

MEDICAL CONTESTED CASE HEARING NO. 14068

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Carrier is liable for the additional \$666.81 in reimbursement for the services rendered by Provider to Claimant for the compensable injury of (Date of Injury), on May 14, 2004; May 19, 2004; May 20, 2004; May 21, 2004; May 24, 2004, May 25, 2004; May 28, 2004; June 1, 2004; June 2, 2004; June 8, 2004; June 9, 2004; June 10, 2004; June 14, 2004; June 15, 2004; June 16, 2004; and July 5, 2004, as set forth in the Medical Fee Dispute Resolution Findings and Order dated February 28, 2014.

STATEMENT OF THE CASE

On February 28, 2014, a Medical Fee Dispute Resolution Findings and Decision was entered by the Division's Medical Fee Dispute Resolution Officer that SCD Back & Joint Clinic, Respondent, is entitled to additional reimbursement in the amount of \$666.81 plus interest for services rendered from May 14, 2004, through July 5, 2004, under HCPCS Code L4350, and CPT Codes 99212-25, 99211-25, 97012, 97024, 99213-25, 97012, 97024, and 99213-25. State Office of Risk Management, Petitioner, appealed the Medical Fee Dispute Resolution Findings and Decision by requesting a Medical Fee Contested Case Hearing in accordance with the Act and Rules.

A contested case hearing was held on May 27, 2014, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that SCD Back & Joint Clinic is entitled to additional reimbursement in the amount of \$666.81 for the services involved in this dispute?

PARTIES PRESENT

Petitioner/Carrier, State Office of Risk Management, appeared and was represented by JT, attorney. Respondent/Provider, (Provider), appeared through DB, DC, a principal of the clinic.

EVIDENCE PRESENTED

No witnesses testified

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Petitioner's Exhibits P-A through P-F.

Respondent's Exhibit R-1.

DISCUSSION

Carrier contends that Provider is not entitled to the reimbursement determined by the Medical Fee Dispute Resolution Officer in her order of February 28, 2014, because Provider failed to request reconsideration of its determination of the amount to be paid for the services provided within 10 months of the date of the service as required under Rule 133.250(b). It does not contend that the services were not reasonably necessary health care for the compensable injury of (Date of Injury), or that the amount of additional reimbursement calculated by the Medical Fee Dispute Resolution Officer is incorrect, only that Provider is barred from availing itself of the Division's Medical Fee Dispute Resolution because it did not comply with the requirement that a request for reconsideration be tendered to Carrier before the matter could be submitted to the Division for dispute resolution. That condition precedent, Carrier asserts, defeats Provider's entitlement to reimbursement in the amount calculated by the Medical Fee Dispute Resolution Officer.

In support of its assertion that Provider failed to request reconsideration of its bill in a timely manner, Carrier offered an affidavit from KK. Ms. K' affidavit states that a thorough search of the claim file and computer records of AW was carried out under her direction and control, but the search revealed no record of a request for reconsideration dated October 18, 2004, from Provider prior to receiving a copy of the request from the Division on May 17, 2005.

Provider offered a copy of a request for reconsideration dated October 18, 2004, for the bills denied or reduced by Carrier that are the subject of this litigation. The request for reconsideration was signed by "A. B" of Provider's Dispute Department and contains a certificate of service, again signed by "A. B" stating that a true and correct copy of the documentation attached to the request for reconsideration (and by implication the request for reconsideration itself) was mailed to Carrier at its correct Austin Post Office Box on October 18, 2004.

Rule 102.4: General Rules for Non-Commission Communications provides in part as follows:

(p) For purposes of determining the date of receipt for non-commission written communications, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed via United States Postal Service regular mail; or the date faxed or electronically transmitted.

The preponderance of the evidence indicates that Provider placed its request for reconsideration into the mail on October 18, 2004. Carrier is deemed to have received that request for

reconsideration on October 23, 2004. The only defense to liability in this matter, that it did not receive a request for reconsideration of the disputed bills within ten months of the date of service, is not supported by a preponderance of the evidence. The determination that Provider is entitled to \$666.81 in additional reimbursement for services rendered for the compensable injury, as set forth in the Medical Fee Dispute Resolution Findings and Decision of February 28, 2014, is consistent with the preponderance of the evidence.

FINDINGS OF FACT

1. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On (Date of Injury), Claimant was the employee of the (Employer).
3. On (Date of Injury), the State of Texas provided workers' compensation insurance as a self-insurer through the State Office of Risk Management, the statutorily designated insurance carrier.
4. On (Date of Injury), Claimant sustained a compensable injury.
5. (Provider) provided reasonably necessary health care to Claimant for the compensable injury of (Date of Injury), on May 14, 2004, May 19, 2004, May 20, 2004, May 21, 2004, May 24, 2004, May 25, 2004, May 28, 2004, June 1, 2004, June 2, 2004, June 8, 2004, June 9, 2004; June 10, 2004, June 14, 2004, June 15, 2004, June 16, 2004; and July 5, 2004.
6. Provider received partial payment from Carrier for the services set forth in Finding of Fact No. 5, and mailed a properly addressed request for reconsideration to Carrier via the United States Postal Service on October 18, 2004.
7. Provider thereafter appealed Carrier's failure to provide full payment for the services identified in Finding of Fact No. 5, to the Division and a medical fee dispute resolution officer determined that Provider is entitled to additional reimbursement in the amount of \$666.81 for the services rendered as set forth in Finding of Fact No. 5.
8. The preponderance of the evidence supports the dispute resolution officer's determination that Provider is entitled to \$666.81 as additional reimbursement for the services rendered by Provider to Claimant for the compensable injury of (Date of Injury), on May 14, 2004; May 19, 2004; May 20, 2004; May 21, 2004; May 24, 2004; May 25, 2004; May 28, 2004; June 1, 2004; June 2, 2004; June 8, 2004; June 9, 2004; June 10, 2004; June 14, 2004; June 15, 2004; June 16, 2004; and July 5, 2004.

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 \$666.81 for reasonably necessary health care provided to Claimant for the compensable injury of (Date of Injury), on May 14, 2004; May 19, 2004; May 20, 2004; May 21, 2004; May 24, 20004, May 25, 2004; May 28, 2004; June 1, 2004; June 2, 2004; June 8, 2004; June 9, 2004; June 10, 2004; June 14, 2004; June 15, 2004; June 16, 2004; and July 5, 2004.

ORDER

Carrier is ordered to pay additional reimbursement to Provider in accordance with this decision, the Texas Workers' Compensation Act, the Commissioner's Rules and the Medical Fee Dispute Resolution Findings and Decision dated February 28, 2014, in this matter. Unpaid additional reimbursement, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT** and the name and address of its registered agent for service of process is

STATE OFFICE OF RISK MANAGEMENT

MAILING ADDRESS:

JONATHAN D. BOW

P.O. BOX 13777

AUSTIN, TEXAS 78711-3777

PHYSICAL ADDRESS:

JONATHAN D. BOW

300 W. 15TH STREET, 6TH FLOOR

AUSTIN, TEXAS 78701

Signed this 30th day of May, 2014.

KENNETH A. HUCHTON

Hearing Officer