

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE RISK INDEMNITY,
PETITIONER
V.
MHHS HERMANN HOSPITAL,
RESPONDENT**

DECISION AND ORDER

Petitioner Executive Risk Indemnity (Carrier) challenges the decision of the Texas Department of Insurance, Division of Workers' Compensation (Division), which ordered reimbursement of \$39,111.59 to MHHS Hermann Hospital (Provider). The Administrative Law Judge (ALJ) finds that Provider did not provide the required documentation with its request for reimbursement and subsequent requests for reimbursement. Therefore, the ALJ concludes that Provider is not entitled to reimbursement.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction; therefore, these matters are addressed solely in the Findings of Fact and Conclusions of Law.

On February 2, 2022, the Division received Provider's request for a Medical Fee Dispute Resolution (MFDR).¹ On February 18, 2022, Carrier filed a response to the MFDR request, arguing that Provider failed to provide required documentation—an itemized statement of charges—prior to requesting an MFDR.² On February 25, 2022, the Division issued its MFDR decision, finding that Provider was entitled to reimbursement in the amount of \$39,111.59 plus interest.³ Carrier requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination. On September 8, 2022, the Division issued a Request to Docket letter that, when combined with SOAH's order setting the hearing, issued October 3, 2022, served as a notice of hearing.

On December 15, 2022, SOAH ALJ Brent McCabe convened a hearing on the merits via Zoom videoconference. Carrier appeared through its attorney, John Fundis. Provider appeared through its non-attorney representative, Donna Bachmann. The record closed with the filing of exhibits on December 20, 2022.

¹ Carrier Ex. A at 2.

² Carrier Ex. B at 2.

³ Carrier Ex. C at 4.

II. APPLICABLE LAW

This case involves a medical fee dispute for reimbursement under a workers' compensation policy provided by Carrier. The resolution of a fee dispute is regulated by the Division's billing, audit, and payment rules.⁴ When submitting a medical bill for reimbursement, a provider is required to submit certain documentation to the carrier.⁵ In addition to the documentation required for all reimbursement submissions, a provider seeking reimbursement for hospital services is required to submit an itemized statement of charges.⁶ The carrier must take action on the request, which includes sending an explanation of benefits to the provider.⁷

If a health care provider is denied or paid a reduced amount for the medical services rendered to an injured employee, the provider is entitled to review—MFDR—by the Division.⁸ The request for an MFDR shall include, among other things, a copy of all medical bills related to the dispute as originally submitted to the carrier.⁹ If a dispute remains after an MFDR review, a party may request a contested case hearing at SOAH.¹⁰ As the party requesting a hearing at SOAH to challenge an adverse medical fee dispute decision, Carrier has the burden of proof to show by a

⁴ 28 Tex. Admin. Code ch. 133.

⁵ 28 Tex. Admin. Code § 133.210(a)-(b).

⁶ 28 Tex. Admin. Code § 133.210(c)(5).

⁷ 28 Tex. Admin. Code § 133.240(e).

⁸ Tex. Labor Code § 413.031(a).

⁹ 28 Tex. Admin. Code § 133.307(c)(2)(J).

¹⁰ Tex. Labor Code § 413.0312(e).

preponderance of the evidence that Provider is not entitled to reimbursement.¹¹ The hearing before SOAH is a de novo review of the issues involved.¹²

III. EVIDENCE

At the hearing, Carrier offered seven exhibits, which were admitted, and the testimony of Tara Kerz, vice president of medical review services at CorVel Corporation (CorVel)—the company that provides medical bill review services for Carrier. Provider offered the testimony of its representative, Donna Bachmann, an insurance recovery analyst for ClaimAssist, LLC (ClaimAssist)—a company who handles the submission of Provider’s medical bills for reimbursement—and did not offer any exhibits.

Ms. Kerz testified that Carrier, through CorVel, received and reviewed the following submissions for medical bill reimbursement from Provider related to hospital services for an injured worker with service dates between May 20, 2021, through June 4, 2021:

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

¹² See *Vista Med. Ctr. Hosp. v. Tex. Mut. Ins. Co.*, 416 S.W.3d 11, 17-18 (Tex. App.—Austin 2013, no pet.).

| Document | Date Received | Date of Carrier's Decision | Carrier's Decision and Basis for Decision |
|---|---------------|----------------------------|---|
| Original Medical Bill Submitted for Reimbursement ¹³ | 7/20/21 | 7/29/21 | Denied for failing to include required documentation ¹⁴ |
| First Request for Reimbursement ¹⁵ | 10/11/21 | 10/18/21 | Denied because it was considered duplicate billing because did not constitute a complete request for reconsideration under the rules ¹⁶ |
| Second Request for Reimbursement ¹⁷ | 11/1/21 | 11/11/21 | Denied because it was considered duplicate billing because it did not constitute a complete request for reconsideration under the rules ¹⁸ |
| Third Request for Reimbursement ¹⁹ | 11/15/21 | 11/22/21 | Denied because the information requested was not provided or was insufficient ²⁰ |
| Fourth Request for Reimbursement ²¹ | 12/10/21 | 12/16/21 | Denied because this information requested was not provided or was insufficient ²² |

¹³ See Carrier Ex. D at 1.

¹⁴ See Carrier Ex. A at 9-10 (“Please resubmit with hospital itemization for further payment consideration. Thank you.”).

¹⁵ See Carrier Ex. B at 8-12.

¹⁶ See Carrier Ex. B at 3-5.

¹⁷ See generally Carrier Ex. E.

¹⁸ See Carrier Ex. B at 13-15.

¹⁹ See generally Carrier Ex. F.

²⁰ See Carrier Ex. B at 21-22. Ms. Kerz testified that this submission was denied as duplicate billing like the previous request; however, the explanation of benefits indicates the information requested was not provided or was insufficient. Carrier Ex. B at 22.

²¹ See generally Carrier Ex. G.

Ms. Kerz indicated that Provider did submit an itemized statement with its request for MFDR;²³ however, Carrier did not receive this itemized statement with Provider's original request for reimbursement or any of the requests for reconsideration.

Ms. Bachmann testified that she was the person who submitted the claim for reimbursement and subsequent requests for reconsideration. She believed that an itemized statement had been provided to Carrier. To submit medical bills, Ms. Bachmann described a system that ClaimAssist uses, which required her to select which documents to print and be sent. After processing the selected documents, the system will indicate that the selected documents were printed. After the system completes the process for selection and printing, the documents are mailed using a third-party mailing service. As for this claim, Ms. Bachmann acknowledged that she was having difficulties with this system and the selection of documents to print. She indicated that she would select her documents, but the system would only print a small subset of the selected documents. She felt that Carrier received multiple requests for reconsideration because she would request the documents but only a few pages would be sent, such as the uniform billing form and appeal letter. For the last request for reconsideration received on December 10, 2021, Ms. Bachmann testified that she checked her system following her selection, and the system indicated that all documents had printed. Ms. Bachmann stated that because ClaimAssist uses a third party to mail the

²² Carrier Ex. A at 14-16. Ms. Kerz testified that this submission still did not contain an itemized statement.

²³ Carrier Ex. A at 19-33.

documentation, she cannot demonstrate that the itemized statement of charges was actually mailed. However, because the applicable documents were confirmed as printed, she concludes that all the necessary documents including the itemized statement would have been sent to Carrier and she does not know why they do not have it in their system.

IV. ANALYSIS

At the hearing, the parties agreed that the sole dispute is whether the itemized statement was submitted with the claim for reimbursement or any request for reconsideration to Carrier. Carrier argues, and Provider acknowledges, that if the ALJ finds that an itemized statement was not provided, then the Division improperly found that Provider was entitled to reimbursement. However, the parties agree that if the ALJ finds that the itemized statement was provided to Carrier, then Provider is entitled to reimbursement and the amount of reimbursement determined by the Division is correct.

Carrier met its burden to establish that an itemized statement of charges was not provided by Provider in the original claim for reimbursement or any of the three requests for reconsideration. Ms. Kerz testified that Exhibits D through G represented the documents received by Carrier in connection with this claim for reimbursement. In these documents, there is no itemized statement of charges, and Ms. Kerz testified that Carrier never received an itemized statement prior to receiving Provider's request for MFDR. While Ms. Bachmann indicated that she believed the entire file, including the itemized statement, was provided to Carrier,

she could not demonstrate that it was sent. Additionally, she identified difficulties she experienced with the system ClaimAssist used to prepare and deliver the documents. This difficulty is demonstrated by the multiple requests for reconsideration that contained only a few documents. While Ms. Bachmann felt that the last reconsideration request corrected these issues, the evidence that Carrier did not receive the itemized statement along with the repeated difficulties suggest that it was not included in the final request for reconsideration or the prior submissions.

Considering this evidence, the ALJ finds that it is more than likely than not that an itemized statement of charges was not provided to Carrier. A provider is required to submit an itemized statement of charges when submitting a medical bill for reimbursement for hospital services.²⁴ The parties agreed that if the itemized statement was not provided, Provider is not entitled to reimbursement. Therefore, given the finding in this case, the ALJ concludes that Provider is not entitled to reimbursement of the medical bills at issue in this case.

V. FINDINGS OF FACT

1. From May 20, 2021, through June 4, 2021, MHHS Herman Hospital (Provider) provided hospital services for an injured worker covered by the workers' compensation insurance system.
2. In July 2021, Executive Risk Indemnity (Carrier) received a claim for reimbursement from Provider for the hospital services.
3. Carrier denied reimbursement and sent to Provider an explanation of benefits form for the claim, indicating that the service lacked information needed and

²⁴ 28 Tex. Admin. Code § 133.210(c)(5).

that Provider should resubmit with an itemized statement of charges for consideration.

4. On October 11, 2021, Carrier received a request for reconsideration of the denial of the claim for reimbursement from Provider.
5. Carrier denied the request and considered this submission to be duplicate billing because it did not comply with the rules for submitting a request for reconsideration.
6. On November 1, 2021, Carrier received a second request for reconsideration of the denial of the claim for reimbursement from Provider.
7. Carrier denied the request and considered this second reconsideration submission to be duplicate billing because it did not comply with the rules for submitting a request for reconsideration.
8. On November 15, 2021, Carrier received a third request for reimbursement of the denial of the claim for reimbursement from Provider.
9. Carrier denied this request for reimbursement because Provider did not provide the requested information, or the documentation was insufficient.
10. On December 10, 2021, Carrier received a fourth request for reconsideration of the denial of the claim for reimbursement from Provider.
11. Carrier denied this request for reimbursement because Provider did not provide the requested information, or the documentation was insufficient.
12. Provider did not provide to Carrier an itemized statement of charges for the service dates with its claim for reimbursement or any of its requests for reconsideration.
13. On February 2, 2022, the Texas Department of Insurance, Division of Workers' Compensation (Division) received Provider's request for a Medical Fee Dispute Resolution (MFDR).
14. In the MFDR response, Carrier argued that reimbursement should be denied because Provider did not submit the required itemized statement of charges.

15. On February 25, 2022, the Division issued its MFDR decision, finding that Provider was entitled to reimbursement in the amount of \$39,111.59 plus interest.
16. Carrier timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
17. On September 8, 2022, the Division issued a notice to the parties with a statement of the nature of the hearing; 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 either 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.
18. On October 3, 2022, the SOAH Administrative Law Judge (ALJ) issued an order with the statement of the time and place of the hearing and instructions for participating in the hearing.
19. On December 15, 2022, SOAH ALJ Brent McCabe convened a hearing on the merits via Zoom videoconference. Carrier appeared through attorney John Fundis. Provider appeared through its non-attorney representative, Donna Bachmann. The record closed with the filing of exhibits on December 20, 2022.

VI. CONCLUSIONS OF LAW

1. Adequate and timely notice of the hearing was provided to the parties. Tex. Gov't Code §§ 2001.051-.052.
2. If a health care provider is denied or paid a reduced amount for the medical services rendered to an injured employee, the provider is entitled to review— an MFDR—by the Division. Tex. Labor Code § 413.031(a).
3. If a dispute remains after the MFDR review, a party may request a contested case hearing at SOAH. Tex. Labor Code § 413.0312(e).

4. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Labor Code §§ 413.031, .0312(e); Tex. Gov't Code ch. 2003.
5. The hearing before SOAH is a de novo review of the issues involved. *See Vista Med. Ctr. Hosp. v. Texas Mut. Ins. Co.*, 416 S.W.3d 11, 17-18 (Tex. App.—Austin 2013, no pet.).
6. Carrier has the burden of proof to show by a preponderance of the evidence that Provider is not entitled to reimbursement. 28 Tex. Admin. Code § 148.14(b), (e).
7. A provider seeking reimbursement of hospital services is required to submit itemized statement of charges with its request for reimbursement. 28 Tex. Admin. Code § 133.210(c)(5).
8. Provider is not entitled to reimbursement for the claim-at-issue submitted to Carrier for hospital services provided to the injured worker.

VII. ORDER

It is **ORDERED** that Provider is not entitled to reimbursement, because it did not submit the required documentation to Carrier.

VIII. NONPREVAILING PARTY DETERMINATION

Texas Labor Code section 413.0312(g) and 28 Texas Administrative Code section 133.307(h) require the nonprevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code section 413.0312(i) requires SOAH to identify the nonprevailing party and any costs for services provided by SOAH in its final decision. For purposes of Texas Labor Code section 413.0312,

Provider 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 February 14, 2023.

ALJ Signature(s):

Brent McCabe,

Presiding Administrative Law Judge