)(B).
5. The Division's Findings and Decision should be reversed, and Carrier should not be required to make any additional reimbursement to Provider for implantables used in _____ surgery.

ORDER

Carrier shall not be required to reimburse any additional amount to Provider for the services at issue in this case.

NONPREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 TAC § 133.307(h) require the nonprevailing party to reimburse DWC for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the nonprevailing party and any costs for services provide by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, Physicians Surgical Center is the nonprevailing 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 December 21, 2016.



HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS