MEDICAL CONTESTED CASE HEARING NO. 11051
M4-09-3351-01

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 November 1, 2010 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of Medical Review that (Subclaimant) is not entitled to additional reimbursement in the amount of $378.78 for services provided by (Healthcare Provider 1) on _____, by (Healthcare Provider 2) on _____, and by (Healthcare Provider 3) on November 18, 2002 for the compensable injury of _____?

PARTIES PRESENT

Petitioner appeared and was represented by CF, attorney. Respondent/Carrier appeared and was represented by KP, attorney. Claimant did not appear, and his appearance was waived.

BACKGROUND INFORMATION

It was undisputed that Claimant sustained a compensable injury, however there was a conflict in the evidence concerning the date of injury (DOI). According to the Division's TXCOMP and CINQ computer records Claimant initially (in January 2003) reported the DOI to the Division (at that time the Commission) as _____. Shortly thereafter the Employer reported the DOI as _____. The Employer filed a correction (in September 2003) giving the date of injury as _____ and that date was used on numerous filings until shortly after Petitioner sent its notice of sub-claim in 2008, when the Employer and Carrier reverted to _____. Based on the available information the DOI is _____.

After sustaining the compensable injury Claimant received treatment from (Healthcare Provider 1) on _____, (Healthcare Provider 2) on _____, and (Healthcare Provider 3) on November 18, 2002. Petitioner contended that this treatment was medically necessary to treat the compensable injury. Petitioner is a recovery vendor to the group health and managed care industries. In this case, it is Petitioner's position that the treatment that the Claimant received from (Healthcare Provider 1), (Healthcare Provider 2), and (Healthcare Provider 3) on the dates in question was paid for in part by a health care insurer, Unicare Life & Health Insurance Co. (Unicare), for whom Petitioner is an authorized representative. Unicare is not a party in this case. Petitioner asserted that in its capacity as an authorized representative of Unicare, it is a sub-claimant in this case under Section 409.009 and/or Section 409.0091 of the Act, and that pursuant to either or both of those provisions it is entitled to seek and obtain reimbursement from United States Fidelity and Guaranty Insurance Company (USF&G), the workers' compensation insurance carrier herein, of the monies paid by Unicare for the services

rendered to the Claimant by (Healthcare Provider 1), (Healthcare Provider 2), and (Healthcare Provider 3).

The MFDR Auditor determined that the Petitioner was not entitled to reimbursement under §409.009 because it failed to meet all of the requirements of Division Rule 140.6, which implements this provision of the statute. Specifically, the Auditor found that Petitioner did not timely submit its request for dispute resolution, nor did its request set forth the required information in the manner and form required by the Division. The Auditor also determined that Petitioner is not eligible to file for reimbursement under §409.0091, since it did not provide proof of a data match within the meaning of §402.084(c-3) as required by subsection (s), nor did it comply with subsection (f) in providing all of the required information in the required format.

Section 408.027(d) of the Act provides as follows:

> (d) If an insurance carrier contests the compensability of an injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

Under this provision, it is clear that a health care insurer may proceed as a sub-claimant under Section 409.009 or Section 409.0091 of the Act to seek reimbursement of the cost health care for which it paid from a workers' compensation insurance carrier if the services provided are for a compensable injury.

Section 409.009 of the Act provides:

> SUBCLAIMS. A person may file a written claim with the division as a subclaimant if the person has:
>
> (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and
> (2) sought and been refused reimbursement from the insurance carrier.

The evidence shows that Petitioner is not a health care insurer, and the evidence does not establish that Petitioner provided any compensation to Claimant, either directly or indirectly. USF&G argued at the hearing that Petitioner does not have standing to seek reimbursement under Section 409.009 because it does not meet the requirements of subsections (1) or (2), and that Petitioner's status as an authorized representative of Unicare does not confer on Petitioner any eligibility to assert sub-claimant status under this section. Petitioner does not meet the definition of a sub-claimant under Section 409.009 and is not eligible to seek reimbursement from USF&G under this provision of the statute.

In addition, Rule 140.6(d) requires that a sub-claimant as defined in Section 409.009 "…must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of [Title 28 of the Texas Administrative Code]." Division Rule 133.307(c)(1)(A), which applies to injured employees and health care providers, requires that a request for MFDR be filed not later than one year after the dates of service in dispute, and subsection (c)(2) of the Rule, which applies to health care providers, requires that a reimbursement request (DWC-60 form) provide specific documentation in a required format. In this case, the evidence showed that Petitioner filed its DWC-60 with the Division on December 1, 2008, more than six years after the most recent date of service in dispute, and that its DWC-60 form lacked required information regarding the disputed dates of service. Petitioner did not establish under Section 409.009 of the Act that it is entitled to reimbursement from USF&G for the disputed dates of service.

Section 409.0091 of the Act provides in pertinent part:

> Section 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES.
>
> (a) In this section, "health care insurer" means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).
>
> (b) This section applies only to a request for reimbursement by a health care insurer.
>
> (c) Health care paid by a health care insurer may be reimbursable as a medical benefit.

Unlike Section 409.009 of the Act, Section 409.0091 expressly includes the authorized representative of a health care insurer, like Petitioner, as an entity that can attain sub-claimant status under its provisions. Section 409.0091 only applies to dates of injury on or after September 1, 2007, except as provided in subsection Section 409.091(s):

> (s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:
>
> (1) a subclaim with the division under Subsection (l) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

Section 409.091(s) refers to data matching that can be provided by the Division under §402.084(c-3) of the Act. Data matching is a tool that can be used by certain entities, like health care insurers, who may be obligated for the cost of health care services for an injured employee, to determine whether a workers' compensation claim exists such that it may be entitled to reimbursement from a workers' compensation insurance carrier for its payment of health care services that were necessitated as the result of a compensable injury. In this case, since the Claimant's injury occurred prior to September 1, 2007, Petitioner has to follow the requirements of Section 409.091(s) to obtain reimbursement under Section 409.0091.

Section 409.091(l) provides in pertinent part:

(l) Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and the division rules.

The evidence shows that Petitioner sent a letter constituting its notice of a sub-claim to USF&G on October 13, 2006, which was denied by USF&G. The letter states that the sub-claim was identified under the provisions of Section 402.084(c-1) through (c-7) of the Act. According to the MFDR Decision and Findings, Petitioner provided an "Affidavit of CF" (not offered at the hearing) indicating a data match occurred in March 2006. Proof of the data match, however, when requested by the Division in connection with MFDR, was not produced by Petitioner. The evidence does not establish the existence of a data match in this case within the meaning of §402.084(c-3).

Petitioner was required under Section 409.0091(s) to file a sub-claim with the Division not later than March 1, 2008. As noted above the DWC-60 was received by the Division on December 1, 2008.

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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

   B. On _____ Claimant was the employee of (Employer).

   C. On _____ Claimant sustained a compensable injury.

   D. Medical Review determined that (Subclaimant) is not entitled to additional reimbursement in the amount of $378.78.

2. Carrier delivered to Petitioner a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. The date of injury is _____.

4. (Subclaimant) has not provided documentation showing a data match with USF&G obtained from the Division pursuant to §402.084(c-3) of the Act.

5. (Subclaimant) is an authorized representative of Unicare, which is a health care insurer that paid for treatment that the Claimant received from (Healthcare Provider 1), (Healthcare Provider 2), and (Healthcare Provider 3) on the disputed dates of service in this case.

6. (Subclaimant) is not a health care insurer, and it has not provided compensation or health care to the Claimant, either directly or indirectly, in this case.

7. (Subclaimant) did not timely file a completed DWC-60 form with the Division regarding the disputed dates of service.

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 Medical Review that (Subclaimant) is not entitled to reimbursement for services provided by (Healthcare Provider 1) on _____, by (Healthcare Provider 2) on _____, or by (Healthcare Provider 3) on November 18, 2002 for the compensable injury of _____.

DECISION

(Subclaimant) is not entitled to reimbursement for services provided by (Healthcare Provider 1) on _____, by (Healthcare Provider 2) on _____, or by (Healthcare Provider 3) on November 18, 2002 for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021 of the Act.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY AND GUARANTY INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701

Signed this 2nd day of November, 2010.

Thomas Hight
Hearing Officer