

SOAH DOCKET NO. 453-03-2571.M5
[TWCC File No. M5-03-0103-01]

TEXAS MUTUAL INSURANCE COMPANY, <i>Petitioner</i>	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
VS.		
BENJAMIN SKELTON, D.C., <i>Respondent</i>		

DECISION AND ORDER

This is a dispute over reimbursement for work conditioning and two office visits. The total amount in dispute is \$1,068.00. The Administrative Law Judge (ALJ) concludes the work conditioning should be reimbursed, but the office visits should not, for total reimbursement of \$972.00.

I. Discussion

The Claimant was injured in a motor vehicle accident _____. After 11 weeks of physical therapy, he participated in work conditioning, provided by Respondent Benjamin Skelton, D.C., from August 27 through September 6, 2001. Texas Mutual Insurance Company (TMIC), the insurance carrier, denied reimbursement for the work conditioning and for the two office visits during the same period. Dr. Skelton filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The Commission's Medical Review Division (MRD), on February 6, 2003, ordered reimbursement for the work conditioning and the office visits. On February 28, 2003, TMIC filed a request for a hearing before the State Office of Administrative Hearings (SOAH).

The hearing was held May 12, 2003, with ALJ Henry D. Card presiding. TMIC participated through its attorney; Dr. Skelton represented himself. The hearing was adjourned the same day.

Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

TMIC argued the documentation submitted by Dr. Skelton did not adequately show the Claimant's progress or expected release date as required by 28 TAC §133.1. It further contended the documentation did not establish several of the elements of work conditioning set out in Section II. D. of the Medicine Ground Rules, which were adopted by the Commission under 28 TAC §134.201. Specifically, TMIC contended, Dr. Skelton failed to document real or simulated work activities, the entrance/admission criteria, an individualized plan of work simulation supervised by a licensed

physical therapist or doctor, and the exit/discharge criteria; he also did not perform an exit/discharge summary. TMIC further claimed Dr. Skelton had failed to meet several aspects of Section I. of the Medicine Ground Rules because no treatment plan was filed with the carrier, there was no initial functional capacity evaluation (FCE) summary, and there was no discharge FCE.

The ALJ agrees with TMIC that Dr. Skelton's documentation did not delineate, point by point, each of the nine elements required of a work conditioning program under Section II. D. of the Medicine Ground Rules. For reimbursement purposes, the documentation is sketchy and disorganized. However, the SOAP notes, combined with Dr. Skelton's testimony and his responses to interrogatories, touch upon all the work conditioning program requirements and the documentation requirements of 28 TAC § 134.201. Although the documentation certainly could be improved, TMIC did not prove it was inadequate.

Dr. Skelton did not provide some of the documents required by Section I. of the Medicine Ground Rules. However, that section does not apply to programs such as work conditioning, which are governed by Section II.

The ALJ concludes Dr. Skelton should be reimbursed \$972.00 for the work conditioning program.

Dr. Skelton also billed TMIC \$48.00 each for office visits on August 30 and September 4, 2001, during the work conditioning period. Section II. A. of the Medicine Ground Rule states:

All services performed by the interdisciplinary core team and other services as part of the program shall be inclusive in the reimbursement of the program.

TMIC is correct that the office visits during the work conditioning program should not be reimbursed separately. Therefore, the ALJ denies reimbursement for those.

II. Findings of Fact

1. The Claimant was injured in a motor vehicle accident _____.
2. After 11 weeks of physical therapy, the Claimant participated in work conditioning provided by Dr. Skelton from August 27 through September 6, 2001.
3. TMIC, the insurance carrier, denied reimbursement for the work conditioning and for the two office visits during the same period.
4. Dr. Skelton filed a timely request for medical dispute resolution with the Commission.
5. The MRD, on February 6, 2003, ordered reimbursement for the work conditioning and the office visits.
6. On February 28, 2003, TMIC filed a request for a hearing before SOAH.

7. Notice of the hearing was sent to the parties March 28, 2003.
8. The notice 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 sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The hearing was held May 12, 2003, with ALJ Henry D. Card presiding, and was adjourned the same day.
10. The requested amount for the work conditioning was \$972.00.
11. The SOAP notes, combined with Dr. Skelton's testimony and his responses to interrogatories, touch upon all the work conditioning program requirements and the documentation requirements of 28 TAC §134.201.
12. Dr. Skelton billed TMIC \$48.00 each for office visits on August 30 and September 4, 2001, during the work conditioning period.

III. Conclusions of Law

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' 2001.052.
3. Under 28 TEX. ADMIN. CODE (TAC) §48.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. TMIC failed to prove Dr. Skelton's documentation of the work conditioning was inadequate under 28 TAC §133.1 or 28 TAC §134.201.
5. Section I. of the Medicine Ground Rules does not apply to programs such as work conditioning, which are governed by Section II.
6. Dr. Skelton should be reimbursed \$972.00 for the work conditioning program.
7. Section II. A. of the Medicine Ground Rule precludes Dr. Skelton from being reimbursed separately for the two office visits conducted during the work conditioning period.
8. Dr. Skelton should not be reimbursed for the office visits conducted on August 30 and September 4, 2001.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company reimburse Benjamin Skelton, D.C., \$972.00 for the work conditioning program provided for the Claimant from August 27 through September 6, 2001. Texas Mutual Insurance Company is not required to reimburse Dr. Skelton for the two office visits conducted August 30 and September 4, 2001.

SIGNED this 23rd day of June 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

HENRY D. CARD
ADMINISTRATIVE LAW JUDGE