SOAH DOCKET NO. 454-08-2114.M4
TWCC MR NO. M4-07-7679-01

CHURCH MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
V.	§	
	§	
	§	
MOBILITY MEDICAL EQUIPMENT,	§	**ADMINISTRATIVE HEARINGS**
Respondent		

DECISION AND ORDER

I. INTRODUCTION

Church Mutual Insurance Company (Carrier) appeals a decision of the Texas Department of Insurance, Division of Workers Compensation, Medical Review Division (MRD) on February 14, 2008, ordering Carrier to pay for an electric scooter provided to Claimant by Mobility Medical Equipment (Provider). Carrier argues that Provider did not submit its bill for payment (the claim) within the time required by rule and statute.

Provider argued that it timely billed the Carrier. Carrier contended that it did not receive the original claim and submitted proof that the second claim was not submitted by Provider as a "resubmittal." In this decision the Administrative Law Judge (ALJ) grants Carrier's appeal based on a finding that the great weight of evidence shows a bill from Provider was never received by the Carrier prior to May 21, 2007. The ALJ further finds that the May 21, 2007 claim filed by Provider with Claimant was beyond the time limit prescribed by statute and rule.

A hearing convened in this case on May 27, 2008, at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300 West 15th Street, Austin, Texas, before the undersigned ALJ. Provider appeared by phone and was represented by vice president Tim Robinson. Carrier's representative was Attorney Christine B. Karcher. The hearing record closed on that same date.

II. DISCUSSION

A. Evidence and Argument

The Texas Labor Code provides as follows at Section 408.027(a):

> **Sec. 408.027. PAYMENT OF HEALTH CARE PROVIDER**
>
> (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.[1]

MRD found that Provider did submit convincing evidence to prove it mailed the claim within legally required time limits.[2] It determined that Carrier was thus obligated to make reimbursement with interest.[3] Carrier filed a timely request for hearing. As the party requesting the hearing, Carrier has the burden of proof.[4]

Carrier's witness, Karen Redmond, testified that she began communicating with Provider on December 12, 2006, and asked Provider to bid on a motorized scooter. On that date, __ at Provider's office faxed a bid of $5,475.00 to Carrier. Ms. Redmond called ___ back at 2:41 p.m. and left a voice mail message saying that if $5,475.00 price was the full final price Carrier would purchase the scooter if the scooter could be provided to Claimant in the next day or two. Ms. Redmond testified that the next communication she had with Provider's office was an inquiry in May of 2007 where that office was asking why it had not been paid for the scooter. Ms. Redmond also testified that she advised Provider that she had never received a bill for the scooter and that the May 21, 2007 typewritten bill was the first she received from Provider.[5] She also testified that she

[1] The Division's rules at 28 TEX. ADMIN. CODE (TAC) § 133.20(b) provide that a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided.

[2] Carrier Ex. 5 at 7.

[3] *Id.*

[4] 1 TAC § 155.41(b); 28 TAC § 148.14(a).

[5] Carrier Ex. 4, page 4.

never saw the earlier handwritten bill until the matter was referred to MDR. Ultimately, Ms. Redmond sent an EOB in early June of 2006, denying payment for the scooter because the bill was not received within 95 days of the ____ date of service. She testified that the Carrier never received a request for reconsideration from the Provider.

Tim Robinson, vice president of Provider, testified that he believes the hand-written bill he submitted to MDR correctly reflects a billing that was sent to Carrier on ____. He has no explanation as to why that bill never made it to the Carrier, but believes it was mailed based on the status of his office records. He testified that he did not have a fax confirmation or anything else to prove it was sent, but he has no reason to believe it was not sent. In early May his office became aware it had not been paid and sent a new typed billing to the Carrier on May 21, 2007. He agrees the second billing is beyond the 95-day limit but he believes Provider's _____ billing was mailed and should be counted as timely.

Carrier contends that the preponderant evidence shows the claim was not timely received. The only claim it received was on May 21, 2007, rather than in January 2007, as Provider urges. It notes that the May 21, 2007 claim was beyond the 95th day after the health care was provided.[6] Carrier argues there is no evidence of what Provider did with the hand-written bill purportedly sent in January and that the overall circumstances around the hand-written billing raise unanswered questions about when it was created and whether it was sent to Carrier.

B. Analysis

The ALJ finds that Carrier did carry its burden of proving, by the great weight of the evidence, that it did not receive the claim from Provider until after the 95th day after the date of service. Mr. Robinson could not say for sure that Provider actually mailed the claim to Carrier in a timely fashion, and certainly had no evidence to rebut Carrier's evidence that a claim was not received until May 21, 2007, beyond the 95th day after the date of service. Overall, Mr. Robinson's circumstantial evidence about timely sending the first claim was uncertain and the hand-written claim looked like less than a final billing. By contrast, Carrier's notes and evidence clearly indicate

[6] Ex. 2 at 17.

it did not receive the January claim and well document the receipt of the May claim. **T**he ALJ finds that the circumstances of this case at least indicate that the Carrier did not timely receive the claim and that this was likely the fault of something in Provider's office.

Commission rule 102.4(h) deals generally with non-commission communications.[7] It says that written communications shall be deemed to have been sent on (1) the date received, if sent by fax personal delivery or electronic transmission or (2) the date of the postmark if sent by regular mail. No evidence was presented that the _____ billing had been faxed or electronically transmitted and no postmark was available. Consequently, the January claim cannot be deemed to have been sent by the Provider or received by the Carrier. The rule's strong presumption that communications that are postmarked will normally be received does not apply because no postmark was available and Provider did not memorialize any other sort of proof for the January billing. Since the January claim was not received, the first claim submitted to the Carrier is the May 21, 2007 claim, which is more than 95 days after the _____ date of service. Thus, Carrier is not obligated, through this administrative forum, to pay this bill.[8]

III. FINDINGS OF FACT

1. An injured worker (Claimant) received a doctor's order for a motorized scooter on _____.

2. On December 11, 2006, Church Mutual Insurance Company preauthorized (Carrier) preauthorized Mobility Medical Equipment (Provider) to provide the scooter to Claimant.

3. Provider delivered the scooter on _____ (Date of service).

4. Carrier did not receive a bill for the scooter prior to May 21, 2007 and Provider could not prove that a bill was mailed or delivered prior to that date.

5. There is sufficient evidence to conclude that Carrier received the claim for payment for services to Claimant later than the 95th day after the day on which the health care services were provided to Claimant.

6. All parties received not less than 10 days' notice 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.

---

[7] 28 TAC § 102.4(h).

[8] The ALJ notes, as an aside, that Carrier did request the scooter and it was delivered to Claimant by Provider. The ALJ does not have jurisdiction to address whether Provider has some other equitable claim of relief.

7. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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. Carrier met its burden of proving that Provider failed to submit a claim for payment to Carrier not later than the 95th day after the day on which the health care services were provided to Claimant.

6. Carrier's appeal should be granted. TEX. LAB. CODE ANN. § 408.027(a); 28 TAC § 133.20(b).

ORDER

IT IS, THEREFORE, ORDERED that the MDR order requiring payment to Mobility Medical Equipment for a scooter services provided to Claimant be, and the same is, overturned.

SIGNED June 27, 2008.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS