MEDICAL CONTESTED CASE HEARING NO. 10125
M4-09-A374-01

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 contested case hearing was held on February 22, 2010 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the findings of Medical Fee Dispute Resolution that the health care provider is not entitled to $292.08 as reimbursement for health care services rendered to the claimant on November 14, 2008 under CPT code 99245?

PARTIES PRESENT

Petitioner/Provider appeared and was represented by Dr. R. Respondent/Self-Insured appeared by telephone and was represented by TW, attorney. LM was present on behalf of the employer. Claimant did not appear and his appearance was waived by the parties.

BACKGROUND INFORMATION

On November 14, 2008, Dr. K examined the Claimant for his compensable _____ injury at Petitioner's facility. Thereafter, Respondent/Self-Insured denied reimbursement because Petitioner's bill was not timely submitted for payment. Medical Fee Dispute Resolution (MFDR) was sought, and the MFDR Officer determined that the Petitioner/Provider did not timely submit the bill and, therefore, was not entitled to the medical fees sought in the amount of $292.08. Petitioner appeals the adverse determination.

Texas Labor Code Section 408.027(a) states that "A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment."

The Petitioner argues that in accordance with Division Rule 102.4(h), the bill was timely submitted based on the date the CMS-1500 was signed by Dr. K, which was on November 28, 2008. The Self-Insured argues that neither it nor its agents received a claim for payment by the Petitioner prior to March 2, 2009 at 8:07 p.m. Rule 102.4 (h) states as follows:

"(h) Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on:
(1) the date received, if sent by fax, personal delivery or electronic transmission or,
(2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal

holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday."

In evidence at the Medical Contested Case Hearing was a copy of the CMS-1500 form that Dr. R testified was submitted by the Provider to the Self-Insured. The form is electronically signed by Dr. K and is dated November 28, 2008. Dr. R testified that the bill, along with the November 14, 2008 report, was sent to the Self-Insured's agent by regular mail on November 28, 2008. Dr. R urged at the hearing that the signature date on the CMS-1500 form controls regarding the date that the bill was sent because a postmark date is unavailable. Dr. R contends that the Self-Insured received the Petitioner's November 28, 2008 mailing, and he urged that the fact that the Self-Insured asserts that it was not received is not dispositive of the issue. Dr. R also urged, by way of example, that he has duplicate copies of other records that the Self-Insured has received in this case, some of which copies are date-stamped by the Self-Insured or its agents, and other identical copies are not date-stamped. Thus, he argued, the absence of records in evidence bearing a date-stamp by the Self-Insured in late November 2008 or in December 2008 does not prove that the Self-Insured did not receive the document in that time frame. Dr. R also argued that as of July 22, 2009, the Self-Insured's agent, (IMO), had in its possession a copy of Dr. K's November 14, 2008 report. Dr. R contended that the only way IMO could have received that report was through the Provider's mailing of it with the disputed bill on November 28, 2008.

The Self-Insured, on the other hand, argued that there is no evidence, other than Dr. R's testimony, that the Provider mailed a claim for payment to the Self-Insured before it faxed a request for reconsideration that the Self-Insured received on March 2, 2009. The Self-Insured asserted that there also is no evidence that it or any of its agents received any claim mailed by the Provider in November 2008, and that the Provider has not met its burden to establish that the bill was sent in November 2008. The Provider faxed a second request for reconsideration that the Self-Insured received on April 16, 2009, and the Self-Insured argued that the March 2, 2009 transmission was actually the initial claim for payment, with the April 16, 2009 transmission being what is really the first request for reconsideration. The Self-Insured argued that under Rule 102.4(h), the date the claim for payment was sent was on March 2, 2009, which was more than 95 days after the November 14, 2008 date of service. The Self-Insured thus asserts that the Provider has forfeited its right to reimbursement for its claim for payment for services rendered on November 14, 2008.

After a review of the entire record, it is determined that the evidence does not establish that the Provider's claim for payment was sent to the Self-Insured prior to March 2, 2009. The bill is dated November 28, 2008 and bears Dr. K's electronic signature on that date, but the evidence does not establish that the bill was sent to the Self-Insured on that date, nor does the evidence show that the bill was received by the Self-Insured prior to March 2, 2009. Since evidence shows that the Provider's claim for payment was sent later than the 95th day after November 14, 2008, the MFDR Officer's determination that the Provider is not entitled to $292.08 for services rendered on November 14, 2008 is not contrary to the preponderance of the evidence.

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. The parties stipulated to the following facts:

A. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction over this matter, and venue is proper in the (City) Field Office.

B. On _____, the Claimant was the employee of the (Self-Insured), employer.

C. On _____, employer had workers' compensation insurance coverage through self-insurance.

D. On _____, the Claimant sustained a compensable injury while in the course and scope of his employment with the (Self-Insured).

2. On November 20, 2009, the MFDR Findings and Decision determined that Dr. K is not entitled to additional reimbursement for services rendered on November 14, 2008 since the claim for payment was untimely filed.

3. Dr. K/(Healthcare Provider) did not send its claim for payment for services rendered to the Claimant on November 14, 2008 to the Self-Insured's agent until March 2, 2009.

4. Petitioner's claim for $292.08 for date of service November 14, 2008 was not timely submitted to the Self-Insured for reimbursement in accordance with Texas Labor Code §408.027.

5. The Self-Insured delivered to the Provider a single document stating the true corporate name of the Self-Insured, and the name and street address of the Self-Insured's registered agent, which was admitted into evidence as Hearing Officer's Exhibit Number 1.

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. The preponderance of the evidence is not contrary to the decision of the MFDR Officer that the health care provider is not entitled to $292.08 as reimbursement for services rendered to the Claimant on November 14, 2008 under CPT code 99245.

DECISION

Petitioner, (Healthcare Provider), is not entitled to reimbursement in the amount of $292.08 for services rendered to the Claimant on November 14, 2008 under CPT Code 99245 since the claim for payment was untimely filed.

ORDER

Respondent/Self-Insured is not liable for the medical benefits at issue in this hearing.

The true corporate name of the Self-Insured is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

AR, CITY SECRETARY
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 23rd day of February, 2010.

Patrice Fleming-Squirewell
Hearing Officer