

___,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
EMPLOYERS MUTUAL CASUALTY	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Summary

This case involves a dispute over whether Employers Mutual Casualty Company (Carrier) should be required to reimburse the costs of home health care services provided by ___ to injured worker ___ (Petitioner). Carrier denied reimbursement for the services on numerous grounds, primarily because Carrier contended that (1) the services were not preauthorized; (2) no bills had been properly submitted to Carrier for the services in question; (3) ___ was not an appropriately certified or licensed person to provide the services; and (4) at the time the services in issue were provided, Petitioner's physician had not yet prescribed them, thus there was no medical necessity shown. After Petitioner requested medical dispute resolution through the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission), MRD considered the documents submitted by the parties and concluded that Petitioner had not obtained preauthorization for the services and, therefore, no reimbursement by Carrier was required. Petitioner then requested a hearing at the State Office of Administrative Hearings (SOAH) regarding the MRD decision, resulting in this proceeding.

After considering the evidence and arguments, the Administrative Law Judge (ALJ) concludes that Petitioner has not met his burden of proving that Carrier should be required to reimburse the home health care services provided by ___. Specifically, the ALJ notes that the Commission's rules require home health care services to be preauthorized. In this case, it is undisputed that the services in issue are home health care services and that preauthorization was not obtained. Therefore, reimbursement is not required. Because this factor alone is dispositive, the ALJ does not address in detail the numerous other defenses raised by Carrier.¹ Accordingly, because preauthorization was not obtained as required by the Commission's rules, Carrier is not required to reimburse for the home health care services provided by ___ to ___ from January 8, 2002, through August 31, 2002.

II. Jurisdiction, Notice and Procedural History

The hearing in this docket commenced on August 28, 2003, in Austin, Texas, before ALJ Craig R. Bennett. The hearing concluded and the record closed that same day. Petitioner appeared

¹ Although the ALJ will not address Carrier's other defenses, the ALJ notes that Carrier is correct in pointing out that ___ never submitted any bills in the manner required by the Commission's rules nor has she documented the extent of services provided to Petitioner. Therefore, the ALJ concludes that this other defense asserted by Carrier would also justify denial of reimbursement.

and was represented by Nick Palmarozzi, attorney. Carrier appeared and was represented by Steve Tipton, attorney. The Commission neither appeared nor participated in this proceeding. There were no contested issues of jurisdiction or notice. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

III. Discussion and Analysis

On ____, Petitioner sustained work-related, compensable injuries to much of his body when he was electrocuted on the job. Because of the severity of his injuries, Petitioner was hospitalized for a lengthy period of time and also placed in a rehabilitation facility. When he was released in November 2001, his physician prescribed eight hours of home health care to him to assist in his daily activities of living and to provide limited nursing attendance. Petitioner began receiving that home health care from Visiting Nurse Association (VNA). At the same time, ____ was Petitioner's fiancée and provided care for the sixteen hours not provided by VNA. ____ did not submit bills and was not paid for her services. Sometime in the summer of 2001, Petitioner's physician concluded that Petitioner should receive home health care services 24 hours a day, seven days a week. At or near that same time, Petitioner also realized that ____ could qualify to provide the treatment and that she could be reimbursed for her services. After numerous communications with Carrier, Petitioner finally obtained preauthorization to receive home health care services from ____, beginning in September 2002. Petitioner then also sought to be reimbursed for the services previously provided by ____ from January through August 2002. While Carrier agreed to pay for ____'s services going forward, it denied reimbursement for past services contending that she had never submitted any bills and had not been preauthorized to provide home health services previously as required by 28 TEX. ADMIN. CODE § 134.600(h)(12) of the Commission's rules. Petitioner challenged Carrier's denial of reimbursement, leading to this proceeding at SOAH.

Workers' compensation insurance covers all medically necessary health care, which includes all reasonable medical aid, examinations, treatments, diagnoses, evaluations, and services reasonably required by the nature of the compensable injury and reasonably intended to cure or relieve the effects naturally resulting from a compensable injury. It includes procedures designed to promote recovery or to enhance the injured worker's ability to get or keep employment.² However, certain services require preauthorization by the insurance carrier before they may be provided. Specifically, preauthorization is required for any home health care services.³ Once preauthorization is granted, the insurance carrier is generally liable to reimburse the procedure according to the Act and the Commission's rules.⁴ If preauthorization is not obtained, no emergency existed, and none of the other exceptions in the rules apply, then the Carrier is not liable to reimburse the services in issue.⁵

At the hearing, the ALJ questioned the parties about the nature of the services provided. Petitioner agreed that the services were classified as home health care services. Petitioner also acknowledged that preauthorization had not been obtained prior to August 2002. However,

² TEX. LAB. CODE ANN. § 401.011(19) and (31). The Texas Workers' Compensation Act is found at TEX. LAB. CODE ANN. § 401.001 *et seq.* and is hereafter referred to as "the Act."

³ 28 TEX. ADMIN. CODE § 134.600(h)(12).

⁴ 28 TEX. ADMIN. CODE § 134.600(b)(1)(B).

⁵ *Id.*

Petitioner asserted that it would be patently unfair and against public policy to deny reimbursement for the services provided by ____, when the Carrier, by granting preauthorization in August 2002, was demonstrating its agreement that such services were necessary and affirming its commitment to pay for the services going forward. Petitioner argues that he should not be punished because he and ____ are laypersons who are not experienced in and familiar with workers' compensation requirements. Carrier responds that, to the extent that ____ claims to be qualified to provide home health care services to Petitioner, then she should be charged with the knowledge of how to get preauthorized and bill for the services. Absent preauthorization, the Carrier argues there is simply no legal basis for requiring it to pay for the services.

Petitioner's arguments are equitable in nature. While the ALJ is sympathetic to Petitioner's condition, there is no basis for making an equitable finding that Carrier should reimburse for services for which it is not responsible under the Commission's rules. Petitioner conceded that it was not until April/May of 2002 that he first learned that ____ might qualify to be reimbursed for the type of services she had been providing. Prior to that, ____ provided home health care to Petitioner simply because she was his fiancée, and not out of a belief that she was going to get paid. Moreover, Petitioner was receiving eight hours a day of home health care from VNA at the same time. While Petitioner may not be required to fully understand the workers' compensation system, he certainly could have persisted with his doctor in getting 24-hour home health care prescribed for him if he believed the VNA services were inadequate. In fact, Petitioner did this once he realized that ____ could get reimbursed for the services. Then, Carrier worked with him to ensure that ____ was properly certified to provide the services and agreed to authorize the services beginning in September 2002. Petitioner's request for reimbursement for services prior to that time is simply an attempt to obtain compensation after the fact for services that he previously was not aware were potentially compensable. But, Petitioner has not met the requirements for reimbursement for the past services. Because home health care services must be preauthorized before the Carrier is responsible, and no preauthorization was obtained, there is no legal basis for requiring Carrier to reimburse for ____'s past services. Accordingly, Petitioner's request must be denied.

IV. Findings of Fact

1. On ____, claimant ____ sustained work-related, compensable injuries to much of his body while employed by an employer carrying workers' compensation insurance underwritten by Employers Mutual Casualty Company (Carrier).
2. Because of the severity of his injuries, Petitioner was hospitalized for a lengthy period of time and also placed in a rehabilitation facility.
3. When Petitioner was released to go home in November 2001, his treating physician, William H. Donovan, M.D., prescribed eight hours of home health care to him to assist in his daily activities of living and to provide limited nursing attendance.
4. Petitioner began receiving eight hours of home health care per day from Visiting Nurse Association (VNA). At the same time, ____ was Petitioner's fiancée and provided care for the sixteen hours per day not provided by VNA.

5. _____ did not submit contemporaneous bills to the Carrier and has not been paid for her services.
6. In the summer of 2002, Petitioner's physician concluded that Petitioner should receive home health care services 24 hours a day, seven days a week. At or near that same time, Petitioner also realized that _____ could qualify to provide the treatment and that she could possibly be reimbursed for her services.
7. After numerous communications with Carrier, Petitioner finally obtained preauthorization to receive home health care services from _____, beginning in September 2002.
8. Petitioner submitted a request to Carrier to be reimbursed approximately \$35,000 for home health services provided to him by _____ between January 1, 2002, and August 31, 2002. Petitioner later revised his request and now seeks reimbursement for the period from January 8, 2002 through August 31, 2002.
9. To date, _____ has never submitted any bills for services to Carrier in any format approved by the Commission or in a manner containing the information set out in the Commission's rules
10. Carrier declined to reimburse for _____'s services.
11. Petitioner submitted a request for dispute resolution to the Texas Workers' Compensation Commission (Commission).
12. The Medical Review Division (MRD) of the Commission issued its Findings and Decision on March 21, 2003, denying reimbursement.
13. Petitioner requested a hearing on March 27, 2003, and the Commission issued its original Notice of Hearing on April 29, 2003.
14. The hearing in this docket commenced on August 28, 2003, in Austin, Texas, before ALJ Craig R. Bennett. The hearing concluded and the record closed that same day. Petitioner appeared and was represented by Nick Palmarozzi, attorney. Carrier appeared and was represented by Steve Tipton, attorney. The Commission neither appeared nor participated in this proceeding.
15. Neither Petitioner nor _____ had preauthorization for her to provide home health services to Petitioner between January 8, 2002, and August 31, 2002.

V. Conclusions of Law

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (the Act). TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The Commission's rules require preauthorization for any home health care services, pursuant to 28 TEX. ADMIN. CODE § 134.600(h)(12).
6. If preauthorization is not obtained, no emergency existed, and none of the other exceptions in the rules apply, then the Carrier is not liable to reimburse for home health care services. 28 TEX. ADMIN. CODE § 134.600(b)(1)(B).
7. Petitioner has the burden of proving by a preponderance of the evidence that the Carrier is liable for reimbursing the services in issue. 28 TEX. ADMIN. CODE § 148.21(h).
8. Petitioner has failed to present evidence sufficient to carry his burden of proving that the Carrier is liable to reimburse the home health care services provided by ___ between January 8, 2002, and August 31, 2002, as the evidence establishes that no preauthorization was obtained and Petitioner has failed to present evidence establishing that any of the possible exceptions to preauthorization have been met.
9. Petitioner's request for reimbursement should be denied.

ORDER

IT IS ORDERED that Employers Mutual Casualty Company is not required to reimburse for home health care services provided by ____ to ____ between January 8, 2002, and August 31, 2002. All other requests for relief are also denied.

SIGNED AT AUSTIN, TEXAS the 3rd day of September 2003

CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS