

MEDICAL CONTESTED CASE HEARING NO. 09184
M4-09-6062-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A medical prehearing conference was held on May 13, 2009, with the record closing on May 28, 2009, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of Medical Fee Dispute Resolution that (Healthcare Provider) is entitled to receive \$675.47 under CPT codes 64475 and 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____?

In order to reflect what was actually being litigated in the proceeding, the issue was amended to remove reference to CPT code 64475 because the decision of Medical Fee Dispute Resolution awarding \$675.47 in additional reimbursement to the Respondent/Provider was made solely pursuant to CPT code 64476.

PARTIES PRESENT

Petitioner/Carrier (hereinafter, "Carrier") appeared by telephone and was represented by RJ, attorney. Respondent/Provider (hereinafter, "Provider") and Claimant did not appear for the prehearing conference and did not respond to a 10-day letter from the Division.

BACKGROUND INFORMATION

Provider did not appear for the prehearing conference scheduled for May 13, 2009 at 9:00 a.m. A letter was sent to Provider's address of record on May 14, 2009, offering it an opportunity to request that the hearing be reset to permit it to present evidence on the disputed issue. No response to that letter was received and, on May 28, 2009, the record was closed. A copy of the 10-day letter was sent to Claimant's address of record on May 14, 2009 and no response to that letter was received.

Carrier, who had the burden of proof on the disputed issue in this case, presented evidence during the May 13, 2009 prehearing conference. The evidence presented in the hearing revealed that, on September 10, 2008, Claimant underwent lumbar injections at the direction of KA, M.D. at three spinal levels: L2-3, L3-4, and L4-5. Following this procedure, Provider billed two units pursuant to Current Procedural Terminology (hereinafter, "CPT") code 64475 and six units pursuant to CPT code 64476. According to the evidence presented in the hearing, CPT codes 64475 and 64476 denote an injection of an anesthetic agent and/or steroid to the lumbar or sacral paravertebral facet joint or facet joint nerve. If the injection is performed on a single spinal level,

the CPT code to be used is 64475. For each additional level, it is necessary to use CPT code 64476.

Division Rule 134.402(d) provides that, for coding, billing, and reporting of facility services covered in this rule, Texas workers' compensation system participants shall apply the Medicare payment policies in effect on the date a service is provided.

Based on a review of Provider's bill and operative report, Carrier reimbursed Provider a total of \$1026.40 for the bilateral injection to L2-3 under CPT code 64475 and a total of \$337.72 (\$168.86 per level) for bilateral injections at L3-4 and L4-5 under CPT code 64476. The evidence presented in the hearing revealed that the reimbursement rate in (County) in 2008 for CPT code 64476 for the injections at L3-4 and L4-5 was \$337.73 (\$225.15 per level x 150% = \$337.725, or \$337.73). Carrier argued that the injections billed under CPT code 64476 would constitute a "subsequent procedure" under Medicare billing and coding requirements. Those requirements state that, when more than one surgical procedure is performed in the same operative session, services are paid at 100% for the first procedure and 50% for subsequent procedures. Based on this understanding of the Medical multiple procedure adjustment, Carrier reimbursed Provider a total of \$337.72 for the injections at L3-4 and L4-5 under CPT code 64476 (reimbursement rate of \$337.72 per spinal level x .50 Medicare multiple procedure discount reimbursement rate of \$168.86 per spinal level). Carrier's argument in this regard was unpersuasive because the Medicare online fee schedule provides that the multiple procedure payment adjustment does not apply to procedures billed under CPT code 64476.

Provider requested reconsideration of the reimbursement under CPT code 64476 and that request was denied by Carrier on March 6, 2009. Provider appealed Carrier's \$337.72 reimbursement under CPT code 64476 to the Division's Medical Fee Dispute Resolution area and, on March 19, 2009, a Medical Fee Dispute Resolution Findings and Decision (MFDRFD) was rendered by an MDR reviewer. The MFDRFD determined that based on the documentation submitted by the parties, and in accordance with Texas Labor Code §413.031, Provider was entitled to reimbursement in the amount of \$675.47 under CPT code 64476. Carrier pointed out one consequential error in the MFDRFD. In reaching the conclusion that Provider was entitled to additional reimbursement in the amount of \$675.47, the MDR reviewer multiplied \$337.73 by three, even though only two spinal levels were at issue, and concluded that the maximum allowable reimbursement (MAR) for CPT code 64476 was \$1013.19. Based on the calculation that Carrier had previously reimbursed Provider for \$337.72, the MDR reviewer took the difference between \$1013.19 ($\337.73×3) and \$337.72 and concluded that Provider was entitled to additional reimbursement under CPT code 64476 in the amount of \$675.47. Based on a careful review of the evidence presented in the hearing, the preponderance of the evidence is contrary to the decision of Medical Fee Dispute Resolution that (Healthcare Provider) is entitled to receive \$675.47 under CPT code 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____. Consequently, Provider is entitled to additional reimbursement in the amount of \$337.74 ($\$337.73 \times 2 = \675.46 ; $\$675.46 - \$337.72 = \$337.74$) under CPT code 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On _____, Claimant was the employee of (Employer), and sustained a compensable injury.
3. The Division sent a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent to Provider and Claimant at their addresses of record. That document was admitted into evidence as Hearing Officer's Exhibit Number 2.
4. The preponderance of the evidence is contrary to the decision of Medical Fee Dispute Resolution that (Healthcare Provider) is entitled to receive \$675.47 under CPT code 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____. (Healthcare Provider) is entitled to \$337.74 in additional reimbursement under CPT code 64476.
5. No evidence was received that showed that Provider or Claimant had good cause for their failure to appear for the medical prehearing conference on May 13, 2009.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Provider is entitled to additional reimbursement in the amount of \$337.74 under CPT code 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____.

DECISION

Provider is entitled to additional reimbursement in the amount of \$337.74 under CPT code 64476 for services rendered to Claimant on September 10, 2008 for the compensable injury of _____.

ORDER

Carrier is liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 4th day of June, 2009.

Jennifer Hopens
Hearing Officer