

SOAH DOCKET NO. 454-18-3077.M4-NP
MFDR NO. _____

CARRIER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
HEALTHCARE PROVIDER,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Carrier challenges the Medical Fee Dispute Findings and Decision (MFD Decision) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division). The MFD Decision ordered Carrier to reimburse Healthcare Provider (Provider) the additional sum of \$4,579.70 for implantables used by Provider during outpatient surgery performed on an injured worker (Claimant). The Administrative Law Judge (ALJ) concludes that the MFD Decision is correct and that Carrier owes Provider the additional sum of \$4,579.70, plus any applicable interest, for services provided to Claimant.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

After Carrier made a reduced payment of Provider's claim for reimbursement for the service in question, Provider filed a request for medical fee dispute resolution with the Division. On December 8, 2017, the Division issued the MFD Decision, in which it determined that Carrier owed an additional \$4,579.70 for implantables used by Provider during surgery performed on Claimant. Carrier requested a benefit review conference on the MFD Decision, and such benefit review conference was concluded on March 27, 2018. Thereafter, on March 29, 2018, Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFD Decision.

The Division sent notice of the hearing to both parties on April 9, 2018. The notice informed the parties that the hearing would be held at 9:00 a.m. on July 2, 2018, at SOAH, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas 78711-3025.

The hearing was held on July 2, 2018, by ALJ Meitra Farhadi, at SOAH's offices at the address set out in the notice of hearing. Carrier appeared telephonically and was represented by attorney CW. Provider did not appear. The ALJ held the record open to allow Carrier to file exhibits and allow Provider an opportunity to file any objections thereto.¹ Carrier filed two exhibits (Exhibits A and B), and Provider filed no objections. On July 26, 2018, the ALJ admitted Carrier's Exhibits A and B, and also admitted as Exhibit C the MFD Decision documents filed by the Division on April 9, 2018.² The record closed on August 10, 2018, following a closing argument filed by Carrier.

II. APPLICABLE LAW

The Division's rule at 28 Texas Administrative Code § 134.403 (Division rule § 134.403) applies to medical services provided in an outpatient acute care hospital. That rule provides that in the absence of a contracted fee schedule, reimbursement to a provider shall be the maximum allowable reimbursement (MAR) amount, including any applicable outlier payment amounts and reimbursement for implantables.³ The rule also sets out how to calculate the MAR.

- (f) The reimbursement calculation used for establishing the MAR shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the *Federal Register*. The following minimal modifications shall be applied.

¹ See SOAH Order No. 2.

² Within Exhibit C, there are documents marked as Exhibits 1, 2, 3, 4, and 5. If necessary, the ALJ will reference Exhibit C with a further reference to Exhibit 1, 2, 3, 4, or 5.

³ 28 Tex. Admin. Code § 134.403(e)(2).

- (1) The sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by:
 - (A) 200 percent; unless
 - (B) a facility or surgical implant provider requests separate reimbursement in accordance with subsection (g) of this section, in which case the facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 130 percent.
 - (2) When calculating outlier payment amounts, the facility's total billed charges shall be reduced by the facility's billed charges for any item reimbursed separately under subsection (g) of this section.
- (g) Implantables, when billed separately by the facility or a surgical implant provider in accordance with subsection (f)(1)(B) of this section, shall be reimbursed at 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 per admission.⁴

An "implantable" is defined as an object or device that is surgically implanted, embedded, inserted, or otherwise applied, and related equipment necessary to operate, program, and recharge the implantable.⁵

Division rule § 134.403 further provides that "[f]or coding, billing, reporting, and reimbursement of health care covered in this section, Texas workers' compensation system participants shall apply Medicare payment policies in effect on the date a service is provided."⁶

⁴ 28 Tex. Admin. Code § 134.403(f), (g).

⁵ 28 Tex. Admin. Code § 134.403(b)(2).

⁶ 28 Tex. Admin. Code § 134.403(d).

However, specific provisions contained in the Texas Labor Code or the Division’s rules shall take precedence over any conflicting Medicare payment policy.⁷

Unresolved disputes “over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury” may be resolved by a contested case hearing at SOAH.⁸ As the party seeking relief from the MFD Decision, Carrier has the burden of proof.⁹

III. REASONS FOR DECISION

A. Evidence and Argument

Provider billed separately for implantables and seeks an additional payment of \$4,579.70.¹⁰ The explanation of benefits (EOB) for Claimant’s surgery identifies the following implantables:¹¹

Provider Code C1713	Anchor/screw	\$1,022.00
Provider Code C1762	Connective tissue, human	\$4,250.00
Total		\$5,272.00

The total add-on amount of 10 percent or \$1,000 per billed item add-on, whichever is less, for the implantables billed by Provider is \$527.20.¹²

⁷ 28 Tex. Admin. Code § 134.403(d)(1).

⁸ Tex. Labor Code §§ 413.031(c), .0312(a), (e).

⁹ 28 Tex. Admin. Code § 148.14(b).

¹⁰ See Exhibit C.

¹¹ Exhibit C, Exhibits 3-4.

¹² \$5,272.00 x 10% = \$527.50.

In its closing statement, Carrier raised three objections to being required to pay an additional reimbursement beyond the \$1,219.50 that has already been paid:

1. Provider’s invoice violates Division rule § 134.403;
2. Provider’s invoice violates the Medicare prudent buyer principle; and
3. Provider failed to furnish a proper invoice.

With regard to its first issue, Carrier argues that Provider’s invoice violates Division rule § 134.403(g) because industry standard pricing is less than the price submitted by Provider. More specifically, Carrier contends in its argument that the industry standard pricing is:¹³

Anchor/screw	\$548.01 (+10%)
Connective tissue, human	\$560.63 (+10%)
Total	\$1,219.50

For its second issue, Carrier contends that Medicare’s prudent buyer principle applies and requires that actual costs not exceed what a prudent and cost-conscious buyer would incur and be comparable to costs incurred for similar services by similar physicians in the area.¹⁴ Carrier then contends that its reimbursement to Provider met industry standard rates and the Medicare prudent buyer principle.

The third issue Carrier raises is that the only invoice submitted by Provider was an “issue order” for the implantables, not a manufacturer’s invoice; therefore, the manufacturer’s invoice amount is unclear.¹⁵ The issue order identifies materials delivered by the sales representative for the Claimant’s surgery and the amount due for those items.¹⁶

¹³ See Carrier’s closing argument at 2

¹⁴ See Carrier’s closing argument at 3.

¹⁵ See Carrier’s closing argument at 4; Exhibit B.

¹⁶ See Exhibit B (AR-2262 Button Inserter \$200.00 + AR-2264 AC Tightrope, Twin Tail \$822.00 = \$1,022.00)

B. ALJ's Analysis

Although Carrier argues that Provider billed for implantables at rates higher than the industry standard and in excess of what a prudent and cost-conscious buyer would incur, Carrier offered no evidence to demonstrate what industry standard pricing is, nor what a prudent and cost-conscious buyer would incur. Additionally, documentary evidence in the record supports the amount Provider claimed it was billed for the implantables used in Claimant's surgery.¹⁷ Although Carrier argues the issue order invoice is from a sales representative and may therefore contain a markup over manufacturer pricing, there is no evidence that the issue order invoice contains any markups, and it matches the amount in the EOB.

Moreover, with regard to application of the Medicare prudent buyer principle, Division rule § 134.403 states that Medicare payment policies are to be applied, but that specific provisions contained in the Division's rules take precedence over any conflicting Medicare payment policy.¹⁸ Therefore, Division rule 134.403(g), covering how implantables that are billed separately should be reimbursed, governs over any Medicare payment policy.

Because Carrier bears the burden of proof in this matter, and because Carrier has failed to demonstrate by a preponderance of the evidence that the MFD Decision is incorrect, the ALJ finds that, as provided in the MFD Decision, Carrier is required to reimburse Provider the additional sum of \$4,579.70, plus applicable interest.

IV. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury that was covered by workers compensation insurance provided by Carrier.
2. Claimant underwent outpatient surgery on May 23, 2017, at Provider.
3. Claimant's surgery required implantables.

¹⁷ Exhibits B-C.

¹⁸ 28 Tex. Admin. Code § 134.403(d)(1).

4. Carrier reimbursed Provider \$1,219.50 for the implantables.
5. After Carrier denied Provider's request for additional reimbursement, Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division), seeking additional reimbursement of \$4,579.70.
6. In its Medical Fee Dispute Resolution Findings and Decision (MFD Decision) issued December 8, 2017, the Division found Provider was entitled to an additional \$4,579.70 reimbursement from Carrier for implantables used by Provider during surgery performed on Claimant.
7. Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) to contest the MFD Decision.
8. The Division sent notice of the hearing to both parties on April 9, 2018.
9. The notice 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. Specifically, the notice informed that parties that the hearing would be held at 9:00 a.m. on July 2, 2018, at SOAH, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas 78711-3025.
10. The hearing was held on July 2, 2018, by Administrative Law Judge (ALJ) Meitra Farhadi at SOAH's offices at the address set out in the notice of hearing. Carrier appeared telephonically and was represented by attorney CW. Provider did not appear.
11. The ALJ held the record open to allow Carrier to file exhibits and allow Provider an opportunity to file any objections thereto. Carrier filed two exhibits (Exhibits A and B), and Provider filed no objections. On July 26, 2018, the ALJ admitted Carrier's Exhibits A and B, and also admitted the MFD Decision documents filed by the Division on April 9, 2018.
12. The record closed on August 10, 2018, following a closing argument filed by Carrier.
13. Provider billed separately (exclusive of rebates and discounts) \$5,272.00 for implantables used in Claimant's outpatient surgery.
14. The total add-on amount of 10 percent or \$1,000 per billed item add-on, whichever is less, for the implantables billed by Provider is \$527.20.

15. The record contains no evidence of the industry standard pricing for the implantables used by Provider for Claimant's surgery, nor evidence of the costs a prudent and cost-conscious buyer would have incurred for those implantables.

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-.052.
3. Carrier has the burden of proof in this proceeding by a preponderance of the evidence. 28 Tex. Admin. Code § 148.14(b).
4. When implantables are separately invoiced, the Maximum Allowable Reimbursement is calculated by multiplying the sum of the Medicare facility-specific reimbursement amount and any applicable outlier payment amount by 130 percent. 28 Tex. Admin. Code § 134.403(f)(1)(B).
5. Implantables, when billed separately in accordance with 28 Texas Administrative Code § 134.403(f)(1)(B), shall be reimbursed at 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 per admission. 28 Tex. Admin. Code § 134.403(g).
6. Specific provisions contained in the Texas Labor Code or the Division's rules shall take precedence over any conflicting Medicare payment policy. 28 Tex. Admin. Code § 134.403(d)(1).
7. Carrier failed to show that the MFD Decision finding that Carrier owes Provider an additional reimbursement of \$4,579.70 for implantables was incorrect.
8. The MFD Decision concluding that Carrier owes Provider an additional \$4,579.70 is consistent with 28 Texas Administrative Code § 134.403.

ORDER

IT IS ORDERED that Carrier is required to reimburse Provider the additional sum of \$4,579.70 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 decision are set forth in the Statement of Costs attached to this Decision and Order and are incorporated herein for all purposes.

SIGNED October 3, 2018.

MEITRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS