

**SOAH DOCKET NO. 454-18-2555.M4-NP**  
**MFDR NO. \_\_\_\_\_**

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| <b>HEALTHCARE PROVIDER,</b> | § | <b>BEFORE THE STATE OFFICE</b> |
| <b>Petitioner</b>           | § |                                |
|                             | § |                                |
| <b>v.</b>                   | § | <b>OF</b>                      |
|                             | § |                                |
| <b>CARRIER,</b>             | § |                                |
| <b>Respondent</b>           | § | <b>ADMINISTRATIVE HEARINGS</b> |

**MODIFIED DECISION AND ORDER**  
**FOLLOWING GRANT OF MOTION FOR REHEARING**

This case involves urine drug testing ordered by Healthcare Provider (HCP) for an injured employee covered by the workers' compensation insurance system. The Texas Department of Insurance's Division of Workers' Compensation (Division) conducted medical fee dispute resolution (MFDR) and declined to order Carrier to reimburse HCP. After a consideration of the record, the Administrative Law Judge (ALJ) determines that HCP is entitled to additional reimbursement.

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

There are no issues of notice or jurisdiction in this proceeding. Therefore, the ALJ addresses these matters in the findings of fact and conclusions of law without further discussion here.

HCP billed Carrier and requested MFDR after Carrier denied reimbursement.<sup>1</sup> On December 15, 2017, the Division issued its MFDR decision, determining that HCP was not entitled to additional reimbursement.<sup>2</sup> HCP requested a hearing at the State Office of

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<sup>1</sup> Provider Ex. A at 2-3.

<sup>2</sup> Provider Ex. A at 20-23.

Administrative Hearings (SOAH) to contest the Division's determination. On March 6, 2018, the Division issued a Notice of Hearing.

On May 30, 2018, ALJ Shannon Kilgore convened a hearing on the merits. HCP was represented by BS, who appeared by telephone. Carrier appeared through attorney JF, who appeared by telephone. The record closed the same day.

The ALJ issued a Decision and Order in this case on June 27, 2018. On July 9, 2018, Carrier filed a Motion to Modify/Reform Decision and Order. On July 19, 2018, HCP filed a response to the motion. The ALJ interpreted Carrier's motion to be a motion for rehearing pursuant to Texas Government Code § 2001.146 and granted it in Order No. 1 in this case. This Modified Decision and Order reflects changes made as a result of the grant of Carrier's motion.

## II. DISCUSSION

The disputed service consists of laboratory analysis of a urine sample, collected on February 6, 2017, and tested for drugs, from an injured worker treated by HCP with opioid medication for chronic pain.<sup>3</sup> Carrier denied reimbursement for the test, explaining "payment adjusted because the payer deems the information submitted does not support this many/frequency of services."<sup>4</sup> Following a request for reconsideration,<sup>5</sup> the matter went to MFDR. HCP submitted information in the MFDR process, but Carrier submitted nothing.

The Division, in arriving at its determination that no reimbursement was due, interpreted Carrier's denial ("does not support this many/frequency of services") to mean that the number of drug classes analyzed was incorrect for the code, Healthcare Common Procedure Coding System (HCPCS) Code G0482, under which the service was billed. At the SOAH hearing, HCP argued that the Division did not accurately count the number of drug classes. Carrier argued that the Division reached the right result, but with the wrong reasoning. Carrier argued that the drug

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<sup>3</sup> Provider Ex. A at 13-17.

<sup>4</sup> Provider Ex. A at 5-7.

<sup>5</sup> Provider Ex. A at 12.

testing was excessive under the Official Disability Guidelines, as the patient had undergone a drug test the prior month. HCP responded that Carrier's argument is really an argument about medical necessity and outside the scope of this SOAH matter.

The ALJ determines that reimbursement is appropriate in this case. Carrier's explanation code was ambiguous. The Division's rule at 28 Texas Administrative Code § 133.307(d)(2)(E) requires the respondent to a request for MFDR to provide "a position statement of reasons why the disputed medical fees should not be paid" as well as materials supporting the respondent's position. Carrier submitted no response to HCP's request for MFDR, thereby failing to clarify its position at the MFDR phase. The Division and HCP had to interpret the reason for Carrier's denial in the absence of input from Carrier. Carrier does not argue that the Division's reasoning in upholding the denial of reimbursement was correct. Carrier's real argument is one of medical necessity, which is not an issue in this SOAH proceeding.<sup>6</sup>

Even if Carrier's position can be characterized as one relating solely to documentation as opposed to medical necessity, there is documentation supporting the urine drug testing on February 6, 2017; HCP's physician assistant's chart note for that day reflects that the patient had run out of his Norco early that month, indicating that he was taking more than the prescribed amounts of controlled substances.<sup>7</sup>

For the above reasons, the ALJ concludes HCP is entitled to reimbursement. The parties agree that the maximum allowable reimbursement for the services at issue is \$255.43.

### **III. FINDINGS OF FACT**

1. On February 6, 2017, HCP collected a urine sample from an injured worker being treated with opioid medication for chronic pain.
2. On that day, the injured worker reported he had run out of his Norco early that month.

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<sup>6</sup> Medical necessity disputes are not heard at SOAH. 28 Tex. Admin. Code § 133.308.

<sup>7</sup> Provider Ex. A at 13.

3. The urine sample was analyzed for the presence of drugs.
4. HCP billed \$1,021.70 under Healthcare Common Procedure Coding System Code (HCPCS) G0482 for the drug testing.
5. Carrier denied reimbursement for the test, explaining “payment adjusted because the payer deems the information submitted does not support this many/frequency of services.”
6. Following a request for reconsideration, HCP requested medical fee dispute resolution (MFDR).
7. HCP submitted information in the MFDR process.
8. Carrier submitted no response to HCP’s request for MFDR.
9. On December 15, 2017, the Texas Department of Insurance’s Division of Workers’ Compensation (Division) issued its MFDR decision, denying reimbursement, reasoning that the number of drug classes analyzed for was incorrect for the code, HCPCS Code G0482, under which the service was billed.
10. HCP requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division’s determination.
11. On March 6, 2018, the Division issued a Notice of Hearing.
12. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
13. On May 30, 2018, ALJ Shannon Kilgore convened a hearing on the merits. HCP was represented by BS, who appeared by telephone. Carrier appeared through attorney JF, who appeared by telephone. The record closed the same day.
14. The ALJ issued a Decision and Order on June 27, 2018. On July 9, 2018, Carrier filed a Motion to Modify/Reform Decision and Order. On July 19, 2018, HCP filed a response to the motion. The ALJ interpreted Carrier’s motion to be a motion for rehearing pursuant to Texas Government Code § 2001.146 and granted it in Order No. 1 in this case.
15. HCP’s use of HCPCS Code G0482 to bill \$1,021.70 for the drug testing was proper.
16. The maximum allowable reimbursement for the services at issue is \$255.43.

**IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
3. HCP had the burden of proving by a preponderance of the evidence that he was entitled to additional reimbursement. 1 Tex. Admin. Code § 155.427.
4. HCP should be reimbursed \$255.43 for the drug testing. 28 Tex. Admin. Code § 134.203.

**ORDER**

**IT IS ORDERED** that Carrier shall reimburse HCP \$255.43, plus applicable interest.

**NON-PREVAILING PARTY DETERMINATION**

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the non-prevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the non-prevailing party and any costs for services provided by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, Carrier is the non-prevailing party. The costs associated with this modified decision are set forth in the Statement of Costs attached to this Modified Decision and Order and are incorporated herein for all purposes.

**SIGNED August 3, 2018.**

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**SHANNON KILGORE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**