APPEAL NO. 002547

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 5, 2000, in (city 1), Texas. The hearing officer determined that the appellant (claimant) was not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. Y, a chiropractor. The claimant appealed on the grounds of sufficiency of the evidence and contended that the hearing officer: (1) erred in placing a "higher" burden of proof on the claimant because he applied the amended version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6), effective for dates of travel after July 15, 2000, rather than the rule in place effective for the dates of travel between October 21, 1999, and December 2, 1999; and, (2) misstated the number of trips taken by the claimant during the relevant travel period thereby failing to address all the travel expenses requested by the claimant. The respondent (carrier) filed a response urging that the evidence was sufficient to support the determination of the hearing officer and should be affirmed, albeit conceding that the hearing officer had minor problems with words and numbers.

DECISION

Affirmed.

The hearing officer found that the claimant had a compensable back injury on October 6, 1999, and that he selected Dr. Y as his treating doctor for medical care. This finding was not appealed and is final by operation of law. Section 410.169. The claimant testified that he resided at _____ in city 1, from October 21, 1999, through February 2, 2000; that between these dates he sought chiropractic manipulation and physical therapy 44 times at the direction of Dr. Y at Dr. Y's "_____" location, specifically at _____ in (city 2), Texas. The hearing officer found that the trip between the claimant's address and Dr. Y's office at this location is approximately 40 miles in each direction. This finding was not appealed and is final. The claimant requested total mileage for each trip in the amount of 75.8 miles.

At issue is whether travel to the _____ location in city 2, from the claimant's home in city 1, is reasonable and necessary for medical treatment at the direction of Dr. Y. The claimant testified that he followed Dr. Y's instructions to go to the Woodlands location in lieu of other locations in Dr. Y's office system, one of which was located at 2808 San Jacinto, in city 1. He stated that he went to Dr. Y at his attorney's instruction and "did what my attorney told me to do." The claimant testified that even though it bothered his back to drive the 40 miles to city 2, he was not concerned about driving to this location when there were other doctors in city 1 who could take care of him. The claimant stated that he did not know there were other locations where Dr. Y practiced that were within 20 miles of his residence even though he had looked at the letterhead from Dr. Y containing the other office locations. He "just didn't think anything of it."

The claimant testified that he saw Dr. Y on 11 of the 44 visits and received physical therapy on all 44 visits. He explained that it was so crowded that all of the therapists and doctors would work together.

Ms. V, the carrier's adjuster, testified that as the adjuster since inception of the claim she made telephone calls to the various locations of Dr. Y's offices to find out what services were available at each location, including Dr. Y's locations in (city 3), Texas, and in city 1. She explained that physical therapy was available at all locations and confirmed that Dr. Y actually practiced at all the offices rather than at just the Woodlands clinic contrary to a letter written by Dr. Y to this effect. Ms. V testified that the claimant's address from Sterlingshire was about 13 miles to Dr. Y's San Jacinto office in city 1.

In evidence is a letter from Dr. F dated April 10, 2000, which was supplied as an addendum to his report of February 21, 2000, wherein he wrote that the claimant had reached maximum medical improvement on February 14, 2000, with a zero per. Dr. F wrote in his April 10, 2000, letter that, in his opinion, "any visits after December 6, 1999, would not be reasonable and/or necessary." Ms. V testified that after receipt of Dr. F's letter she filed a Notice of Medical Payment Dispute (TWCC-62) with the Texas Workers' Compensation Commission (Commission) for medical treatment by Dr. Y after December 2, 2000.

The hearing officer determined that the medical care provided to the claimant was in the nature of routine care in that it did not involve any emergency or urgent care interventions; that Dr. Y, and any associated physical therapy, provided similar medical services at locations that were less than 20 miles from the claimant's residence between October 21, 1999, and December 2, 1999; that other health care providers located within 20 miles of the claimant's residence were available to provide similar medical care; and that the claimant's travel between October 21, 1999, and December 2, 1999, to Dr. Y's Woodlands office for medical treatment was not reasonably necessary.

The question of whether the claimant had demonstrated entitlement to reimbursement for travel expenses under Rule 134.6 was a question of fact for the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

In this case, it is evident from the hearing officer's discussion of the evidence, that despite his reference to Rule 134.6, both before and after amendment on July 15, 2000, he used the proper rule and was not persuaded by the claimant's evidence that travel was reasonably necessary to the Woodlands office to obtain appropriate treatment from October 21, 1999, through December 2, 1999. The hearing officer was acting within his

province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's findings of fact regarding specified travel from October 21, 1999, through December 2, 1999, are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal.

At issue and still remaining to be decided however, are the travel expenses for the dates of travel from December 3, 1999, through February 2, 2000, which were clearly tried by the parties as part of the CCH. The claimant contended that the hearing officer erred in failing to address travel expenses for December 3, 1999, through February 2, 2000. The hearing officer wrote that the "[c]arrier disputed the reasonableness of medical care by Dr. [Y] after December 2, 1999--a matter that has not been determined. Because of that dispute, the hearing officer could not award travel for medical care after December 2, 1999." This conclusion by the hearing officer is apparently based upon the adjuster's statement during the CCH that the carrier had disputed medical treatment under the direction of Dr. Y after December 2, 1999, as not reasonable and necessary.

Determinations on whether medical care is reasonable and necessary are the function of the Medical Review Division pursuant to Chapter 413 of the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 950214, decided March 29, 1995. In addition, there is a distinction between the reasonableness and necessity of medical care for a compensable injury and the reasonableness and necessity of travel to receive that care. Texas Workers' Compensation Commission Appeal No. 951098, decided August 15, 1995. Apparently, no decision as to whether Dr. Y's treatment after December 2, 1999, was reasonable and necessary had been made by medical review as of the date of the CCH.

Section 413.014 provides that, absent a medical emergency, certain health care treatments as determined by the Commission require express preauthorization by the carrier. In those cases where preauthorization is required, but not requested, the carrier is not liable for costs of the treatment. Rule 134.600(h)(10) provides that preauthorization, again absent a medical emergency, is required for "physical therapy or occupational therapy beyond eight weeks of treatment." The claimant did not argue that the physical therapy ordered by Dr. Y from December 2, 1999, through February 2, 2000, was a medical emergency.

As the Appeals Panel observed in Texas Workers' Compensation Commission Appeal No. 961842, decided November 1, 1996, in accordance with Rule 134.600(h)(10) and Rule 134.6(b), before the carrier became liable for travel expenses for physical therapy ordered by Dr. Y, the reasonableness of that care had to be determined and ordered through the medical review process. That process had been invoked but had not, as of the date of the CCH, reached the point of a decision. Because a determination of the reasonableness of the recommended care had not been made, no determination of the disputed issue of reimbursement for travel expenses could have been made by the hearing officer. If the Division of Medical Review finds the care reasonable, the question of the

carrier's liability for reimbursement for these travel expenses from December 2, 1999, through February 2, 2000, may be again presented and a defense raised in new dispute resolution proceedings.

For these reasons, we affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge