

SOAH DOCKET NO. 454-21-3314.M4-NP
MFDR TRACKING NO. _____

TX PUBLIC SCHOOL WC PROJECT,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
BAYLOR SCOTT & WHITE MARBLE	§	
FALLS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Public School Workers’ Compensation Project (Carrier) challenges the Texas Department of Insurance, Division of Workers’ Compensation (the Division or DWC) Medical Fee Dispute Resolution (MFDR) Findings and Decision of July 3, 2020 (Decision) granting reimbursement to Baylor Scott & White Marble Falls (Hospital). The Administrative Law Judge (ALJ) finds that Hospital is entitled to reimbursement. Therefore, the ALJ upholds the determination by DWC and orders that Carrier reimburse Hospital \$27,148.52.¹

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

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

On May 27, 2020, Hospital filed a request for medical fee dispute resolution with the DWC. On July 3, 2020, the DWC issued a decision granting Hospital’s request for additional reimbursement. On September 11, 2020, Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the decision. A hearing was convened before ALJ Meitra Farhadi on January 20, 2022, by Zoom videoconferencing. Carrier appeared and was represented by attorney John Molinar. Hospital appeared and was represented by attorney Alan Barker. The record closed upon conclusion of the hearing on January 20, 2022.

¹ This is the amount in dispute identified in the MFDR Decision. *See* Respondent Ex. 10; Petitioner Ex. 8.

II. APPLICABLE LAW

“An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed.”² Specifically, the employee is entitled to health care that: “(1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.”³

Texas Labor Code § 413.014 authorizes the Division to adopt rules regarding preauthorization. An insurance carrier is liable for all reasonable and necessary medical costs of both inpatient hospital admissions and outpatient surgical or ambulatory surgical services when those services have been preauthorized.⁴ If the inpatient hospital admission or outpatient surgical or ambulatory services are the result of an emergency, however, preauthorization is not required.⁵ A medical emergency is “the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in: (i) placing the patient’s health or bodily functions in serious jeopardy, or (ii) serious dysfunction of any body organ or part.”⁶

A preauthorization request can be sent by telephone, facsimile, or electronic transmission and must include, among other things, the estimated date of the proposed health care.⁷ The insurance carrier must contact the requestor by telephone, facsimile, or electronic transmission within three working days of receipt of a request for preauthorization to approve or deny the request, and must also send written notification of the decision to the injured employee and requestor.⁸ An approval must include, among other things, the specific health care and the specific period of time to complete the treatments.⁹ The insurance carrier cannot condition an approval or

² Tex. Lab. Code § 408.021(a).

³ *Id.*

⁴ 28 Tex. Admin. Code § 134.600(c)(1)(B), (p)(1)-(2).

⁵ 28 Tex. Admin. Code § 134.600(c)(1)(A).

⁶ 28 Tex. Admin. Code § 133.2(5)(A).

⁷ 28 Tex. Admin. Code § 134.600(f)(9).

⁸ 28 Tex. Admin. Code § 134.600(i)-(j).

⁹ 28 Tex. Admin. Code § 134.600(l)(1)-(2).

change any elements of the request unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.¹⁰

If a health care provider is denied or paid a reduced amount for the medical service rendered, the provider is entitled to review by the Division.¹¹ If a dispute remains after that review, a party may request a contested case hearing at SOAH.¹² As the party requesting a hearing at SOAH to challenge an adverse MFDR decision, Carrier has the burden of proof to show by a preponderance of the evidence that Hospital is not entitled to reimbursement.¹³ The hearing before SOAH is a de novo review of the issues involved.¹⁴

III. EVIDENCE AND ANALYSIS

At the hearing, Carrier had eight exhibits admitted into evidence, and Hospital admitted ten exhibits into evidence. Neither party presented any witnesses.

A. Evidence

This case arises out of the hospital admission on June 11, 2019, of an injured worker (Claimant) whose workers' compensation insurance was provided by Carrier. Due to a fall on (Date of Injury), Claimant's orthopedic doctor recommended that Claimant undergo surgery for a compensable injury sustained to Claimant's left shoulder. On June 7, 2019, after a peer-to-peer discussion between Claimant's doctor and a physician advisor working for Carrier's Injury Management Organization (IMO), a preauthorization determination letter was issued. The preauthorization covered Open Reduction Internal Fixation (ORIF) of the left shoulder with possible Reverse Shoulder Arthroplasty (RSA) to be done on an outpatient basis.¹⁵ If an RSA was

¹⁰ 28 Tex. Admin. Code § 134.600(n).

¹¹ Tex. Lab. Code § 413.031(a).

¹² Tex. Lab. Code § 413.0312(e).

¹³ 28 Tex. Admin. Code § 148.14(b), (e).

¹⁴ See *Vista Med. Ctr. Hosp. v. Texas Mut. Ins. Co.*, 416 S.W.3d 11, 17-18 (Tex. App.—Austin 2013, no pet.).

¹⁵ Petitioner Ex. 1 at 1.

done, an inpatient stay would be necessary. Hospital had requested both inpatient and outpatient authorization; however, the IMO utilization review (UR) nurse advised Hospital not to request authorization for an inpatient stay until it was certain that Claimant would be admitted. The UR nurse advised Hospital that if RSA was performed, Hospital should fax the authorization request for an inpatient stay and then call to notify IMO as well.¹⁶

On Tuesday, June 11, 2019, Claimant underwent surgery from 10:15 a.m. to 12:50 p.m. After commencing the operation, Claimant's doctor decided to proceed with the RSA procedure in lieu of the ORIF procedure.¹⁷ At 2:06 p.m. Hospital left a voicemail for the adjuster with IMO regarding the need for inpatient admission following the surgery.¹⁸ On the same date, Hospital also submitted an online request to IMO seeking preauthorization for an inpatient hospital stay.¹⁹ In response, IMO issued an amended preauthorization determination letter authorizing medical necessity for an inpatient stay for three days for an RSA on an inpatient basis.²⁰ The amended preauthorization was effective for dates of service from June 12, 2019 through August 12, 2019.²¹

Hospital billed Carrier for the treatment.²² Carrier, through its administrator Creative Risk Funding (CRF), denied reimbursement on the basis that the services were not preauthorized.²³

Carrier contends it is not liable for services provide prior to the June 12, 2019, effective date of the amended preauthorization for inpatient hospital services. Carrier further asserts that the medical evidence demonstrates that Claimant's surgery was not an emergency. Specifically, the IMO preauthorization letter mentions a peer-to-peer discussion with Claimant's surgeon, in which he explained his surgical plan to perform the ORIF procedure to repair Claimant's left

¹⁶ Respondent Ex. 1 at 2.

¹⁷ Respondent Ex. 2 at 1-3.

¹⁸ Respondent Ex. 1 at 1.

¹⁹ Petitioner Ex. 2 at 1-3.

²⁰ Petitioner Ex. 3 at 1.

²¹ *Id.*

²² Petitioner Ex. 4.

²³ Petitioner Ex. 5.

shoulder fracture, with the possibility that he would need to convert to the RSA procedure if the fracture was irreparable.²⁴ Carrier argues that Hospital knew that if the RSA was done, it would need authorization for the inpatient stay. Further, Carrier stated that such a contingency could have been addressed from a preauthorization standpoint had Hospital included a hospital stay for the RSA procedure in its initial request.

Hospital contends that the RSA was a medically necessary procedure, and that the Hospital took the conservative route to only obtain the outpatient authorization. However, Hospital argued that it would have been inappropriate to stop the surgery and wait for the inpatient authorization before performing the approved RSA procedure. Hospital contends that IMO erred by dating the inpatient authorization to commence on June 12, 2019, instead of June 11, 2019.

B. Analysis and Decision

Carrier is liable for treatments and services requiring preauthorization if preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner. As applicable to this case, preauthorization must be obtained from the insurance carrier prior to receiving health care listed in 28 Texas Administrative Code § 134.600(p). Among the health care listed in 28 Texas Administrative Code § 134.600(p) is non-emergency healthcare including both inpatient hospital admissions and outpatient surgical services.

The preponderance of the evidence demonstrates that Hospital sought preauthorization for ORIF of the left shoulder with possible RSA to be done on an outpatient basis as well as approval for inpatient admission. Carrier approved the ORIF of the left shoulder with possible RSA to be done on an outpatient basis, but the IMO UR nurse advised Hospital not to request inpatient until they were certain it would be required. The evidence further demonstrated that it was not until the operation had begun that Claimant's doctor decided it would be necessary to proceed with the RSA procedure in lieu of the ORIF procedure. As requested by the IMO UR nurse, once the RSA surgery was done and it was confirmed that Claimant would need inpatient

²⁴ Petitioner Ex. 1.

admission, Hospital both called and faxed the inpatient request to IMO. IMO approved the request but failed to date it correctly—dating the amended preauthorization to be effective June 12, 2019.

Hospital obtained preauthorization which included the possibility of RSA. RSA necessitates an inpatient hospital admission. Although the preauthorization was not amended to specify the inpatient admission until the need for RSA was confirmed during surgery; the preponderance of the evidence established that the RSA was approved, and that if the RSA was performed an inpatient stay would be required. Carrier cannot now change an element of the request.²⁵

In addition, although the RSA surgery itself was not a medical emergency; upon performing it, the inpatient admission of Claimant could arguably be considered a medical emergency. Carrier did not present any evidence that an RSA surgery does not present an emergency medical situation requiring inpatient hospital admission.

For these reasons, the ALJ concludes that Carrier has not met its burden of showing that Hospital did not receive preauthorization for the June 11, 2019, RSA surgery and resulting inpatient hospital stay. Therefore, the MFDR Decision correctly determined that Hospital is entitled to reimbursement from Carrier. The ALJ makes the following findings of fact and conclusions of law in support of this decision.

IV. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury on (Date of Injury).
2. Texas Public School Workers' Compensation Project (Carrier) was the responsible workers' compensation insurer for Claimant.
3. On June 7, 2019, after a peer-to-peer discussion between Claimant's doctor and a physician advisor working for Carrier's Injury Management Organization (IMO), a preauthorization determination letter was issued. The preauthorization covered Open Reduction Internal Fixation (ORIF) of the left shoulder with possible Reverse Shoulder Arthroplasty (RSA) to be done on an outpatient basis.

²⁵ 28 Tex. Admin. Code § 134.600(n).

4. If an RSA was performed, an inpatient stay would be necessary.
5. Baylor Scott & White Marble Falls (Hospital) had requested both inpatient and outpatient authorization; however, the IMO utilization review (UR) nurse advised Hospital not to request authorization for an inpatient stay until it was certain that Claimant would be admitted. The UR nurse advised Hospital that if RSA was performed, Hospital should fax the authorization request for an inpatient stay and then call to notify IMO as well.
6. On Tuesday, June 11, 2019, Claimant underwent surgery from 10:15 a.m. to 12:50 p.m. at Hospital. After commencing the operation, Claimant's doctor decided to proceed with the RSA procedure in lieu of the ORIF procedure. At 2:06 p.m. Hospital left a voicemail for the adjuster with IMO regarding the need for inpatient admission following the surgery. On the same day, Hospital also submitted an online request to IMO seeking preauthorization for an inpatient hospital stay.
7. On June 13, 2019, IMO issued an amended preauthorization determination letter authorizing medical necessity for an inpatient stay for three days for an RSA on an inpatient basis. The amended preauthorization was effective for dates of service from June 12, 2019 through August 12, 2019.
8. Hospital billed Carrier for the surgery and inpatient admission. Carrier, through its administrator Creative Risk Funding, denied reimbursement on the basis that the services were not preauthorized.
9. On May 27, 2020, Hospital filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (DWC or the Division).
10. On July 3, 2020, the DWC issued its Medical Fee Dispute Resolution Findings and Decision granting Hospital's request for reimbursement.
11. Carrier timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
12. On August 20, 2021, the Division issued a notice of the hearing. 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.
13. On December 1, 2021, the SOAH Administrative Law Judge (ALJ) issued Order No. 2 with a statement of the time and place of the hearing and instructions for participating in the hearing.

14. A hearing was convened before ALJ Meitra Farhadi on January 20, 2022, by Zoom videoconferencing. Carrier appeared and was represented by attorney John Molinar. Hospital appeared and was represented by attorney Alan Barker. The record closed upon conclusion of the hearing on January 20, 2022.

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. Carrier had the burden of proof in this proceeding by a preponderance of the evidence.1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 148.14(b), (e).
4. A medical fee dispute is a dispute over the amount of payment for services that have been determined to be medically necessary and appropriate for treatment of an injured employee's compensable injury. 28 Tex. Admin. Code § 133.305(a)(4).
5. The Division may adopt rules regarding preauthorization and the insurance carrier is not liable for treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and obtained from either the insurance carrier or ordered by the commissioner. Tex. Lab. Code § 413.014.
6. An insurance carrier may not condition an approval or change any elements of the request unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented. 28 Tex. Admin. Code § 134.600(n).
7. Carrier impermissibly conditioned or changed an element of the preauthorization request.28 Tex. Admin. Code § 134.600(n).
8. Hospital is entitled to reimbursement by Carrier of \$27,148.52, plus any applicable interest.

ORDER

THEREFORE, IT IS ORDERED that Texas Public School Workers' Compensation Project is required to pay the sum of \$27,148.52, plus any applicable interest, to Baylor Scott & White Marble Falls for the services at issue in this case.

NONPREVAILING PARTY DETERMINATION

Texas Labor Code § 413.0312(g) and 28 Texas Administrative Code § 133.307(h) require the nonprevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify the nonprevailing party and any costs for services provide by SOAH in its final decision. For purposes of Texas Labor Code § 413.0312, Texas Public School Workers' Compensation Project is the nonprevailing party. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

SIGNED March 16, 2022.

**MEITRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**