

DOCKET NO. 453-03-0924.M5
[MDR TRACKING NO. M5-02-2170-01]

OXYMED, INC.,
Petitioner

v.

LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. PROCEDURAL HISTORY

Oxymed, Inc. (Petitioner) appealed the decision of Independent Review, Inc., an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Worker's Compensation Commission (TWCC) Medical Review Division tracking number M5-02-2170-01 denying reimbursement for durable medical equipment in the amount of \$749.00.

The Administrative Law Judge convened a hearing on December 16, 2002. Petitioner was represented by Peter N. Rogers, attorney. Liberty Mutual Fire Insurance Company (Carrier) was represented by Shannon Butterworth, attorney. The hearing was concluded that day, but the record was left open until December 31, 2002, for the parties to file post-hearing statements.¹

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Petitioner \$749.00 plus interest for durable medical equipment consisting of a water circulating unit and cooler wrap. Petitioner billed \$494.00 for the water circulating unit and \$255.00 for the cooler wrap.

The documentary record in this case consisted of 24 pages of medical records reviewed by the IRO. Oral testimony was presented by Dr. Lawrence E. Stolar, the Claimant's treating physician.

¹ Petitioner filed its closing argument late on January 3, 2003. Counsel for the Carrier objected and moved to strike Petitioner's written argument. Petitioner's late filed materials were not considered in the preparation of this Decision and Order.

Based on the evidence, the ALJ concludes that the Petitioner's appeal should be denied. The particular facts, reasoning, and legal analysis in support of this decision are set forth below in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. On _____, _____ (Claimant) suffered a compensable injury with a diagnosis of cumulative stress disorder.
2. Claimant's injury is covered by worker's compensation insurance written for Claimant's employer by Liberty Mutual Fire Insurance Company (Carrier).
3. Lawrence E. Stolar, D.C., treated the Claimant's injury by prescribing a water circulating unit and cooler wrap (durable medical equipment) on May 8, 2001.
4. A health insurance claim form requesting payment of \$749.00 for the durable medical equipment was submitted to the Carrier on May 17, 2001, by Oxymed, Inc. (Petitioner).
5. On June 15, 2001, the Carrier denied payment because preauthorization had not been obtained for the durable medical equipment.²
6. Petitioner billed for the water circulating unit and the cooler wrap separately.
7. Dr. Stolar wrote one prescription for the durable medical equipment.
8. Neither Dr. Stolar nor Petitioner sought preauthorization for the purchase of the durable medical equipment.
9. A water circulating unit and cooler wrap cannot function independently.

² The Carrier issued a second denial on June 22, 2001, which stated that the equipment provided unnecessary medical treatment. It is unnecessary to consider the second ground for denial.

10. Petitioner timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).

11. On June 7, 2002, Independent Review, Inc., an independent review organization certified by the Texas Department of Insurance, issued its decision agreeing with the Carrier, and Petitioner timely appealed.
12. The Commission sent notice of the hearing to the parties on November 1, 2002. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
13. The hearing was held on December 16, 2002, and all parties appeared and participated.

IV. CONCLUSIONS OF LAW

14. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
15. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ch. 2003.
16. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE § 2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
17. Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. § 413.031.
18. To be liable for certain services and supplies, a carrier must preauthorize the purchase. TEX. LAB. CODE ANN. § 413.014.
19. Durable medical equipment costing over \$500.00 requires preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(13).
20. Durable medical equipment are those items that can withstand repeated use; are primarily used to serve a medical purpose; are generally not useful to a person in the absence of illness, injury, or disease; and are appropriate for use in the injured worker's home. 28 TEX. ADMIN. CODE § 134.201.
21. Based on Findings of Fact Nos. 3, 4, 7, and 9, and Conclusions of Law Nos. 5 - 7, the water

circulating unit and cooler wrap prescribed for the Claimant were durable medical equipment requiring preauthorization.

22. The Carrier is not required to reimburse Petitioner.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company shall not be required to reimburse Oxymed, Inc., for the amount claimed.

ISSUED this 6th day of February, 2003.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**