

**SOAH DOCKET NO. 454-18-2561.M4-NP**  
**MFDR NO. \_\_\_\_\_**

<b>HEALTH CARE PROVIDER,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Requestor</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>CARRIER,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This case involves services rendered by Health Care Provider(HCP) to an injured person 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 Carrier to reimburse HCP in the amount of \$335.48.<sup>1</sup> HCP contends it is entitled to an additional reimbursement of \$817.60. The Administrative Law Judge (ALJ) concludes that no additional payment is due.

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

Notice and jurisdiction were uncontested and are addressed only in the findings of fact and conclusions of law. On November 28, 2017, the Division issued its MFDR Decision.<sup>2</sup> HCP requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the \$817.60 not awarded by the Division. On March 6, 2018, the Division issued a Notice of Hearing. On May 30, 2018, ALJ Pratibha J. Shenoy convened a hearing on the merits at SOAH. Workers' Compensation Analyst TB represented HCP and participated by telephone. Carrier appeared through attorney WW. The record closed at the conclusion of the hearing the same day.

---

<sup>1</sup> HCP Ex. 1 at 1-6.

<sup>2</sup> HCP Ex. 1 at 5.

## II. DISCUSSION

### A. Burden of Proof

As the party requesting a hearing at SOAH to challenge an adverse MFDR decision, HCP had the burden of proof to show by a preponderance of the evidence that it is entitled to reimbursement. The hearing before SOAH is a *de novo* review of the issues involved.

### B. Applicable Law

The relevant law in this case is a rule found at 28 Texas Administrative Code (TAC) § 134.402(f)(1)(B), which states:

- (B) if an ASC requests separate reimbursement for an implantable, reimbursement for the non-device intensive procedure shall be the sum of:
  - (i) the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on's [sic] per admission; and
  - (ii) the Medicare ASC facility reimbursement amount multiplied by 153 percent.

### C. Arguments and Evidence

On January 20, 2017, a patient (Patient) underwent surgery on his right foot at HCP. During his surgery, six implantable devices were used by the surgeons. HCP billed Carrier \$8,176.00 for implantable devices.<sup>3</sup> HCP now asserts it never received the 10 percent markup (also called "interest") referenced in 28 TAC § 134.402(f)(1)(B)(i), in the amount of \$817.60, which would have resulted in a total reimbursement of \$8,993.60.

Carrier asserts that HCP miscalculated the base costs of the implants, and that the actual cost of the implants used totaled \$7,726.00. Therefore, according to Carrier, HCP is entitled to

---

<sup>3</sup> Carrier Ex. 1 at 15.

total reimbursement for implants of \$8,498.60 (*i.e.*, \$7,726.00 + \$772.60). Carrier contends that it has already paid that \$8,498.60 amount and HCP is not entitled to further reimbursement.

As evidence, HCP submitted a copy of the MFDR Decision; the MFDR request it filed with the Division; letters from Carrier concerning reimbursement for HCP's services; and some of Patient's medical records.<sup>4</sup> Carrier submitted Patient's operative report; the Implant Record from the procedure and related invoices; its MFDR response; HCP's original bill; and Carrier's explanations of reimbursement, issued both before and after the MFDR Decision.<sup>5</sup> All of the exhibits were admitted without objection.

#### **D. The MFDR Decision**

The MFDR Decision contains a summary of findings that states, in relevant part:<sup>6</sup>

<b>Dates of Service</b>	<b>Disputed Services</b>	<b>Amount in Dispute</b>	<b>Amount Due</b>
January 20, 2017	Interest	\$817.60	See Order Below

However, the Order section of the MFDR Decision does not address the \$817.60, nor does it appear to be discussed anywhere else in the MFDR Decision. The Order section directs Carrier to remit \$335.48 due under 28 TAC § 134.130, which is not at issue in this case.<sup>7</sup>

Ms. B stated that, after the MFDR Decision had been issued, the MFDR Officer called her and explained that he misunderstood HCP's request for the interest amount of \$817.60 and inadvertently omitted it from the Order section. The ALJ notes that the MFDR Officer is listed as "EP," so Ms. B may have been thinking of a different, male MFDR Officer. Regardless, any statements outside the MFDR Decision are not in evidence and are not considered.

---

<sup>4</sup> HCP Ex. 1.

<sup>5</sup> Carrier Ex. 1.

<sup>6</sup> HCP Ex. 1 at 3.

<sup>7</sup> HCP Ex. 1 at 5.

**E. ALJ’s Analysis**

The ALJ finds that HCP has not met its burden of proof to establish that the cost of the underlying implants is \$8,176.00. Rather, the evidence establishes that the base cost of the implants is \$7,726.00, as asserted by Carrier.

Patient’s operative report and HCP’s Implant Record<sup>8</sup> from the procedure indicate that the following implantable devices were used:

<b>Implantable Device</b>	<b>Cost Per Item</b>	<b>Total Cost</b>
Cancellous Cross Section	\$983.00	\$983.00
Full Thread Cannulated Screw (2)	\$673.00	\$1,346.00
Partial Thread Cannulated Screw (1)	\$1,097.00	\$1,097.00
Arthrocell	\$3,500.00	\$3,500.00
StimuBlast	\$800.00	\$800.00
<b>TOTAL</b>		<b>\$7,726.00</b>

It is unclear how HCP arrived at a base implant cost of \$8,176.00, which is \$450.00 more than the \$7,726.00 calculated above.

On the invoices attached to HCP’s Implant Record, some items that are not included on the Implant Record are listed, such as \$150.00 for a “Mixing Syringe, 14cc with Luer Cap” and a \$310.00 for a “Drill, Cannulated, 3/16 Sq. Connection, 4.” Those items total \$460.00, which could be a source of the discrepancy between the \$7,726.00 cost represented on the Implant Record and the \$8,176.00 billed by HCP. However, HCP has not asserted that the

---

<sup>8</sup> Carrier Ex. 1 at 1-4, 5.

Implant Record is incomplete in any way, and it is HCP's burden to establish the base amount of the implants used in Patient's procedure.

Carrier's evidence demonstrates that it initially paid HCP the billed amount of \$8,176.00 for implantable devices.<sup>9</sup> After HCP filed its MFDR request, Carrier reviewed the documentation and realized that the total reimbursement should have been \$8,498.60 (*i.e.*, \$7,726.00 + \$772.60).<sup>10</sup> Accordingly, Carrier issued payment in the amount of \$322.60 to cover the difference between its original reimbursement (\$8,176.00) and the total reimbursement due (\$8,498.60).<sup>11</sup> Carrier also issued the payment of \$335.48 ordered by the MFDR Decision.<sup>12</sup>

The MFDR decision is affirmed. No additional reimbursement is due to HCP.

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

1. On January 20, 2017, an injured person (Patient) covered by the workers' compensation insurance system underwent surgery on his right foot at HCP.
2. Among other things, HCP billed implantable device costs totaling \$8,176.00 to Carrier.
3. HCP asserts Carrier failed to reimburse it for a 10 percent markup ("interest") on its implantable device costs and contends it is entitled to \$817.60 under applicable law.
4. On October 20, 2017, HCP requested medical fee dispute resolution (MFDR) at the Texas Department of Insurance's Division of Workers' Compensation (Division).
5. On November 28, 2017, the Division issued its MFDR Decision, which ordered a payment of \$335.48, but did not order reimbursement of the \$817.60 claimed by HCP.
6. HCP requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.

---

<sup>9</sup> Carrier Ex. 1 at 18.

<sup>10</sup> Carrier Ex. 1 at 13.

<sup>11</sup> Carrier Ex. 1 at 13, 24.

<sup>12</sup> Carrier Ex. 1 at 30.

7. On March 6, 2018, the Division issued a Notice of Hearing.
8. 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.
9. On May 30, 2018, Administrative Law Judge Pratibha J. Shenoy convened a hearing on the merits at SOAH. Workers' Compensation Analyst TB represented HCP and participated by telephone. Carrier appeared through attorney WW. The record closed at the conclusion of the hearing the same day.
10. HCP's Implant Record for Patient's procedure lists a total of six implantable devices used by the surgeon:

<b>Implantable Device</b>	<b>Cost Per Item</b>	<b>Total Cost</b>
Cancellous Cross Section	\$983.00	\$983.00
Full Thread Cannulated Screw (2)	\$673.00	\$1,346.00
Partial Thread Cannulated Screw (1)	\$1,097.00	\$1,097.00
Arthrocell	\$3,500.00	\$3,500.00
StimuBlast	\$800.00	\$800.00
<b>TOTAL</b>		<b>\$7,726.00</b>

11. Carrier has reimbursed HCP a total of \$8,498.60 for implant costs (\$7,726.00) plus a 10 percent markup (\$772.60).
12. Carrier has also reimbursed HCP the amount of \$335.48 as ordered in the MFDR Decision.

#### **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. Adequate and timely notice of the hearing was provided as required by Texas Government Code §§ 2001.051-.052.

2. An ambulatory surgical center that requests separate reimbursement for an implantable is entitled to reimbursement for a non-device intensive procedure equal to the sum of: “(i) the lesser of the manufacturer’s invoice amount or the net amount (exclusive of rebates and discounts) plus 10 percent or \$1,000 per billed item add-on, whichever is less, but not to exceed \$2,000 in add-on’s [sic] per admission; and (ii) the Medicare ASC facility reimbursement amount multiplied by 153 percent.” 28 Tex. Admin. Code § 134.402(f)(1)(B).
3. HCP failed to meet its burden of proof to establish that its base implant device costs totaled \$8,176.00 such that it is entitled to an additional reimbursement of \$817.60 as a 10 percent markup.
4. HCP has failed to meet its burden of proof to show that the MFDR decision was incorrect. The MFDR decision is affirmed.

**ORDER**

**IT IS ORDERED** that Carrier is not required to reimburse HCP the requested \$817.60.

**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, HCP is the non-prevailing party. The costs associated with this decision are set forth in the Statement of Costs attached to this Decision and Order and are incorporated herein for all purposes.

**SIGNED June 15, 2018.**

---

PRATIBHA J. SHENOY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS