



Medical Fee Dispute Resolution Findings and Decision

General Information

Requestor Name

Emily Bailey, D.C.

Respondent Name

Fedex Freight, Inc.

MFDR Tracking Number

M4-24-2119-01

Carrier's Austin Representative

Box Number 19

DWC Date Received

May 31, 2024

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
January 9, 2024	Designated Doctor Examination 99456-W5-NM	\$350.00	\$350.00
January 9, 2024	Designated Doctor Examination 99456-W6-RE	\$500.00	\$500.00
Total		\$850.00	\$850.00

Requestor's Position

"I submitted my report to all parties on January 18, 2024. Fax confirmation shows that the carrier received this submission and that all 15 pages were received including the report, DWC68 and DWC69 along with HCFA and cover sheet. Billing for the entire exam was in the amount of \$850.00 as the claimant was found to have not yet reached maximum medical improvement. No check or EOB was ever received from the carrier."

Amount in Dispute: \$850.00

Respondent's Position

The Austin carrier representative for Fedex Freight, Inc. is Flahive, Ogden & Latson. The representative was notified of this medical fee dispute on June 11, 2024. Per 28 Texas Administrative Code §133.307 (d)(1), if DWC does not receive the response within 14 calendar days of the dispute notification, then the DWC may base its decision on the available information.

As of today, no response has been received from the insurance carrier or its representative. We will base this decision on the information available.

Findings and Decision

Authority

This medical fee dispute is decided according to [Texas Labor Code §413.031](#) and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC).

Statutes and Rules

1. [28 Texas Administrative Code \(TAC\) §133.307](#) sets out the procedures for resolving medical fee disputes.
2. [28 TAC §134.235](#) sets out the fee guidelines for examinations to determine extent of injury, return to work, and disability.
3. [28 TAC §134.240](#) sets out medical fee guidelines for designated doctor examinations.
4. [Texas Labor Code \(TLC\) §408.0041](#) sets out provisions of Designated Doctor examinations under the Texas Workers' Compensation Act.

Denial Reasons

- Neither party submitted an explanation of benefits (EOB) document.

Issues

1. Has the insurance carrier taken final action on the disputed medical bill in accordance with 28 TAC §133.240?
2. What rules apply to the services in dispute?
3. Is the requestor entitled to reimbursement?

Findings

1. Per 28 TAC §133.240, insurance carriers are required to review and take final action or determine to audit a medical bill not later than the 45th day after the date the insurance carrier received a complete medical bill.

A review of the submitted documents finds evidence to support that the medical bill in dispute was timely submitted to the insurance carrier via successful facsimile transmission to the fax number provided on the DWC032, Request for Designated Doctor Examination form. As of the date of this review, DWC finds no evidence in the submitted documentation to support that the insurance carrier has taken any action on the disputed medical bill.

Specifically, DWC finds no evidence to support that the insurance carrier has provided an EOB or provided notification to the requestor of intent to audit the medical bill.

Therefore, DWC finds that the insurance carrier has failed to take final action on the disputed medical bill in accordance with 28 TAC §133.240.

2. This medical fee dispute involves an examination by a designated doctor for the purpose of establishing: if maximum medical improvement (MMI) has been reached; what date MMI was reached if applicable; to provide impairment ratings (IR) if MMI has been reached; and for the purpose of determining the extent of the employee's compensable injury.

On the disputed date of service, the requestor billed \$850.00 for CPT codes 99456-W5-NM and 99456-W6-RE. CPT code 99456 indicates the service of a maximum medical improvement (MMI) and/or impairment rating (IR) examination by a doctor other than the treating doctor. Modifier W5 indicates the examination was performed by a designated doctor. The modifier NM indicates that per the doctor's evaluation, the employee's injuries have not yet reached MMI. Modifier W6 is appended to indicate an evaluation to determine the extent of the employee's compensable injury, while modifier RE is required to indicate return to work (RTW) and/or evaluation of medical care (EMC) examination.

Designated Doctor examinations are addressed under Texas Labor Code (TLC) §408.0041. TLC §408.0041 states in pertinent part, "DESIGNATED DOCTOR EXAMINATION.

- (a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:
 - (1) the impairment caused by the compensable injury;
 - (2) the attainment of maximum medical improvement;
 - (3) the extent of the employee's compensable injury;
 - (4) whether the injured employee's disability is a direct result of the work-related injury;
 - (5) the ability of the employee to return to work; or
 - (6) issues similar to those described by Subdivisions (1)-(5) ...
- (h) The insurance carrier shall pay for:
 - (1) an examination required under Subsection (a), (f), or (f-2), unless otherwise prohibited by this subtitle or by an order or rule of the commissioner;"

DWC finds that 28 TAC §134.250 applies to the reimbursement of the services in dispute. 28 TAC §134.250, which sets out the fee guidelines for maximum medical improvement examinations and impairment ratings, states in pertinent part, "(2)(A) If the examining doctor, other than the treating doctor, determines MMI has not been reached, the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this section. Modifier "NM" shall be added... (3) The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT code 99456. Reimbursement shall be \$350."

28 TAC §134.235, which applies to the billing and reimbursement of the services in dispute, states, "The following shall apply to return to work (RTW)/evaluation of medical care (EMC) examinations. When conducting a division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT code 99456 with modifier 'RE.' In either instance of whether maximum medical improvement/ impairment rating (MMI/IR) is performed or not, the reimbursement shall be \$500 in accordance with §134.240 of this title and shall include division-required reports. Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee."

28 TAC §134.240, which applies to the services in dispute states in pertinent part, "The following shall apply to designated doctor examinations:

(1) Designated doctors shall perform examinations in accordance with Labor Code §§408.004, 408.0041, and 408.151 and division rules, and shall be billed and reimbursed as follows:

(A) Impairment caused by the compensable injury shall be billed and reimbursed in accordance with §134.250 of this title, and the use of the additional modifier 'W5' is the first modifier to be applied when performed by a designated doctor;

(B) Attainment of maximum medical improvement shall be billed and reimbursed in accordance with §134.250 of this title, and the use of the additional modifier 'W5' is the first modifier to be applied when performed by a designated doctor;

(C) Extent of the employee's compensable injury shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier 'W6'."

3. The requestor, Emily Bailey, D.C., is seeking reimbursement in the amount of \$850.00 for an examination rendered on January 9, 2024, for the purpose of determining MMI and the extent of the injured employee's compensable injury.

The submitted medical record supports that Dr. Bailey, a designated doctor, performed an evaluation of maximum medical improvement (MMI) as ordered by DWC. The designated doctor determined that the employee's injuries had not yet reached MMI, therefore, modifier NM was appended to the CPT code 99456 and no impairment rating was calculated. Per 28 TAC §134.250 (3)(C), the maximum allowable reimbursement (MAR) for this examination is \$350.00.

A review of the submitted documentation finds that Dr. Bailey performed an examination to determine the extent of the employee's compensable injuries as ordered by DWC. According to 28 TAC §134.235, the MAR for such examinations is \$500.00.

DWC finds that the requestor, Emily Bailey, D.C., is entitled to reimbursement in the total amount of \$850.00 for CPT code 99456-W5-NM and 99456-W6-RE, rendered on January 9, 2024.

Conclusion

The outcome of this medical fee dispute is based on the evidence presented by the requestor and the respondent at the time of adjudication. Though all evidence may not have been discussed, it was considered.

DWC finds the requestor has established that reimbursement is due in the amount of \$850.00.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to reimbursement for the disputed services. It is ordered that Fedex Freight, Inc. must remit to Emily Bailey, D.C. \$850.00 plus applicable accrued interest within 30 days of receiving this order in accordance with 28 TAC §134.130.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

August 8, 2024

Date

Your Right to Appeal

Either party to this medical fee dispute has a right to seek review of this decision under 28 TAC §133.307, which applies to disputes filed on or after **June 1, 2012**.

A party seeking review must submit DWC Form-045M, *Request to Schedule, Reschedule, or Cancel a Benefit Review Conference to Appeal a Medical Fee Dispute Decision (BRC-MFD)* and follow the instructions on the form. You can find the form at www.tdi.texas.gov/forms/form20numeric.html. DWC must receive the request within **20 days** of when you receive this decision. You may fax, mail, or personally deliver your request to DWC using the contact information on the form or the field office handling the claim. If you have questions about DWC Form-045M, please call CompConnection at 1-800-252-7031, option 3, or email CompConnection@tdi.texas.gov.

The party seeking review of the MFDR decision must deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with DWC. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** with any other required information listed in 28 TAC §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 1-800-252-7031, opción 3 o correo electrónico CompConnection@tdi.texas.gov.