

VONO	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
LUMBERMENS MUTUAL CASUALTY	§	
COMPANY	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

VONO has appealed the decision of the Independent Review Organization (IRO) denying reimbursement for prescription medications provided to injured worker ___ (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Lumbermens Mutual Casualty Company (Carrier) is liable for reimbursing VONO the sum of \$1,653.42 for the prescription medications in issue.

I. BACKGROUND

Claimant suffered a compensable, work-related injury in ____. Sometime thereafter, Claimant began receiving treatment for the injury from Salvador Baylan, M.D. As part of his course of treatment, Claimant began taking the prescription medications Ambien, Paxil, Soma, Lortab, Etodoloac, Hydrocodone/APAP, and Carisoprodol. Claimant continued taking many of these medications for an extended period of time and Carrier reimbursed for such medications as related to Claimant's compensable injury. In February 2002, Dr. Baylan again prescribed these medications to Claimant. Prior to filling the medications, VONO contacted Carrier to determine whether the prescriptions would be reimbursed by the Carrier. Although Carrier made no guarantee, it did indicate that the prescriptions would be reimbursed, as always, based on medical necessity. Knowing that the prescriptions had been reimbursed in the past, and with the medical documentation from Dr. Baylan indicating the medical necessity of the medications, VONO filled numerous prescriptions for Claimant between February 14, 2002, and March 14, 2002. VONO then billed Carrier for the medications.

Carrier declined to reimburse the medications, stating that they were "unnecessary treatment (with peer review)." VONO requested a copy of the peer review report and sought reconsideration of the Carrier's decision. Carrier did not provide a copy of the peer review report, and maintained its denial after reconsidering the matter. Based on Carrier's continued denial, VONO sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the medications were not medically necessary treatment for Claimant's compensable injury. VONO then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on October 14, 2003, with ALJ Craig R. Bennett presiding. VONO appeared through its designated representative, Nicky Otts. Carrier appeared through its designated representative, Wayne Gill. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

At the hearing, VONO raised a number of issues. However, it is necessary to address only one of the issues, which the ALJ finds is dispositive of this case. Specifically, VONO contended that Carrier failed to provide any peer review report, despite the fact that it denied reimbursement on the basis of a peer review. VONO cited to past SOAH decisions finding in favor of reimbursement under such circumstances. Even though it was raised at the hearing, Carrier did not address this issue. After considering the arguments and authorities presented, the ALJ agrees that Carrier's failure to provide a peer review report in compliance with the Commission's rules results in it being liable for reimbursement for the medications in issue under the circumstances of this case.

Commission Rule 133.304(h) requires a carrier who reduces or denies payment for a treatment or service on the recommendation of a peer review to provide a peer review report to the sender of the bill with the explanation of benefits (EOBs).¹ In this case, the evidence establishes that VONO did not receive a peer review report with the EOBs denying reimbursement for the medications in issue. After receiving the EOBs, VONO requested the peer review report. Despite the request, Carrier did not provide a copy of the report. VONO contended that the first time it saw the report was when Carrier filed its evidence in this case. However, Carrier later acknowledged that the medical documentation in the record was not a peer review report. So, the evidence establishes that at no point has VONO received a peer review report from Carrier.

Under the circumstances, the ALJ finds that Carrier's denial of reimbursement is legally inadequate, as it has failed to deny reimbursement in compliance with the Commission's rules. This is consistent with past SOAH decisions.² Because Carrier has never properly denied reimbursement in compliance with the Commission's rules, it is now required to provide such reimbursement.³ Based on this threshold legal ruling, the ALJ does not address any medical necessity issues. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. ____ (Claimant) suffered a compensable, work-related injury in ____.
2. Lumbermens Mutual Casualty Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. For his compensable injury, Claimant began receiving treatment from Salvador Baylan, M.D.

¹ 28 TEX. ADMIN. CODE 133.304(h).

² See SOAH Docket No. 453-02-0991.M5, Decision and Order (April 12, 2002) (ALJ Ingraham); *also* SOAH Docket No. 453-03-2310.M5, Decision and Order (September 3, 2002) (ALJ Wood).

³ The ALJ's determination is limited to the facts before him. Because the Carrier has not denied the claim in a manner consistent with the Commission's rules, and has not remedied any defects (for example, by providing a peer review report later, even if not originally sent with the EOBs), it has failed to present a valid denial—essentially constituting no denial at all. For this reason, it is liable for reimbursement. The ALJ is not faced with, and does not decide, whether an initially defective denial can be remedied by later action by the carrier.

4. As part of his course of treatment, Claimant began taking the prescription medications Ambien, Paxil, Soma, Lortab, Etodoloac, Hydrocodone/APAP, and Carisoprodol.
5. Carrier reimbursed for such medications as related to Claimant's compensable injury.
6. In February 2002, Dr. Baylan again prescribed these medications to Claimant.
7. Prior to filling the medications, VONO contacted Carrier to determine whether the prescriptions would be reimbursed by the Carrier. Although Carrier made no guarantee, it did indicate that the prescriptions would be reimbursed based on medical necessity.
8. Knowing that the prescriptions had been reimbursed in the past, and with the medical documentation from Dr. Baylan indicating the medical necessity of the medications, VONO filled numerous prescriptions for Claimant between February 14, 2002 and March 14, 2002.
9. VONO billed Carrier the sum of \$1,659.05 for the medications provided to Claimant between February 14, 2002 and March 14, 2002.
10. The amount in dispute, based on the maximum allowable reimbursement for the medications discussed in the previous finding, is \$1,653.42.
11. Carrier denied reimbursement for the medications based on a peer review.
12. When Carrier sent VONO an Explanation of Benefits (EOB) form denying reimbursement for the medications, it failed to send a copy of the peer review with it.
13. Carrier did not provide the peer review report to VONO, despite being requested to do so.
14. VONO requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
15. After conducting medical dispute resolution, the IRO physician reviewer determined that the medications were not medically necessary.
16. Based on the IRO decision, MRD issued an order on May 14, 2003, declining to order reimbursement.
17. On May 27, 2003, VONO requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
18. On October 14, 2003, Administrative Law Judge Craig R. Bennett convened a hearing in this case. VONO appeared through its designated representative, Nicky Otts. Carrier appeared through its designated representative, Wayne Gill. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
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. VONO has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§148.21(h) and 133.308(w).
6. Carrier failed to follow 28 TEX. ADMIN. CODE §133.304(h) by failing to send VONO a copy of the peer review report with the explanation of benefits form denying payment for the medications in issue.
7. VONO established, by a preponderance of the evidence, that Carrier failed to properly deny reimbursement for the medications in issue and, therefore, is liable for reimbursing VONO for them.

ORDER

IT IS, THEREFORE, ORDERED that Lumbermens Mutual Casualty Company reimburse VONO the sum of \$1,653.42 plus interest for the Ambien, Paxil, Soma, Lortab, Etodoloac, Hydrocodone/APAP, and Carisoprodol, provided to Claimant between February 14, 2002, and March 14, 2002.

ISSUED this 17th day of October 2003.

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