

**SOAH DOCKET NO. 453-05-7999.M5**  
**MDR Tracking No. M5-05-2264-01**

<b>S.I.C.E.M.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>PETITIONER</b>	§	
	§	<b>OF</b>
<b>V.</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>GREAT AMERICAN INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>RESPONDENT</b>	§	

**DECISION AND ORDER**

S.I.C.E.M. (Provider) appealed the decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD)<sup>1</sup> that denied reimbursement for services provided a workers' compensation claimant (Claimant). Great American Insurance Company (Carrier) denied reimbursement based on its determination that the services were improperly billed. This decision finds that Carrier does not owe reimbursement to Provider for the disputed services.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction, notice, or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened February 13, 2006, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. The record also closed that date. Attorney Steven Tipton appeared for Carrier. Provider's

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<sup>1</sup> As of September 1, 2005, the Commission has become a division within the Texas Department of Insurance. Acts of May 30, 2005, 79<sup>th</sup> Leg., R.S., ch. 265, 2005 Tex. Sess. Law Serv. Ch 265 (HB 7). All citations in this Proposal for Decision are to the applicable statutes and rules as they existed at the time this case was referred to the State Office of Administrative Hearings in March 2005. Claimant continued with the same therapy regimen,<sup>1</sup> for five additional sessions, which took place on January 19, 20, 23, and 26 and February 6, 2004

owner, Charles Blevins, appeared on its behalf. Commission Staff did not participate in the hearing.

Although docketed as a medical necessity dispute under the "M5" modifier, the parties explained that the only remaining issue in this case was a fee dispute, the medical necessity portion of the original dispute having been disposed of. Therefore, the sole disputed issue was what, if any, amount of reimbursement should be paid to Provider.

## **II. DISCUSSION**

### **A. Background**

In\_\_\_\_, Claimant sustained an injury that was compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* At the time of the compensable injury, Carrier was the workers' compensation insurer for Claimant's employer. Between April 19 and June 4, 2004, Claimant received physical therapy at Provider's facility.

Carrier denied reimbursement for five dates of service – April 19 and 20 and June 1, 3, and 4, 2004. Provider filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The Commission's Medical Review Division found in favor of Carrier. Provider filed a timely request for a contested case hearing.

### **B. The Disputed Issue**

Carrier refused to pay for services billed under CPT 97110 on five dates between April 19 and June 4, 2004. Provider complained that Carrier failed to send an explanation of benefits (EOB) on the denial until seven months after the dates of service. Carrier responded that the lack of timely EOB was irrelevant because Provider had billed mutually exclusive CPTs on the dates in dispute. Carrier asserted that, on the disputed dates, the Medicare guidelines adopted by the Commission governed reimbursement.

Carrier pointed out that the Medicaid Guidelines list mutually exclusive services that are subject to automatic disallowances. These disallowances are found in the Medicaid Guidelines CCI edits. The CCI edits state that if CPT 97110 is billed on the same date of service as either CPT 97113 or 97150, only one of the services (the one with the lowest reimbursement amount) can be paid for that date of service. Because CPT 97110 has a higher reimbursement rate, it is disallowed when billed for the same date of service as 97113 or 97150.

Provider admitted it used the Commission's 1996 Fee Guidelines when it billed up to two hours worth of 97110 units each day of service along with either CPT 97113 or 97150. Provider's owner, Mr. Blevins, testified that he was unaware that TWCC reimbursement is now controlled by the Medicare Guidelines.

### **C. Analysis**

Provider failed to meet its burden of proof to show that it was entitled to reimbursement for the services as billed. 28 TAC § 148.14; 1 TAC § 155.41. Carrier was correct. On the dates of service at issue, the 1996 Fee Guidelines had been superseded by the Medicare guidelines. TEX. LAB. CODE ANN. § 413.011; 28 TEX. ADMIN. CODE (TAC) § 134.202. Because the Medicare Guidelines and its CCI edits do not permit CPT 97110 to be reimbursed if billed on the same date as either 97113 or 97150 and because Provider had billed the mutually exclusive CPTs for the disputed dates, no reimbursement could be paid for the CPT 97110 billings.

Provider also failed to establish that it did not timely receive EOBs for the disputed dates of service. The evidence on that issue was conflicting as Carrier presented copies of EOBs that referred to earlier (and timely) versions of those same EOBs.

## **III. FINDINGS OF FACT**

1. In\_\_\_\_\_, Claimant sustained an injury that was compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*

2. At the time of the compensable injury, Great American Insurance Company (Carrier) was the workers' compensation insurer for Claimant's employer.
3. Between April 19 and June 4, 2004, Claimant received physical therapy at S.I.C.E.M.'s (Provider) facility, which services were billed under CPT 97110.
4. On the dates of service when it billed for CPT 97110, Provider also billed for services under either CPT 97113 or 97150.
5. Carrier denied Provider's request for reimbursement for five dates of service billed under CPT 97110 on April 19 and 20 and June 1, 3, and 4, 2004.
6. Provider appealed Carrier's denial but the Commission's Medical Dispute Resolution Division upheld Carrier's decision.
7. Provider filed requested a contested case hearing.
8. Pursuant to the Commission's notice of hearing, all parties appeared or were represented at the hearing in this matter held February 13, 2006.
9. On the dates in dispute, the Medicare guidelines controlled reimbursement for worker's compensation claims.

#### **IV. CONCLUSIONS OF LAW**

1. The Workers' Compensation Division of the Texas Department of Insurance<sup>2</sup> (formerly the Texas Workers' Compensation Commission ) has jurisdiction related to this matter pursuant to the Texas Workers Compensation Act (Act), TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031 of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) §§ 133.305 and 133.308.

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<sup>2</sup> Acts of May 30, 2005, 79<sup>th</sup> Leg., R.S., ch. 265, 2005 Tex. Sess. Law Serv. Ch 265 (HB 7).

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
5. Provider had the burden of proof in this proceeding. 28 TAC §§ 148.14; 1 TAC § 155.41.
6. On the dates of service at issue in this case, the 1996 Fee Guidelines had been superseded by the Medicare guidelines. TEX. LAB. CODE ANN. § 413.011; 28 TEX. ADMIN. CODE (TAC) § 134.202.
7. The Medicare Guidelines and its CCI editing requirements do not permit CPT 97110 to be reimbursed if billed on the same date as either 97113 or 97150.
8. Because Provider had billed for either 97113 or 97150 on the disputed dates, the Medicaid Fee Guidelines prohibit reimbursement for the CPT 97110 on those same dates of service.
9. Provider is not entitled to reimbursement from Carrier for the services rendered to Claimant on April 19 and 20 and June 1, 3, and 4, 2004, that were billed under CPT 97110.

### **ORDER**

**It is ORDERED** that S.I.C.E.M. is not entitled to reimbursement from Great American Insurance Company for services billed under CPT 97110 provided to Claimant on April 19 and 20 and June 1, 3, and 4, 2004.

**SIGNED March 30, 2006.**

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**ANN LANDEROS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**