

**SOAH DOCKET NO. 454-18-3509.M4-NP**  
**MR 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>

**DECISION AND ORDER**

This case involves a dispute regarding payment for medical services provided by Healthcare Provider (HCP) to an injured employee (Claimant) covered by the worker’s compensation insurance system. The Texas Department of Insurance’s Division of Worker’s Compensation (Division) conducted a medical fee dispute resolution (MFDR) and declined to order Carrier to reimburse HCP in the amount of \$162,628.70.<sup>1</sup> HCP contends it is entitled to this additional reimbursement. The Administrative Law Judge (ALJ) concludes that HCP is not entitled to additional reimbursement from Carrier for medical services provided to Claimant from May 26, 2015, through October 31, 2016.

**I. NOTICE AND PROCEDURAL HISTORY**

On July 30, 2018, Carrier filed a Plea to the Jurisdiction (Plea) with TD, Chief Clerk of Proceedings for the Division.<sup>2</sup> Carrier maintains that SOAH lacks jurisdiction to hear this contested case because it was untimely filed by HCP. HCP disagrees. The ALJ finds that the State Office Administrative Hearings (SOAH) has jurisdiction to determine whether the request

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<sup>1</sup> HCP added an additional claim in the amount of \$26,551.05 for services provided Claimant from October 16-31, 2016, making the total HCP asserts Carrier owes \$189,179.75.

<sup>2</sup> Although the address indicates that Carrier’s Plea to the Jurisdiction (Plea) was sent to SOAH, the Plea was addressed to TD, the Division’s Chief Clerk of Proceedings, and sent to her facsimile number at the Division. Carrier provided the ALJ a copy of the Plea and the parties argued the Plea as a preliminary matter to the hearing on the merits. Carrier emailed its Response to the Plea to the ALJ the same day.

for a contested case hearing was timely filed. This issue will be addressed further in the Discussion and Analysis section below.

There is no issue regarding notice; therefore, this issue will be addressed in the findings of fact and conclusions of law without further discussion here.

On August 1, 2018, ALJ Catherine Egan convened a hearing on the merits at the SOAH. Attorney CN represented HCP. Attorney JM represented Carrier. The record closed on August 28, 2018, after the filing of written closing arguments.<sup>3</sup>

As the party requesting a hearing at SOAH, HCP has the burden of proof to show by a preponderance of the evidence that it is entitled to reimbursement.<sup>4</sup> The hearing before SOAH is a *de novo* review of the issues involved.

## II. DISCUSSION AND ANALYSIS

### A. Background

HCP provided medical services to Claimant at two of its facilities in Texas after he sustained a work-related injury on date of injury.<sup>5</sup> Carrier was the workers' compensation carrier for Claimant's employer. HCP and Carrier entered into six Letters of Agreement (LOAs) regarding payment options for medical services provided to Claimant.<sup>6</sup> In general, the LOAs gave Carrier a discounted negotiated rate for medical services provided Claimant if Carrier paid HCP within 45 days of receiving a claim. If Carrier failed to pay a claim timely, Carrier had to pay HCP the entire amount billed.<sup>7</sup>

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<sup>3</sup> Carrier filed its written closing argument on August 28, 2018. Although the closing argument was received a day after the deadline set out in Order No. 1, the ALJ allowed the late filing because August 27, 2018, was a state holiday. The ALJ closed the record on August 28, 2018, after Carrier filed its written closing argument.

<sup>4</sup> 28 Tex. Admin. Code § 148.14(b).

<sup>5</sup> The two Carrier facilities were NSH and TNC. Exhibit H at 1.

<sup>6</sup> Exhibit A.

<sup>7</sup> Exhibit A.

On February 8, 2017, HCP filed a request for MFDR to recover additional reimbursement from Carrier in the amount of \$162,628.70. On October 24, 2017, the Division issued an MFDR decision holding that HCP was due no further reimbursement from Carrier. The MFDR noted that a provider waives the right to MFDR if the fee dispute is filed after the one-year filing deadline, unless an exception applies.<sup>8</sup> HCP did not assert an exception. The MFDR decision also stated that health care providers must take certain action before filing for MFDR, including billing the carrier for services, asking the carrier for reconsideration of the carrier's final action, and allowing the carrier 30 days to respond to a request for reconsideration.<sup>9</sup>

According to the MFDR decision, HCP was not entitled to any further reimbursement for services provided on May 26, 2015, through February 4, 2016, because HCP had not filed a request for MFDR within the one-year filing deadline. As for the claims from February 8, 2016, through October 31, 2016, these claims were not eligible for review because HCP failed to show it requested reconsideration for the services in dispute, a prerequisite to filing a request for MFDR.<sup>10</sup>

On November 13, 2017, HCP requested a Benefit Review Conference.<sup>11</sup> The Benefit Review Conference concluded unsuccessfully on January 15, 2018.<sup>12</sup> On February 2, 2018, HCP filed a Request to Schedule a Medical Contested Case Hearing with the Division.<sup>13</sup> The Chief Clerk of Proceedings received the Request for Contested Case Hearing on May 3, 2018, and filed a Request to Docket Case with SOAH on May 4, 2018.

## **B. Parties' Positions**

HCP requests additional reimbursement from Carrier for medical services rendered to the Claimant from May 26, 2015, through October 31, 2016, now totaling \$189,179.75.<sup>14</sup> This

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<sup>8</sup> Exhibit J at 2. 28 Tex. Admin. Code § 133.307(c)(1)(A).

<sup>9</sup> Exhibit J at 2. 28 Tex. Admin. Code § 133.250.

<sup>10</sup> Exhibits H at 5 and J at 2-3.

<sup>11</sup> Exhibit G.

<sup>12</sup> Exhibit H at 1.

<sup>13</sup> Exhibit H.

<sup>14</sup> Exhibits B, E, and F.

amount includes the original \$162,628.70 considered by MFDR and another claim for reimbursement in the amount of \$26,551.05 for services provided Claimant on October 16-31, 2018. HCP asserts that because Carrier did not timely pay the discounted negotiated rate, Carrier owes HCP the full amounts charged as agreed in the LOAs. Carrier disagreed and argued that HCP failed to timely request MFDR and failed to timely and properly request reconsideration of these claims, both prerequisites to obtaining additional reimbursement for disputed claims. Additionally, Carrier asserts that SOAH does not have jurisdiction to consider HCP's claims because HCP did not timely request a Medical Contested Case Hearing before SOAH as required by 28 Texas Administrative Code § 133.307(g)(2)(A).

### **C. Applicable Law**

If a health care provider disagrees with an insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action so long as the request for reconsideration is submitted no later than 10 months from the date of services.<sup>15</sup> A written request for reconsideration must reference the original bill, billing codes, dates of service, and dollar amount of the bill, the original explanation of benefits (EOB), or if none was received, a request for an EOB.<sup>16</sup> An oral request for reconsideration must "identify the health services denied based on an adverse determination and include a substantive explanation in accordance with § 133.3 of this title that provides a rational basis to modify the previous denial or payment."<sup>17</sup>

According to 28 Texas Administrative Code § 133.250(i), "[i]f the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the

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<sup>15</sup> 28 Tex. Admin. Code § 133.250(b).

<sup>16</sup> 28 Tex. Admin. Code § 133.250(d).

<sup>17</sup> 28 Tex. Admin. Code 133.250(e). Section 133.3 provides:

(a) Any communication between the health care provider and insurance carrier related to medical bill processing shall be of sufficient, specific detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "insurance carrier improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position does not satisfy the requirements of this section.

health care provider may request MFDR in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills).”

The Division is responsible for resolving disputes regarding the amount of payment due for medically necessary health care.<sup>18</sup> A requestor, such as a medical provider, must timely file the request for MFDR with the Division’s MFDR section or waive the right to MFDR.

According to 28 Texas Administrative Code § 133.307(c)(1)(A), a request must be “filed no later than one year after the date(s) of service in dispute.”<sup>19</sup>

If the medical fee dispute remains unresolved, a Benefit Review Conference may be requested. If the issues remain unresolved after a Benefit Review Conference, the matter may be referred to SOAH for a contested case hearing as long as the request is properly filed. According to 28 Texas Administrative Code § 133.307(g)(2)(A), the party requesting a contested case hearing must file a written request “with the Division’s Chief Clerk of Proceedings not later than 20 days after conclusion of the benefit review conference in accordance with § 148.3 of this title (relating to Requesting a Hearing).” The date the Division’s Chief Clerk of Proceedings is found to have received the request is governed by 28 Texas Administrative Code § 148.3(c) which provides:

When a request for a hearing is addressed to the Chief Clerk of Proceedings but is sent to an office other than the Chief Clerk of Proceedings, the date filed or received shall be the date the request is received by the division. The request for hearing will be forwarded to the division’s Chief Clerk of Proceedings, but this may result in delay of processing the request. When a request for a hearing is not addressed to the Chief Clerk of Proceedings, it will not be considered filed or received by the division unless it is actually received by the Chief Clerk of Proceedings. Otherwise, a request for a hearing is deemed filed as of the date of the division date stamp placed on the document or other evidence of receipt.

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<sup>18</sup> 28 Tex. Admin. Code § 133.307(a)(2).

<sup>19</sup> HCP did not assert an exception under 28 Texas Administrative Code § 133.307(c)(1)(B).

**D. ALJ's Analysis**

HCP filed a request for MFDR on February 8, 2017, and argues because the parties continued to negotiate the disputed claims, it timely filed the request for MFDR for its claims from May 26, 2015, to October 31, 2016. The ALJ disagrees. HCP did not prove an exception applied to the one-year deadline to file a request for MFDR. Therefore, pursuant to 28 Texas Administrative Code § 133.307(c)(1)(A), HCP waived the right to MFDR for these claims. The ALJ finds that because HCP did not timely file a request for MFDR for the services provided from May 26, 2015, through February 4, 2016, HCP is not entitled to any additional reimbursement from Carrier for claims during this period.

With respect to those medical services provided by HCP from February 8, 2016, through October 31, 2016, a threshold issue is whether HCP timely filed its Request for a Contested Case Hearing. According to 28 Texas Administrative Code § 133.307(g)(2)(A), HCP was required to file a written request for a SOAH hearing with the Division's Chief Clerk of Proceedings no later than 20 days after the Benefit Review Conference. The rule specifically requires that the request be filed with the Chief Clerk of Proceedings. HCP filed its request with the Division, but did not address it to the Chief Clerk of Proceedings. Consequently, the date the request is deemed filed was not the date it was filed with the Division, but the date the Chief Clerk of Proceedings received it. In this case the Chief Clerk of Proceedings received the request for a SOAH hearing on May 3, 2018.<sup>20</sup> Because the request for a contested case hearing was not timely filed by HCP, HCP is not entitled to any relief from SOAH.<sup>21</sup>

In conclusion, the ALJ finds that HCP did not timely request MFDR for the services provided between May 26, 2015, through February 4, 2016, and is not entitled to any additional reimbursement from HCP for services provided Claimant during this period. The ALJ further

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<sup>20</sup> 28 Tex. Admin. Code § 148.3(c), (d).

<sup>21</sup> Because the request for a contested case hearing with SOAH was not timely filed with the Chief Clerk of Proceedings, it is unnecessary for the ALJ to address whether HCP properly requested reconsideration of its claims from Carrier.

finds that HCP failed to timely file a Request for a Contested Case Hearing with the Chief Clerk of Proceedings; therefore, SOAH cannot grant any relief to HCP for the services in dispute.

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

1. HCP delivered medical service from May 26, 2015, through October 31, 2016, to a worker's compensation insurance claimant (Claimant).
2. Carrier was the workers' compensation carrier for Claimant's employer.
3. On February 8, 2017, HCP requested medical fee dispute resolution (MFDR) at the Texas Department of Insurance's Division of Workers' Compensation (Division) in connection with the medical services provided Claimant. The amount in dispute was \$162,628.70.
4. On October 24, 2017, the Division's MFDR section issued its Finding and Decision denying any additional reimbursement from Carrier to HCP for the services in dispute.
5. HCP requested a Benefit Review Conference on November 13, 2017. The Benefit Review Conference concluded unsuccessfully on January 15, 2018.
6. On February 2, 2018, HCP filed a Request to Schedule a Medical Contested Case Hearing addressed to the Division, but did not address the request to the Division's Chief Clerk of Proceedings.
7. The Division's Chief Clerk of Proceedings received the Request to Schedule a Medical Contested Case Hearing filed by HCP on May 3, 2018, more than 100 days after the Benefit Review Conference concluded.
8. On May 4, 2018, the Division filed a Notice of Administrative Hearing (Notice) with the State Office of Administrative Hearings (SOAH) that was issued to HCP and Carrier. The Notice identified May 3, 2018, as the date the Request to Schedule a Medical Contested Case Hearing was received from HCP.
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 or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
10. On August 1, 2018, Administrative Law Judge Catherine Egan convened the hearing on the merits at SOAH. Attorney CN represented HCP. Attorney JM represented Carrier. The record closed on August 28, 2018, after the filing of written closing arguments.

#### 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, .0311; Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided the parties. Tex. Gov't Code §§ 2001.051-.052.
3. As the party seeking relief from the MFDR decision, HCP had the burden of proof. 28 Tex. Admin. Code § 148.14(b).
4. A requestor shall timely file the request with the Division's MFDR section or waive the right to MFDR. The request for MFDR must be filed no later than one year after the date(s) of service in dispute. 28 Tex. Admin. Code § 133.307(c)(1)(A).
5. The exceptions to the one-year filing deadlines set out in 28 Texas Administrative Code § 133.307(c)(1)(B) do not apply to HCP's claims for services provided Claimant from May 26, 2015, through February 4, 2016.
6. HCP waived the right to MFDR as to dates of service May 26, 2015, through February 4, 2016; therefore, HCP is not entitled to any additional reimbursement for medical services provided to Claimant on these dates.
7. If a medical fee dispute remains unresolved after a Benefit Review Conference, a health care provider may request a contested case hearing before SOAH by filing a written request with the Division's Chief Clerk of Proceedings not later than 20 days after the conclusion of the Benefit Review Conference. 28 Tex. Admin. Code § 133.307(g)(2)(A).
8. When a request for a hearing is not addressed to the Division's Chief Clerk of Proceedings, it is not considered filed or received until it is received by the Chief Clerk of Proceedings. 28 Tex. Admin. Code § 148.3(c).
9. The request for a contested case hearing before SOAH was untimely filed by HCP with the Chief Clerk of Proceedings; therefore, HCP is not entitled to any relief from SOAH. 28 Tex. Admin. Code §§ 148.3(c), 133.307(g)(2)(A).
10. Carrier is not required to reimburse HCP any additional amounts for services provided to Claimant on May 26, 2015, through October 31, 2016.



## **ORDER**

**It is ORDERED** that the carrier, is not required to reimburse HCP any additional reimbursement for the services rendered to the injured worker from May 24, 2015, through October 31, 2016.

### **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 of service 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 October 29, 2018.**

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**CATHERINE C. EGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**