

AMERICAN HOME
ASSURANCE COMPANY,
Petitioner

v.

CENTRAL DALLAS REHAB,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

American Home Assurance Company (Carrier) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Worker's Compensation Commission ordering reimbursement to Central Dallas Rehab (Provider) in the amount of \$7,679.94 for treatment of a compensable injury. The Administrative Law Judge (ALJ) concludes the Carrier should not reimburse the Provider for the program, but should not itself be reimbursed for payments already made.

II. PROCEDURAL HISTORY, EVIDENCE, AND BASIS FOR DECISION

The ALJ convened a hearing on April 15, 2003. The Carrier was represented by Peter Macaulay, attorney. The Provider was represented by Scott C. Hilliard, attorney. At the conclusion of the hearing, the record was closed.

The documentary record in this case consisted of the 496-page certified record. Oral testimony was not given.

The first issue presented is whether the Petitioner is relieved of any responsibility to reimburse the Provider because the work hardening program had not been preauthorized. Secondly, the Carrier requested that the Provider be ordered to make reimbursement for overpayments.

The facts are not in dispute. The Claimant participated in a work hardening program from June 19, 2000, to July 24, 2000. Texas Workman Care Clinic provided the services and was paid by the Carrier. The Claimant participated in a second work hardening program from July 25, 2001, to August 16, 2001, with the Provider rendering the services. The Carrier denied reimbursement for the second work hardening program because it had not been preauthorized.¹ Reimbursement was ordered by the MRD because the Carrier failed to prove that the Claimant had been previously treated with a work hardening program.

¹ The Carrier paid \$2,048 of the amount claimed by the Provider before denying the claim for reimbursement.

In its request for hearing filed with the MRD, the Provider stated “it is interesting to note that some of his work hardening services were paid on the initial billing, and some were paid upon reconsideration, which indicates a total lack of continuity with the carrier.” Apparently, the Carrier did not respond to this statement in its filings with the MRD and did not request that the MRD order reimbursement for the amount paid for the second work hardening program. Additionally, the Carrier did not request reimbursement in its request for hearing and appeal of the MRD decision.

At the hearing, the Provider stated that it was no longer seeking reimbursement of the amount ordered by the MRD. Hence, the first issue is resolved. The Provider argued, however, that it should not be ordered to reimburse the Carrier for the amount paid because the issue was not raised prior to the hearing. It is uncontroverted that the Carrier did not raise the issue at the MRD level for consideration, and did not address it in the hearing request dated October 10, 2002. This situation was previously discussed in Docket No. 453-02-0249.M5:

Essentially, it offered a trial amendment of its pleadings, adding a claim for refund of the amounts it paid to its request for relief from the award made by the MRD. The Carrier provided no rationale for why i[t] failed to present its refund claim to the MRD for consideration, and/or to plead it in its request for a contested case hearing. 1 TEX. ADMIN CODE (TAC) § 155.29. It provided no authority for the proposition that a party in a TWCC fee dispute can bring an entirely new claim for the first time in the contested case hearing. Further, even if a new claim can be raised here, since it was not raised when the hearing was requested, the Notice of Hearing issued by the Commission on September 26, 2001, did not provide notice to the Provider of this claim. 28 TAC § 148.4(b). Based on the scheme for contested-case review of medical fee disputes set forth in TEX. LABOR CODE ANN. § 413.031 and 28 TAC § 148.1, *et. seq.*, the ALJ concludes that the Carrier did not properly and timely raise the issue of refund of amounts it paid for the initial two hours of physical therapy service. The ALJ cannot consider it in this contested case. 1 TAC § 155.25(a). The only issue in this case will be the additional reimbursement ordered by the MRD.

The ALJ agrees with the Carrier that overpayments should be refunded because no party should be unjustly enriched at the expense of another party. However, as stated above, the ALJ cannot consider the issue in this contested case.

The ALJ concludes that the Carrier’s appeal should be granted; however, reimbursement for overpayments will not be ordered. 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 ____, the Claimant suffered a compensable injury to his knee.
2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by American Home Assurance Company (Carrier).
3. The Claimant was treated for the compensable injury by Central Dallas Rehab (Provider).
4. The Provider treated the Claimant's injury with a work hardening program from July 25, 2001, to August 16, 2001.
5. The Claimant was treated with a work hardening program from June 19, 2000, to July 24, 2000.
6. The Carrier denied payment to the Provider on the basis that the work hardening program referred to in Finding of Fact No. 4 was not preauthorized.
7. Six weeks of work hardening is allowed without preauthorization.
8. The Provider timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).
9. On October 3, 2002, the Commission's Medical Review Division issued its Findings and Decision ordering the Carrier to reimburse the Provider \$7,679.94 for the treatment referred to in Finding of Fact No. 4.
10. On October 10, 2002, the Carrier filed a request for hearing to contest the order for reimbursement referred to in Finding of Fact No. 9.
11. The Commission sent notice of the hearing to the parties on November 6, 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.
12. The hearing was held on April 15, 2003, and all parties appeared and participated.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
2. 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.
3. The Notice of Hearing issued by the Commission 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.
4. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. § 413.031.
5. Based on Findings of Fact Nos. 4 - 7 and Conclusion of Law No. 4, the Carrier is not required to reimburse Provider.
6. The Carrier is not entitled to reimbursement for overpayments. TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE § 148.1, *et seq.*

ORDER

IT IS, THEREFORE, ORDERED that the American Home Assurance Company shall not be required to reimburse Central Dallas Rehab for the amount claimed.

ISSUED this 23rd day of May, 2003.

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