TDI Division of Workers' Compensation
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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

General Information

Requestor Name
Beau T. Kirkwood, D.O.

Respondent Name
Texas Mutual Insurance Co.

MFDR Tracking Number
M4-24-2393-01

Carrier's Austin Representative
Box Number 54

DWC Date Received
June 25, 2024

Summary of Findings

Dates of Service	Disputed Services	Amount in Dispute	Amount Due
February 29, 2024	Designated Doctor Examination 99456-W5-WP	$150.00	$00.00
	99456-W7-RE	$00.00	$00.00
	99456-W8-RE	$00.00	$00.00
	Total	$150.00	$00.00

Requestor's Position

"The insurance carrier has failed to submit payment for the Medical Fee Guidelines allowable for a State issued Designated Doctors Evaluation."

Amount in Dispute: $150.00

Respondent's Position

"RMJ Evaluations is requesting additional reimbursement of $150 for DRE of the [medical procedure], however, this falls under the lower extremity that has already been reimbursed… Our position is that no payment is due."

Response Submitted by: Texas Mutual Insurance Co.

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 §134.250 sets out the fee guidelines for examinations to determine maximum medical improvement and impairment rating.
3. 28 TAC §134.235 sets out the fee guidelines for examinations to determine extent of injury, return to work, and disability.
4. 28 TAC §134.240 sets out medical fee guidelines for designated doctor examinations.
5. 28 TAC §129.5 sets out the fee guidelines for Work Status reports.

Adjustment Reasons

- P12 – WORKERS' COMPENSATION JURISDICTIONAL FEE SCHEDULE ADJUSTMENT.
- G15 – PRICING IS CALCULATED BASED ON THE MEDICAL PROFESSIONAL FEE SCHEDULE VALUE.
- W3 & 350 – IN ACCORDANCE WITH TDI-DWC RULE 134.804, THIS BILL HAS BEEN IDENTIFIED AS A REQUEST FOR RECONSIDERATION OR APPEAL.
- 193 - ORIGINAL PAYMENT DECISION IS BEING MAINTAINED. UPON REVIEW, IT WAS DETERMINED THAT THIS CLAIM WAS PROCESSED PROPERLY.
- 45 - CHARGE EXCEEDS FEE SCHEDULE/MAXIMUM ALLOWABLE OR CONTRACTED/LEGISLATED FEE ARRANGEMENT.
- DC3 - ADDITIONAL REIMBURSEMENT ALLOWED AFTER RECONSIDERATION.
- DC4 - NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER RECONSIDERATION.

Issues

1. What rules apply to the services in dispute?
2. What amount of reimbursement has the insurance carrier allowed for the disputed services as of the date of this review?
3. Is the requestor entitled to additional reimbursement?

Findings

1. 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; and to provide impairment ratings (IR) if MMI has been reached; whether there is a disability due to the compensable injury and to establish the ability of the employee to return to work.

   On the disputed date of service, the requestor billed $1,715.00 for CPT codes 99456-W5-WP, 99456-W7-RE, 99456-W8-RE and 99080-73.

   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. Modifier WP indicates that the same examining doctor performed the MMI examination and the IR testing of the musculoskeletal body area(s), thus reimbursement shall be 100 percent of the total maximum allowable reimbursement (MAR).

   CPT code 99456-W7-RE indicates an evaluation by a designated doctor to determine whether the injured employee's disability is a direct result of the work-related injury.

   CPT code 99456-W8-RE indicates an evaluation by a designated doctor to determine the ability of the employee to return to work.

   CPT 99080-73 indicates that a Work Status Report (DWC073 form) has been completed and submitted.

   DWC finds that 28 TAC §134.250 applies to the reimbursement of the MMI and IR 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, "(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. (4) The following applies for billing and reimbursement of an IR evaluation. (A) The health care provider shall include billing components of the IR evaluation with the applicable MMI evaluation CPT code. The number of body areas rated shall be indicated in the unit's column of the billing form… (C) For musculoskeletal body areas, the examining doctor may bill for a maximum of three body areas.

   (i) Musculoskeletal body areas are defined as follows:

   (I) spine and pelvis;

   (II) upper extremities and hands; and

   (III) lower extremities (including feet).

   (ii) The maximum allowable reimbursement (MAR) for musculoskeletal body areas shall be as follows:

   (I) $150 for each body area if the diagnosis related estimates (DRE) method found in the AMA Guides fourth edition is used.

   (II) If full physical evaluation, with range of motion, is performed: (-a-) $300 for the first musculoskeletal body area; and (-b-) $150 for each additional musculoskeletal body area.

(iii) If the examining doctor performs the MMI examination and the IR testing of the musculoskeletal body area(s), the examining doctor shall bill using the appropriate MMI CPT code with modifier 'WP.' Reimbursement shall be 100 percent of the total MAR.

(D) Non-musculoskeletal body areas shall be billed and reimbursed using the appropriate CPT code(s) for the test(s) required for the assignment of IR.

(i) Non-musculoskeletal body areas are defined as follows:

(I) body systems;

(II) body structures (including skin); and

(III) mental and behavioral disorders…

(v) The MAR for the assignment of an IR in a non-musculoskeletal body area shall be $150."

28 TAC §134.235, which applies to the billing and reimbursement of some 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."

DWC finds that 28 TAC §134.240 applies to the services in dispute and states "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'…

(D) Whether the injured employee's disability is a direct result of the work-related injury shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier 'W7'.

(E) Ability of the employee to return to work shall be billed and reimbursed in accordance with §134.235 of this title, with the use of the additional modifier 'W8'…

(2) When multiple examinations under the same specific division order are performed concurrently under paragraph (1)(C) - (F) of this section:

(A) the first examination shall be reimbursed at 100 percent of the set fee outlined in §134.235 of this title;

(B) the second examination shall be reimbursed at 50 percent of the set fee outlined in §134.235 of this title; and

(C) subsequent examinations shall be reimbursed at 25 percent of the set fee outlined in §134.235 of this title."

2. A review of the explanation of benefits (EOBs) submitted finds that the insurance carrier has allowed reimbursement in the following amounts:
    - EOB dated April 9, 2024, allowed reimbursement in the amount of $1,415.00
    - EOB dated May 20, 2024, allowed reimbursement in the amount of $150.00.
    - The insurance carrier has allowed a total reimbursement amount of $1,565.00 as of the date of this medical fee dispute resolution review.

3. The requestor, Dr. Kirkwood, is seeking additional reimbursement in the amount of $150.00 for an examination by a designated doctor rendered on February 29, 2024.

    The submitted documentation supports that Dr. Kirkwood, a designated doctor, performed an evaluation of maximum medical improvement (MMI) as ordered by DWC. Per 28 TAC §134.250 (3)(C), the maximum allowable reimbursement (MAR) for this examination is $350.00.

    In addition, the submitted documentation finds that Dr. Kirkwood performed an impairment rating (IR) evaluation of one musculoskeletal body area, the lower extremity, utilizing range of motion measurements. The rule at 28 TAC §134.250 (4)(C)(ii) defines the fees for the calculation of an impairment rating for musculoskeletal body areas. The MAR for the evaluation of the first musculoskeletal body area performed with range of motion is $300.00.

    The submitted documentation further supports that Dr. Kirkwood performed an impairment rating examination of one non-musculoskeletal body area, the skin. 28 TAC §134.250(4)(D) defines the fees for the calculation of an impairment rating for non-musculoskeletal body areas. The MAR for the assignment of impairment rating for non-musculoskeletal body areas is $150.00 each.

    The submitted documentation supports that Dr. Kirkwood provided an evaluation to determine if the disability is the direct result of the compensable injury. The MAR for the first evaluation of this type is $500.00. The submitted documentation further supports that the requestor provided an evaluation to determine the ability of the injured worker to return to work. For the second evaluation of this type, the MAR is $250.00 (50%) in accordance with 28 TAC §134.235 and 28 TAC §134.240.

    Lastly, the submitted documentation supports that the designated doctor completed and submitted a Work Status Report, DWC073. The MAR for the completion and submission of a Work Status Report is $15.00 in accordance with 28 TAC §129.5.

    DWC finds that the reimbursements, which apply to the disputed examination rendered on February 29, 2024, are:

    - For an MMI examination, reimbursement is $350.00.
    - For an IR of the first musculoskeletal body area with range of motion, reimbursement is $300.00.
    - For an IR of one non-musculoskeletal body area (skin) the reimbursement is

$150.00.

- For the evaluation to determine disability, reimbursement is $500.00.
- For the evaluation to determine ability to return to work, reimbursement is $250.00 (50% of the evaluation above).
- For the completion and submission of a Work Status Report, reimbursement is $15.00.
- DWC finds that the total maximum allowable reimbursement for the examination in question, rendered on February 29, 2024, is $1,565.00.
- The insurance carrier paid a total amount of $1,565.00 for the designated doctor examination rendered on February 29, 2024.
- No additional reimbursement is recommended.

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 not established that additional reimbursement is due.

Order

Under Texas Labor Code §§413.031 and 413.019, DWC has determined the requestor is entitled to $0.00 additional reimbursement for the disputed services.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	July 19, 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, 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 electronico CompConnection@tdi.texas.gov.