SOAH DOCKET NO. 454-12-7135.M4

BRECKENRIDGE SURGERY CENTER, **Petitioner**	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
CONTINENTAL INSURANCE CO., **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Breckenridge Surgery Center (Provider) challenges the denial of reimbursement by Continental Insurance Co. (Continental) for services provided to an injured worker. The Administrative Law Judge (ALJ) concludes that Provider did not provide requests for payment to the correct insurance carrier within the time provide. Consequently, Provider is not entitled to reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction. Therefore, those matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division). On June 15, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision. On July 9, 2012, Provider requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On July 12, 2012, the Division issued a Notice of Hearing. The hearing was held October 8, 2012, before ALJ Steven D. Arnold, at the SOAH located in Austin, Texas. Provider was represented by Joan Gillham. Continental was represented by attorney James M. Cassidy. The record closed on October 22, 2012, following the submission of written briefs.

II. APPLICABLE LAW

Section 408.027(a) of the Texas Labor Code states that "[f]ailure by 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." Under 28 Tex. Admin. Code § 133.20(b):

> Except as provided in Labor Code § 408.0272(b), (c), or (d), a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided. In accordance with subsection (c) of the statute, the health care provider shall submit the medical bill to the correct workers' compensation insurance carrier not later than the 95th day after the date the health care provider is notified of the health care provider's erroneous submission of the medical bill.

Section 408.0272(b)(1)(C) of the Texas Labor Code provides:

> Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if . . . a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title.

Section 408.0272(c) of the Texas Labor Code provides:

> Notwithstanding Subsection (b), a health care provider who erroneously submits a claim for payment to an entity described by Subdivision (1) of that section forfeits the provider's right for reimbursement for that claim if the provider fails to submit the claim to the correct workers' compensation insurance carrier within 95 days after the date the provider is notified of the provider's erroneous submission of the claim.

The provider has the burden of proving by a preponderance of the evidence in the record that it satisfies these requirements and is entitled to payment.

III. EVIDENCE AND ANALYSIS

A. Evidence

The facts of this case are generally uncontested. The patient (Claimant) suffered two separate injuries, one occurring on , when Continental was the carrier for Claimant's employer, and the other occurring on , when Liberty Mutual Insurance Company (Liberty) was the carrier for Claimant's employer. No activity has occurred on the , injury since .

On May 19, 2009, Provider performed a procedure on Claimant. Billing for this procedure was sent by Provider to Liberty under Liberty claim number 949337460. The workers' compensation claim provided by Liberty showed a date of injury of Bills for the procedure were audited by Liberty. Liberty paid a total of $5,741.27 for the submitted charges. Bills were re-audited by Liberty after additional reimbursement was sought. Provider filed its Medical Fee Dispute resolution against Liberty. The request for Medical Fee Dispute Resolution was sent to Continental to respond to the DWC 60 Fee Dispute.

On September 11, 2009, Continental provided a response to the Medical Review Division and Provider, stating that it had a claim (claim number 303D0472) for Claimant dated , but had not received any requests for services or billing from Provider for services performed on May 19, 2009. This response by Continental constitutes notice to the Provider that it submitted its claims for payment to the incorrect insurance carrier. Provider acknowledged that it has never submitted a claim for payment to Continental.

B. Analysis

Provider admits that it submitted all documentation regarding the claim to Liberty and that it never submitted any documentation to Continental. As Continental is the Carrier for the

, injury, Provider should have submitted the documentation to Continental. It failed to do so and, therefore, forfeited its right to reimbursement for the claim.

IV. FINDINGS OF FACT

1. Breckenridge Surgery Center (Provider) challenges the denial of benefits for procedures performed on the patient (Claimant) on May 19, 2009.

2. Claimant suffered two separate injuries, one occurring on , when Continental Insurance Co. (Continental) was the carrier for Claimant's employer, and the other occurring on , when Liberty Mutual Insurance Company (Liberty) was the carrier for Claimant's employer

3. On May 19, 2009, Provider performed a procedure on Claimant.

4. Billing for this procedure was sent by Provider to Liberty under Liberty claim number 949337460. The workers' compensation claim provided by Liberty showed a date of injury of

5. Because the procedure related to an injury incurred at the time Continental was the carrier, Provider should have submitted its claim for payment to Continental.

6. Bills for the procedure were audited by Liberty, which paid a total of $5,741.27 for the submitted charges.

7. Bills were re-audited by Liberty after additional reimbursement was sought.

8. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).

9. The request for Medical Fee Dispute Resolution was sent to Continental to respond to the DWC 60 Fee Dispute.

10. On September 11, 2009, Continental provided a response to the Medical Review Division and Provider, stating that it had a claim (claim number 303D0472) for Claimant dated , but had not received any requests for services or billing from Provider for services performed on May 19, 2009.

11. The September 11, 2009, response by Continental constituted notice to Provider that it had failed to submit a claim for payment to the correct insurer.

12. Provider did not submit a claim for payment to Continental within 95 days after September 11, 2009.

13. On June 15, 2012, the Division issued its Medical Fee Dispute Resolution Findings and Decision.

14. On July 9, 2012, Provider requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination

15. On July 12, 2012, the Division issued a Notice of Hearing. The notice informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.

16. The hearing was held October 8, 2012, before ALJ Steven D. Arnold, at the SOAH located in Austin, Texas. Provider was represented by Joan Gillham. Continental was represented by attorney James M. Cassidy. The record closed on October 22, 2012, following the submission of written briefs.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.

2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051 and 2001.052.

3. Subject to certain exceptions, failure by 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. Tex. Lab. Code § 408.027(a).

4. Provider had the burden of proof in this proceeding by a preponderance of the evidence.

5. Provider did not prove it timely submitted a claim for payment to the correct insurer as required by Tex. Lab. Code § 408.027(a).

6. Once notified that it had failed to submit a claim to the correct insurer, Provider failed to submit a claim for payment to the correct insurer as required by Tex. Lab. Code § 408.0272(b) and (c).

7. Provider did not prove it was entitled to reimbursement for services performed on the Claimant.

ORDER

Continental is not required to pay Provider any reimbursement for services provided to the Claimant.

ISSUED December 14 2012.

Steven D. Arnold

STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS