

SOAH DOCKET NO. 454-22-0004.M4-NP

COLUMBIA MUTUAL INSURANCE	§	BEFORE THE STATE OFFICE
CO.,	§	
Petitioner	§	
	§	
v.	§	OF
	§	
TEXAS INSTITUTE FOR SURGERY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Columbia Mutual Insurance Co. (Columbia) 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 Columbia to reimburse the Texas Institute for Surgery (Provider) the additional sum of \$1,804.48 for implantables used during outpatient surgery provided to an injured worker. After reviewing the evidence presented and the applicable law, the Administrative Law Judge (ALJ) concludes that Columbia met its burden of proof to show that the MFD Decision incorrectly calculated the reimbursement amount. Accordingly, Columbia owes no additional reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

A Zoom videoconference hearing was held on February 8, 2022, before ALJ Srinivas Behara of the State Office of Administrative Hearings (SOAH). Columbia was represented by attorney Dan C. Kelley. Provider did not appear. Columbia presented the testimony of one witness, Anne M. Geanes. The hearing and record closed the same day.

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. Absent 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.¹ An “implantable” is an object or device that is surgically implanted, embedded, inserted, or otherwise applied, and related equipment necessary to operate, program, and recharge the implantable.² MAR for implantables is calculated as follows:

(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) 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.³

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

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

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

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.⁴ As the party seeking relief from the MFD Decision, Columbia has the burden of proof.⁵

III. EVIDENCE AND ANALYSIS

On June 4, 2019, Provider performed surgery on an injured worker to repair a tendon in the left middle finger.⁶ The surgery used two implantables—an anchor and k-wire—to fixate bone and soft tissue.⁷ After the procedure, Provider timely submitted a bill to Columbia, itemizing charges in a document titled “Patient Account Detail.” Provider highlighted a portion of the Patient Account Detail to show Columbia the specific implantables charges in the amount of \$2,202.00.⁸ In addition, Provider’s request for reimbursement to Columbia contained copies of the “implant log” and manufacturer invoices, demonstrating the specific implantables used and their costs from the manufacturer in the amount of \$450.00.⁹

Based on the erroneous determination that Provider did not submit separate reimbursement request for implantables, the MFD Decision applied Division Rule 134.403(f)(1)(A), which mandates that “the sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 200%.” However, there is no evidentiary support that the 200% multiplier should have applied under the circumstances. The undisputed evidence demonstrates that Provider made a separate request for reimbursement implantables. The charges for the implantables were separately billed, and thus, under Division Rule 134.403(f)(1)(B), that reimbursement should have been calculated at 130% of the facility- specific reimbursement amount plus any applicable outlier payment. Because Columbia has met its burden of proof that the correct reimbursement at 130% was made, no additional reimbursement of \$1,804.48 remains due.

⁴ Tex. Labor Code §§ 413.031(c), .0312(a), (e).

⁵ 28 Tex. Admin. Code § 148.14(b).

⁶ Pet. Ex. 4 at 42.

⁷ Pet. Ex. 4 at 43.

⁸ Pet. Ex. 1.

⁹ Pet. Ex. 2 at 3-8.

IV. FINDINGS OF FACT

1. On June 4, 2019, Texas Institute for Surgery (Provider) performed outpatient acute care services on an injured worker (Claimant) to repair a tendon in the worker's finger.
2. The services involved use of an anchor and k-wire, which are "implantables" used to fixate bone and soft tissue.
3. Provider timely submitted a bill to Claimant's insurance carrier, Columbia Mutual Insurance Co. (Columbia), itemizing charges in a document titled Patient Account Detail. Provider highlighted a portion of the Patient Account Detail to show Columbia the specific implantables charges. The total charge for implantables was \$2,202.00.
4. Provider's request for reimbursement to Columbia contained copies of the implant log and manufacturer invoices, demonstrating the specific implantables used and the implantables' costs. The total invoice cost of implantables from the manufacturer was \$450.00.
5. The total billed charges were \$21,218.38. Provider's total billed charges less Provider's billed charges for items reimbursed separately totaled \$19,016.38. Provider's cost-to-charge ratio is 0.281.
6. Provider sought separate reimbursement for implantables when Respondent submitted its bill for payment to Columbia, and therefore reimbursement should have been calculated at 130% of the facility specific amount as set forth in 28 Texas Administrative Code Section 134.403(f)(1)(B).
7. Carrier reimbursed \$21,693.42 to Provider for services to Claimant. This amount was based on a rate of 130% of the facility specific reimbursement amount.
8. Accordingly, for the date of service, the correct total reimbursement to Provider was \$3,851.32, calculated as follows: \$2,581.79 (Ambulatory Payment Classification payment for the appropriate Current Procedural Terminology (CPT) code 26356) multiplied by 130%, plus \$495.00 (which is the implant cost of \$450.00 plus 10% of the implant cost).
9. Provider filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division) on December 17, 2019, requesting additional reimbursement.
10. On January 10, 2020, the Division issued its Medical Fee Dispute Resolution Findings and Decision, finding that Provider was entitled to an additional \$1,804.48 in reimbursement.

11. On September 2, 2021, Columbia requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
12. On September 2, 2021, the Division issued a Notice of Hearing. The notice, along with SOAH Order No. 2, informed the parties of the date, time, and location of the hearing; the factual matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
13. A Zoom videoconference hearing was held on February 8, 2022, before ALJ Srinivas Behara of SOAH. Columbia was represented by attorney Dan C. Kelley. Provider did not appear. The hearing and record closed the same day.
14. Columbia adequately reimbursed Provider for services provided to Claimant.

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. Columbia had the burden of proof in this proceeding by a preponderance of the evidence.
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%. 28 Tex. Admin. Code § 134.403(f)(1)(B).
5. The Medical Fee Dispute Resolution Findings and Decision concluding that City owes an additional \$8,282.08 is not consistent with 28 Texas Administrative Code § 134.403(f).

ORDER

Columbia Mutual Insurance Co. is not required to pay Texas Institute for Surgery (Provider) the additional reimbursement of \$1,804.48 for services provided to Claimant.

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 Institute for Surgery 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 21, 2022

/s/ Srinivas Behara
Administrative Law Judge
State Office of Administrative