

MEDICAL CONTESTED CASE HEARING NO. 14024

**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.

**ISSUE**

A medical contested case hearing was held on October 31, 2013 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider 2) is entitled to reimbursement in the amount of \$612.00 for a functional capacity evaluation for date of service of July 15, 2009 for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Carrier appeared, and was represented by Attorney TR. Respondent/Provider did not appear for the October 31, 2013 Medical Contested Case Hearing, and Claimant's appearance was excused by the Hearing Officer.

**BACKGROUND INFORMATION**

Provider sought payment from Carrier for a functional capacity evaluation of Claimant that it administered during a patient visit on July 15, 2009, and on May 23, 2013, the Division's Medical Fee Dispute Resolution Officer issued a decision holding that Provider was entitled to reimbursement in the amount of \$612.00 from Carrier.

Carrier presented voluminous evidence to the effect that (Healthcare Provider 1), an entity established by Dr. HD, essentially required that a functional capacity evaluation be ordered for every designated doctor examination, regardless of whether the designated doctor was of the opinion that such a test was necessary or was aware that one had been ordered. (Healthcare Provider 1) also routinely billed for four hours, the maximum permissible time, for each functional capacity evaluation; the evidence, however, indicates that functional capacity evaluations usually lasted far less than the four hours billed for such service.

When it was discovered that (Healthcare Provider 1) was billing for services that were not provided, were not reasonable and necessary, or that took less time than claimed, Dr. D established a new entity, (Healthcare Provider 2), obtained a new address and tax identification number for that entity, and continued his previous billing practices. Dr. D has since been convicted of a criminal offense in conjunction with the above-described billing scheme.

Carrier's evidence also indicates that the services billed did not conform to the American Medical Association's CPT code 97750 for the services rendered, in that this CPT code mandates direct patient contact for the entirety of the time billed; the four-hour duration that Provider routinely billed for functional capacity evaluations does not comply with this requirement.

The preponderance of the evidence therefore is found to be contrary to the Medical Fee Dispute Resolution Findings and Decision that Provider is entitled to reimbursement in the total amount of \$612.00 for the functional capacity evaluation for the date of service of July 15, 2009 for Claimant's compensable injury of (Date of Injury). The amount of reimbursement to which Provider is entitled is reduced from \$612.00 to \$00.00.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. On (Date of Injury), Claimant was employed by (Employer), Employer.
2. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance issued by the Texas Mutual Insurance Company, Carrier.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
4. Carrier mailed Provider and Claimant 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 Carrier's Exhibit Number 1.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of his body while he was within the course and scope of his employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. The Medical Fee Dispute Resolution Officer determined that Provider was entitled to reimbursement in the amount of \$612.00 for the functional capacity evaluation with a date of service of July 15, 2009.
8. The services for which Provider billed under CPT code 97750 were not shown to be necessary, and were billed at an excessive rate.

9. Provider produced no evidence to show the duration of the functional capacity evaluation at issue in this case.

### **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 contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider 2) is entitled to reimbursement in the amount of \$612.00 for a functional capacity evaluation with a date of service of July 15, 2009 for the compensable injury of (Date of Injury).

### **DECISION**

(Healthcare Provider 2) is not entitled to reimbursement in the amount of \$612.00 for a functional capacity evaluation with a date of service of July 15, 2009 for the compensable injury of (Date of Injury). The amount of reimbursement to which Provider is entitled for that testing is reduced from \$612.00 to \$00.00

### **ORDER**

Carrier is not liable for the reimbursement at issue in this hearing in the amount of \$612.00. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**RICHARD J. GERGASKO**  
**TEXAS MUTUAL INSURANCE COMPANY**  
**6210 EAST HIGHWAY 290**  
**AUSTIN, TEXAS 78723**

Signed this 1<sup>st</sup> day of November, 2013.

Ellen Vannah  
Hearing Officer