SOAH DOCKET NO. 454-08-0835.M4
MR NO. M4-07-5158-01

JEFFREY BUNCHER, M.D.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	**OF**
	§	
TRAVELERS INDEMNITY CO.,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Jeffrey Buncher, M.D. (Provider) appeals a decision of the Texas Department of Insurance, Division of Workers Compensation (the Division) denying reimbursement of $3,600[1] from Travelers Indemnity Company (Carrier) for an Independent Medical Evaluation (IME) of Claimant. The Division found Provider did not submit his bill for payment (the claim) to Carrier within 95 days of service as required by rule and statute, so forfeited reimbursement. Information provided by the parties to the Division as part of the medical fee dispute resolution process showed Provider submitted the claim to Carrier in October 2006, some four months after the June 2006 date of service; but evidence admitted at the hearing establishes Provider timely submitted the claim to Carrier within the 95-day deadline. Therefore, Carrier is to pay Provider the disputed $3,600.

I. PROCEDURAL HISTORY

The hearing in this matter convened August 14, 2008, before ALJ Sharon Cloninger at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Provider appeared *pro se* by telephone. Carrier was represented by William E. Weldon, attorney. The hearing concluded and the record closed that same day.

[1] The Table of Disputed Services submitted to the Division for medical fee dispute resolution by Provider included a charge of $500 payable to a neuro-radiologist who viewed all of Claimant's imaging studies at Provider's request, and totaled $4,100. The neuro-radiologist services were not included in the CMS 1500, which shows a disputed amount of $3,600 due to Provider.

II. DISCUSSION

A. Applicable Law

Provider examined Claimant in July 2005 and submitted the completed IME to the Division in June 2006. The following law became effective September 1, 2005, and applies to the issue of timeliness in this case. Under TEX. LAB. CODE ANN. § 408.027(a):

> A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the day on which the health care services are provided to the insured employee. Failure of the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment.[2]

The Division rule at 28 TAC § 102.4(p) addresses how to determine the date of receipt for non-commission[3] written communications:

> 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…the date faxed or electronically transmitted.

[2] *See also* 28 TEX. ADMIN. CODE (TAC) § 133.20(b), which requires a health care provider to submit a medical bill no later than the 95th day after the date the services are provided.

[3] The functions of the Texas Workers' Compensation Commission were transferred to the Division on September 1, 2005, after the rule was promulgated. Hence, the reference to "non-commission" written communications.

B. Evidence

On June 24, 2005, Carrier notified Claimant that Provider had been assigned as the designated doctor to prepare an IME answering a question regarding Claimant's maximum medical improvement and/or permanent impairment,[4] and ordered Claimant to attend a July 22, 2005 examination with Provider.[5]

Provider examined Claimant in July 2005 but needed medical records from her previous health care providers to complete the IME.[6] He spent a number of months requesting and reviewing the medical records, and completed the IME in June 2006. On June 4, 2006, he submitted the claim for the IME services to Carrier via facsimile.[7]

When Provider still had not been paid for the IME by the end of September 2006, Provider's staff contacted Carrier and was told the claim was not on file. Provider resubmitted the claim to Carrier via registered letter on October 3, 2006.[8] Carrier denied payment of the claim because it had not been submitted within 95 days of the June 4, 2006 date of service.

After Carrier denied the claim, Provider requested medical fee dispute resolution through the Division. On October 3, 2007, the Division issued the Medical Fee Dispute Resolution Findings and

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[4] The reason for the order was "Patient with cervical fusion, C4-6, two years ago with new cervical pain, please evaluate." Provider's Exh. 1, page 18 of 57.

[5] Carrier's Exh. 1. The record variously reports the designated doctor examination to have taken place on July 22 or July 26, 2005.

[6] Provider said he needed to review all of the films for the imaging studies performed to determine whether the hardware in Claimant's neck was loosened and there was an acute bony injury to the fusion. Provider's Exh. 1, page 17 of 57. He particularly needed films for the MRI performed on December 26, 2001, at East Texas Medical Center and the medical report that corresponds to the request for a plain radiograph performed on December 31, 2002, at Brook Army Medical Center, due to worsening pain in the cervical spine, because both radiographs precede Claimant's compensable _____ automobile accident injuries. Provider's Exh. 1, page 27 of 57.

[7] The transmission verification report shows two pages were successfully sent to (877) 786-5577, presumably the correct facsimile number for Carrier. The invoice itself is not in evidence, but the fax cover sheet shows "bill for review/prepare" related to Claimant was sent to Susan Liening at 11:28 p.m. on June 4, 2006. Provider's Exh. 1, page 9 of 57. Ms. Liening is identified elsewhere in the record as an adjuster with Carrier. Provider's Exh. 1, pages 12 and 14 of 57.

[8] Provider's Exh. 1, page 15 of 57 and pages 2-3 of 27.

Decision denying reimbursement. On October 25, 2007, Provider timely requested a hearing before SOAH to contest the Division's decision. As the party requesting the hearing, Provider has the burden of proof.[9]

Provider testified that it took him between 12-14 hours to conduct a history and physical of Claimant, to review an approximately six-inch stack of her medical records, and prepare the IME. He said he did not bill Carrier for the numerous telephone calls and letters he generated in an attempt to obtain Claimant's complete medical records necessary for completion of the IME.

In addition to his own work, Provider said he enlisted the aid of a neuro-radiologist to read about 14 sets of Claimant's MRI films. He explained that, to accurately determine if Claimant had reached maximum medical improvement and her level of impairment rating as related to the compensable injury, he needed information from imaging studies made of Claimant's neck before and after the _____ automobile accident. The MRIs were important, he said, because Claimant had complained of neck pain a month before the compensable injury occurred.

C. Analysis

Carrier contends that it did not receive the original claim for the June 2006 IME until October 2006. But the evidence in the record establishes that Provider sent Carrier a two-page facsimile on June 4, 2006, consisting of a cover page and an invoice for preparation of Claimant's IME.[10] The facsimile transmittal sheet shows that the two pages—addressed to Ms. Liening, an adjuster with Carrier—were received at fax number (877) 786-5577 at 11:20 p.m. on June 4, 2006. There is no evidence in the record to show whether the fax number is correct for Carrier, but the ALJ finds it to be a rebuttable presumption that the fax number is correct and, therefore, finds the claim was submitted to Carrier within the 95 days prescribed by statute and rule. Accordingly, Carrier is to reimburse Provider $3,600.

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[9] 1 TAC § 155.41(b); 28 TAC § 148.14(a).

[10] Only a copy of the facsimile transmittal sheet is in evidence. Neither the cover page nor invoice is in

III. FINDINGS OF FACT

1. On _____, Claimant was injured on the job.

2. Claimant's employer carried workers' compensation insurance through Travelers Indemnity Company (Carrier).

3. The Workers' Compensation Division (the Division) of the Texas Department of Insurance asked Jeffrey Buncher, M.D. (Provider) to perform a designated doctor examination of Claimant to determine the level of permanent impairment caused by the compensable injury.

4. In July 2005, Provider completed a designated doctor examination of Claimant.

5. From July 2005 through May 2006, Provider contacted the Division, Carrier, Claimant's health care providers and her attorney to obtain medical records necessary for a preparation of a thorough Independent Medical Evaluation (IME).

6. On June 4, 2006, Provider submitted the completed IME to the Division.

7. At 11:20 p.m. on June 4, 2006, Provider submitted a bill for $3,600 (the claim) for the IME to Carrier via facsimile.

8. Around the end of September 2006, Provider inquired with Carrier about payment of the claim and was told the claim was not on file.

9. On October 3, 2006, Provider resubmitted the claim via certified mail.

10. On October 23, 2006, Carrier denied payment for the IME, contending the time limit for filing the claim had expired because it was not submitted within 95 days after the June 4, 2006 date of service.

11. Provider requested medical fee dispute resolution before the Division.

12. The Medical Fee Dispute Resolution Findings and Decision issued by the Division on October 3, 2007, found Provider did not submit convincing evidence to support the position that the claim was submitted to Carrier no later than the 95th day after the date on which the health care services were provided.

13. On October 25, 2007, Provider requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Medical Fee Dispute Resolution Findings and Decision.

14. On December 6, 2007, the Division sent a hearing notice to all parties, informing them of the date, time, and location of the hearing, a short, plain statement of the matters asserted; and a reference to the applicable statutes and rules involved.

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evidence.

15. The hearing was held on August 14, 2008, before ALJ Sharon Cloninger at SOAH, William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Provider appeared *pro se* via telephone. Carrier was represented by William E. Weldon, who appeared in person. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. Carrier had the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) § 148.14.

4. In order to receive payment, a health care provider must submit a claim for payment to the insurance carrier not later than the 95th day after the day on which the health care services are provided to the insured employee. TEX. LAB. CODE ANN. § 408.027(a); 28 TAC § 133.20(b).

5. Provider met its burden of proving that the claim was submitted not later than the 95th day after the day on which the health care services were provided to Claimant.

6. Provider's appeal should be granted pursuant to TEX. LAB. CODE ANN. § 408.027(a) and 28 TAC § 133.20(b).

ORDER

IT IS, THEREFORE, ORDERED that the Division's order denying reimbursement to Provider for the IME is reversed, and Carrier shall reimburse Provider the amount of $3,600.

SIGNED September 10, 2008.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS