

**STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 West 15th Street  
Austin, Texas 78701**

**DOCKET NO. 453-03-3610.M5  
MDR TRACKING NO. M5-03-1624-01**

<b>AMERICAN HOME ASSURANCE COMPANY, PETITIONER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>RICHARD TAYLOR, D.O., AND THE TEXAS WORKERS' COMPENSATION COMMISSION, RESPONDENTS</b>	<b>§</b>	
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	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. Introduction**

The American Home Assurance Company (Carrier) has appealed a decision by the Medical Review Division of the Texas Workers' Compensation Commission (TWCC), ordering Carrier to reimburse Dr. Richard Taylor \$650.00 for the fee paid by Dr. Taylor to an Independent Review Organization (IRO). Carrier argues that it had previously paid for the medical services in dispute and that there was no need for Dr. Taylor to file an appeal to the IRO. Dr. Taylor disagrees and states that Carrier agreed to pay for the services only after Dr. Taylor had already appealed to IRO and paid the IRO fee.

The ALJ finds that the State Office of Administrative Hearings (SOAH) lacks jurisdiction to hear this IRO-fee dispute.

**II. Procedural History**

ALJ Thomas H. Walston convened a hearing on the merits of this case on September 4, 2003, at the State Office of Administrative Hearings (SOAH), William Clements State Office Building, Austin, Texas. Attorney Dan C. Kelley appeared on behalf of Carrier and Dr. Richard Taylor appeared by telephone. The Commission did not attend or participate in the hearing. The record closed the same day following the hearing. The parties did not contest proper notice.

### III. Jurisdiction

Although the parties did not raise the issue of SOAH's jurisdiction, a prior SOAH decision has concluded that SOAH lacks subject-matter jurisdiction to decide IRO fee disputes.<sup>1</sup> In that case the ALJ provided the following analysis:

The ALJ concludes that he has no jurisdiction to hear or rule on an IRO fee dispute. SOAH has only the specific powers conferred on it by statute in clear and express language.<sup>2</sup> The Government Code<sup>3</sup> authorizes SOAH to conduct administrative hearings: (1) for agencies that do not have an employee whose sole duty is to conduct such hearings and (2) in matters as required by other law.<sup>4</sup>

It is true that SOAH's enabling act requires SOAH to conduct certain workers' compensation hearings as provided under Labor Code Title 5.<sup>5</sup> However, that title does not authorize SOAH to conduct all workers' compensation hearings. TWCC has specialized hearings officers. TWCC's Division of Hearings conducts certain contested case hearings related to workers' compensation claims.<sup>6</sup>

Labor Code § 413.031(k), which lies within Title 5, does authorize SOAH to hear cases involving a "medical dispute that remains unresolved after review" by TWCC. It is tempting to say that such a "medical dispute" includes any ancillary dispute concerning IRO reimbursement. Within the context of Section 413.031, however, it is clear that the "medical dispute" concerns only the "review of a medical service provided or for which authorization of payment is sought . . .".<sup>7</sup> Thus the main dispute in this case, concerning the medical necessity of and reimbursement for the FCEs, is a "medical dispute," while the IRO-reimbursement dispute is not.

Other provisions in Title 5 authorize SOAH to hear cases involving other types of workers' compensation disputes,<sup>8</sup> but IRO-reimbursement disputes are not mentioned. Notably, the provisions of Title 5 that provide for IRO review of medical disputes and specify who shall pay for the cost of that review<sup>9</sup> do not authorize SOAH to hear related disputes concerning IRO reimbursement.

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<sup>1</sup> *Impairment and Pain Center v. University of Texas System*, SOAH Docket No. 453-02-3525.M5 (ALJ Newchruch) (Oct. 15, 2002).

<sup>2</sup> *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 137-38 (Tex. App. – Austin 1986, writ ref'd n.r.e.)

<sup>3</sup> TEX. GOV'T CODE ANN. (West 2001).

<sup>4</sup> Gov't Code § 2003.021(b)(1) and (2).

<sup>5</sup> Gov't Code §2003.021(c).

<sup>6</sup> Labor Code §410.004.

<sup>7</sup> Labor Code §413.031 (a) and (b).

<sup>8</sup> E.g. Labor Code §§ 407.046, 411.049(b), 413.055, and 415.034.

<sup>9</sup> Labor Code § 413.031(c) through (j).

Nor does TWCC's IRO rule support the Carrier's notion that SOAH is to hear disputes concerning the IRO's reimbursement. The rule requires the party requesting review of a retrospective medical-necessity dispute, in this case the Provider, to remit payment to the assigned IRO at the same time the requestor files the documentation requested by the IRO.<sup>10</sup> The rule provides that "the commission" shall review the

IRO decision to determine the prevailing party and, if applicable, will order the non-prevailing party to refund the IRO fee to the party who prevailed by contested case hearing or SOAH decision.<sup>11</sup> If the IRO decision is subsequently reversed or differently decided by SOAH, the rule states that "the commission" shall order a refund of the IRO fee to be paid the party who prevailed by the SOAH decision.<sup>12</sup> Thus, TWCC's rules do not contemplate or even arguably delegate to SOAH the authority to hear an IRO-reimbursement dispute.

The ALJ in the present case agrees with this analysis and concludes that SOAH has no jurisdiction to rule on this IRO-reimbursement dispute. Therefore, this case should be dismissed from the SOAH docket for lack of subject-matter jurisdiction.

#### **IV. Findings of Fact**

1. American Home Assurance Company (Carrier) has appealed a decision of the Medical Review Decision of the Texas Workers' Compensation Commission dated May 14, 2003, that orders Carrier to reimburse Dr. Richard Taylor \$650.00 for the fee paid by Dr. Taylor to an Independent Review Organization (IRO) in connection with an appeal of a billing dispute.
2. There are no other issues in dispute in this case other than reimbursement of the IRO fee.
3. Notice of a September 4, 2003 hearing in this case was mailed to the Carrier and the Provider on June 30, 2003.
4. On September 4, 2003, ALJ Thomas H. Walston held a hearing on the Carrier's appeal at the SOAH Hearing Facilities, William P. Clements State Office Building, Austin, Texas. The hearing concluded and the record closed on that same day.
5. The Carrier appeared through its attorney Dan C. Kelley.
6. Dr. Taylor appeared by telephone.

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<sup>10</sup> 28 TAC § 133.308(q)(1)(B).

<sup>11</sup> 28 TAC § 133.308(q)(2).

<sup>12</sup> 28 TAC § 133.308(q)(10).

## **V. Conclusions of Law**

1. The State Office of Administrative Hearings has jurisdiction over matters related to hearings on Workers' Compensation medical disputes, pursuant to Tex. Labor Code Ann. §§ 402.073(b) and 413.031(k) (West 2002) and Tex. Gov't Code Ann. ch. 2003 (West 2001).
2. An IRO-reimbursement dispute is not a medical dispute, and SOAH has no jurisdiction to rule on IRO-reimbursement disputes.
3. SOAH lacks subject-matter jurisdiction to decide this IRO-reimbursement dispute.

## **ORDER**

**IT IS ORDERED THAT** this IRO-reimbursement dispute is **DISMISSED** from the docket of the State Office of Administrative Hearings due to lack of subject-matter jurisdiction.

**Signed September 15, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**THOMAS H. WALSTON**  
**ADMINISTRATIVE LAW JUDGE**