

SOAH DOCKET NO. 454-18-0969.M4-NP
MFDR NO. _____

CARRIER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
HEALTHCARE PROVIDER,	§	
Respondent	§	
	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves services rendered by (Healthcare Provider) (HCP) to an injured employee covered by the workers' compensation insurance system. The Texas Department of Insurance's Division of Workers' Compensation (Division) conducted medical fee dispute resolution (MFDR) and declined to order (Carrier) to reimburse (HCP) in the amount of \$13,905.00.¹ The Administrative Law Judge (ALJ) concludes that (HCP) is not entitled to additional reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, the ALJ addresses these matters in the findings of fact and conclusions of law without further discussion here.

On April 21, 2017, (HCP) requested MFDR.² On August 10, 2017, the Division issued its MFDR decision, denying reimbursement.³ (HCP) did not receive the initial notice of the MFDR decision, and it was re-sent on September 14, 2017; the Division regarded the September notice as the first notice of the decision.⁴ HCP requested a hearing at the State Office of

¹ This is the amount in dispute identified in the MFDR decision. Resp. Ex. 1 at 3.

² Resp. Ex. 1 at 15.

³ Resp. Ex. 1 at 3-6.

⁴ Resp. Ex. 1 at 7.

Administrative Hearings (SOAH) to contest the Division's determination. On November 14, 2017, the Division issued a Notice of Hearing.

On February 13, 2018, ALJ Shannon Kilgore convened a hearing on the merits at SOAH. (HCP) was represented by its owner, MM, DC. Carrier appeared through attorney JL. The record closed on March 13, 2018, the date of filing of a final written closing argument.⁵

II. DISCUSSION

A. Scope of this Proceeding and Burden of Proof

At the SOAH hearing, Dr. M made clear that reimbursement is not his primary goal or concern. Rather, Dr. M seeks a finding that a representative of Carrier lied to him about preauthorization requirements and coverage for the services in question and/or a determination that Carrier committed fraud or an ethical breach. It is evident that Dr. M strongly believes he was not dealt with forthrightly by Carrier. However, upon reviewing the law and the arguments of the parties, the ALJ concludes that the fraud or ethics issues raised by (HCP) are not part of the instant SOAH case.

The MFDR decision did not reach the merits of any coverage determination by Carrier. Rather, the MFDR decision determined that (HCP) had failed to undertake the necessary steps to preserve its claims for consideration in the MFDR process. Because the ALJ agrees with the MFDR decision, as discussed below, this Decision and Order does not reach the issues of alleged dishonesty and/or fraud by Carrier in connection with its communication related to coverage and preauthorization for the services at issue.

As the party requesting a hearing at SOAH to challenge an adverse MFDR decision, (HCP) had the burden of proof to show by a preponderance of the evidence that he is entitled to reimbursement. The hearing before SOAH is a *de novo* review of the issues involved.

⁵ The deadline for submitting written closing arguments was March 9, 2018. Nonetheless, the ALJ has considered (HCP)'s final argument filed March 13, 2018.

B. The MFDR Decision

This case involves chiropractic services delivered from April 16, 2016, through April 19, 2017, on about 100 occasions for one patient. The MFDR decision’s summary of findings was as follows:⁶

Dates of Service	Findings	Amount in Dispute	Amount Due
April 16-19, 2016	(HCP) filed for MFDR after the one-year filing deadline and therefore waived the right to MFDR.		
April 20-21, 2016	(HCP) failed to present evidence of seeking reconsideration from Carrier before filing for MFDR.	\$216.00	\$0.00
April 28, 2016- April 19, 2017	(HCP) failed to provide convincing evidence that Carrier was billed for the services prior to MFDR.	\$12,923.00	\$0.00

C. Evidence

(HCP)’s evidence in this proceeding consists of several documents;⁷ the testimony of the injured worker, (Injured Worker) and the testimony of Dr. M. This evidence relates chiefly to Dr. M’s assertion that he agreed to treat the injured worker based on a misrepresentation by Carrier in a phone call that the first eight visits required no preauthorization, and that following visits would be approved if the injured worker showed improvement. Dr. M has filed a series of

⁶ For dates of service April 16 through 19, 2016, the MFDR decision left the “Amount in Dispute” and “Amount Due” blank apparently because of the determination that those claims were time-barred and therefore not even part of the case.

⁷ Pet. Exs. 1 (pages 1 and 2 only) and 3. Attached to Dr. M’s written closing argument, filed March 1, 2018, is a “Superbill” for service dates April 16 through April 26, 2017. Services provided on four dates during that time frame are listed, with billed amounts that actually add up to \$1,324, although the total reflected on the bill is \$15,663—an amount that seems to represent the total for the entire course of treatment. This document is not in evidence; the ALJ therefore has not considered it in the preparation of this Decision and Order.

complaints against Carrier with the Department of Insurance concerning his fraud allegation and his belief that Carrier has attempted to cover up its misrepresentation.

Carrier's evidence consists of the record from the MFDR process.⁸ This documentation shows that a (HCP) provided services to the injured worker throughout the period in question.⁹ However, the only bills to Carrier for the disputed services are for dates of service April 16 to 21, 2016.¹⁰ The only explanations of benefits (EOBs) from Carrier are for dates of service April 16 to 21, 2016; they reflect denial based on a lack of pre-authorization and because the provider was not authorized.¹¹ It appears that Dr. M and the injured worker made efforts to have Dr. M named as the injured workers treating doctor, and were ultimately successful on June 21, 2016.¹²

Dr. M testified that he requested preauthorization for the first eight dates of service in a phone call with Carrier's representative, but did not request preauthorization for the remaining 92 dates of service. He said that he does not recall whether he requested reconsideration of Carrier's denial of reimbursement for dates of service April 20 and 21, 2016, and he did not submit evidence of any such requests for reconsideration. He acknowledged that he did not submit any bills for dates of service April 28, 2016, through April 19, 2017, to Carrier before requesting MFDR. He indicated that he did not "provide the billings" because of the pendency of his fraud complaint.

D. Discussion

The Division's MFDR rule, which is at 28 Texas Administrative Code § 133.307, provides in relevant part: "A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. . . . A request for MFDR . . . shall be filed no later than one

⁸ Resp. Ex. 1.

⁹ Resp. Ex. 1 at 20-27, 55-66, 84-103.

¹⁰ Resp. Ex. 1 at 70-73.

¹¹ Resp. Ex. 1 at 67-69.

¹² Resp. Ex. 1 at 74.

year after the date(s) of service in dispute.”¹³ On April 21, 2017, (HCP) requested MFDR.¹⁴ Therefore, (HCP) waived the right to MFDR as to dates of service April 16 through 19, 2016.

The Division’s rule at 28 Texas Administrative Code § 133.250 provides that a health care provider dissatisfied with a carrier’s final action on a bill may request that the carrier reconsider its action.¹⁵ If the health care provider is dissatisfied with the insurance carrier’s final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution.¹⁶ An MFDR requestor must include a paper copy of all medical bills submitted to the insurance carrier in accordance with § 133.250.¹⁷ As to dates of service April 20 and 21, 2016, (HCP) billed Carrier¹⁸ and received EOBs denying payment,¹⁹ but (HCP) did not submit (at the MFDR stage or in the instant SOAH proceeding) copies of any requests for reconsideration pursuant to § 133.250. Therefore, (HCP) has not shown that the services provided on April 20 and 21, 2016, were eligible for MFDR.

As to all the remaining dates of service, from April 28, 2016, through April 19, 2017, there is no evidence that (HCP) even billed Carrier. Section 133.307(c)(2) requires an MFDR requestor to include paper copies of all original bills, EOBs, and bills submitted for reconsideration.²⁰ Accordingly, the unbilled services were not eligible for MFDR under §§ 133.250(i) and 133.307.

The MFDR decision is affirmed.

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

¹⁴ Resp. Ex. 1 at 15.

¹⁵ 28 Tex. Admin. Code § 133.250.

¹⁶ 28 Tex. Admin. Code § 133.250(i).

¹⁷ 28 Tex. Admin. Code § 133.307(c)(2)(J).

¹⁸ Resp. Ex. 1 at 70-71.

¹⁹ Resp. Ex. 1 at 67.

²⁰ 28 Tex. Admin. Code § 133.307(c)(2)(J)-(K). *See also* 28 Tex. Admin. Code § 133.10 (billing procedures).

III. FINDINGS OF FACT

1. (HCP) delivered chiropractic services from April 16, 2016, through April 19, 2017, on about 100 occasions, to an injured worker.
2. On April 21, 2017, (HCP) requested medical fee dispute resolution (MFDR) at the Texas Department of Insurance's Division of Workers' Compensation (Division) in connection with the treatment of the injured worker. The MFDR stated the amount in dispute was \$13,905.
3. On August 10, 2017, the Division issued its MFDR decision, denying reimbursement.
4. (HCP) requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
5. On November 14, 2017, the Division issued a Notice of Hearing.
6. The notice of hearing 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 or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. On February 13, 2018, Administrative Law Judge convened a hearing on the merits at SOAH. (HCP) was represented by its owner, MM, DC. (Carrier) appeared through attorney JL. The record closed on March 13, 2018, the date of filing of a final written closing argument.
8. As to dates of service April 20 and 21, 2016, (HCP) billed Carrier and received explanations of benefits (EOBs) denying payment, but (HCP) did not submit (at the MFDR stage or in the instant SOAH proceeding) copies of any requests for reconsideration.
9. As to dates of service April 28, 2016, through April 1, 2017, there is no evidence that (HCP) billed 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; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.

3. A requestor shall timely file the request with the Division's MFDR Section or waive the right to MFDR, and a request for MFDR shall be filed no later than one year after the date(s) of service in dispute. 28 Tex. Admin. Code § 133.307(c)(1)(A).
4. (HCP) waived the right to MFDR as to dates of service April 16 through 19, 2016.
5. The Division has established requirements for health care providers' billing for services provided to injured workers. 28 Tex. Admin. Code § 133.10.
6. A health care provider dissatisfied with a carrier's final action on a bill may request that the carrier reconsider its action. 28 Tex. Admin. Code § 133.250.
7. If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution. 28 Tex. Admin. Code § 133.250(i).
8. An MFDR requestor must include a paper copy of all original bills, EOBs, and medical bills submitted to the insurance carrier in accordance with § 133.250. 28 Tex. Admin. Code § 133.307(c)(2)(J)-(K).
9. Because there is no evidence that (HCP) sought reconsideration of Carrier's denial of reimbursement for dates of service April 20 and 21, 2016, those services were not eligible for MFDR.
10. Because there is no evidence that (HCP) billed Carrier for dates of service April 28, 2016, through April 1, 2017, those services were not eligible for MFDR.
11. (HCP) has failed to meet its burden of proof to show that the MFDR decision was incorrect, and the MFDR decision is affirmed.

ORDER

IT IS ORDERED that Carrier is not required to reimburse (HCP) the requested \$13,905.

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, (HCP) is the non-prevailing party. The costs associated with this decision are set forth in the Statement of Costs attached to this Decision and Order and are incorporated herein for all purposes.

SIGNED April 3, 2018.

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