

FINAL STAGE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TEXAS MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Final Stage (Provider), appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD), which denied reimbursement for a work hardening program that was administered to Claimant ___ from December 11, 2001, through January 25, 2002. In this decision, the Administrative Law Judge (ALJ) finds Provider is entitled to reimbursement from Texas Mutual Insurance Company (Carrier) for the work hardening program it administered to Claimant.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed on December 18, 2003, at the State Office of Administrative Hearings (SOAH) before Steven M. Rivas, ALJ. Provider appeared and was represented by Sam Randolph.¹ Carrier was represented by Patricia Eads, attorney.

II. DISCUSSION

1. A. Background Facts

Claimant sustained a compensable injury on ____. As part of her treatment, Claimant was referred to Provider to undergo a work hardening program, which occurred from December 11, 2001, through January 25, 2002. Provider billed Carrier \$12,800 for the work hardening program, and Carrier denied reimbursement. Provider's request for reconsideration was also denied because no explanation of benefits (EOB) was attached to the request. Provider appealed Carrier's denial to the Commission's MRD, which agreed with Carrier that Provider was not entitled to reimbursement because its request for reconsideration was incomplete when it was submitted. Provider appealed the MRD ruling to SOAH.

¹Sam Randolph is the brother of John T. Randolph, D.C., Claimant's treating doctor at Final Stage. Dr. Randolph informed the ALJ that Sam Randolph works with Dr. Randolph and prepared the case for hearing.

B. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the "Act") and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021 provides in pertinent part: an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

The Commission's rule found at 28 TEX. ADMIN. CODE (TAC) § 133.304(k), provides that if the sender of the bill is dissatisfied with the insurance carrier's final action of a medical bill, the sender may request that the insurance carrier reconsider its action. The request must include: (1) a copy of the complete medical bill, clearly marked with the statement "REQUEST FOR RECONSIDERATION"; (2) a copy of the explanation of benefits; and (3) a claim-specific substantive explanation that enables the insurance carrier to understand the sender's position.

C. Analysis and Conclusion

Provider asserted it did not attach the required EOB to its initial request for reconsideration because it never received the EOB from Carrier. The evidence indicated Carrier received all of Provider's bills on February 6, 2002. The EOB in evidence reflected an audit of all Provider's bills was completed on March 1, 2002. No further action was taken until Provider submitted a request for reconsideration on October 8, 2002. The request was returned to Provider on October 15, 2002, because no EOB was attached to the request for reconsideration. On October 29, 2002, Provider requested a copy of the EOB from Carrier. No EOB was sent to Provider and subsequently, Provider filed a request for Medical Dispute Resolution with the Commission's MRD.

Carrier contended the EOB was sent to Provider at some point following Carrier's audit of Provider's bills. Ms. Eads pointed out that Provider would not have known it had to file a request for reconsideration if it had not received the EOB denying reimbursement for all of the treatment rendered to Claimant. This is a good point, but with no supporting evidence in the record like a certified mail return receipt, the ALJ must consider other evidence on this matter.

There is no evidence that proves Provider received the EOB, and the ALJ found Provider's position more persuasive in that it would not have requested the EOB in question if it had previously received the EOB from Carrier. There is evidence that indicated Carrier returned Provider's request for reconsideration because no EOB was attached. Subsequently, Provider faxed a request for Claimant's EOB to Carrier, which Carrier received on October 29, 2002. The request consisted of a fax cover page and a letter requesting the EOB on page two. Claimant's name, social security number, date of injury, and dates of service were contained on the request. Additionally, the request contained Provider's name, address, phone number, fax number, tax ID number, and total amount in dispute. However, page two of the request contained two errors in the body of the letter, in that it read, "This document serves as a request for an EOB for medical billing for the treatment of D. V." The dates of service needed are 3/22/2002 thru 4/19/2002.

The name of the claimant on the letter was not Claimant. Also, the dates of service did not correspond with Claimant's dates of service. However, the ALJ finds that despite the errors in the body of the letter, the request in its entirety is considerably accurate, and that any discrepancies could have been cleared up with a phone call to Provider. Carrier argued Provider erred in its request for the EOB in question because the request contained inaccurate information, and therefore, it was justified in not sending an EOB. Carrier apparently ignored the request completely, and in doing so, caused this dispute to burgeon forth. Although Carrier was correct in returning Provider's initial request for reconsideration, the request for EOB should have been addressed by Carrier in a reasonable amount of time after it received the request, despite the inaccurate information contained in the request for EOB.

Carrier argued in the alternative that the treatment rendered was not medically necessary. However, those arguments were not considered as this dispute was one of reimbursement and not medical necessity. Therefore, Provider is entitled to reimbursement of \$12,800 for the work hardening program it rendered to Claimant.

III. FINDINGS OF FACT

1. Claimant, ____, sustained a compensable injury on ____.
2. Claimant was referred to Final Stage (Provider) to undergo a work hardening program, which occurred from December 11, 2001, through January 25, 2002.
3. Provider billed Texas Mutual Insurance Company (Carrier) for the work hardening program.
4. Carrier denied reimbursement, but Provider did not receive the explanation of benefits (EOB).
5. Provider submitted a request for reconsideration to Carrier, which was returned because no EOB was attached.
6. Provider requested copies of the EOB in question, and Carrier failed to send Provider the EOB.
7. Provider appealed this matter to the Commission's Medical Review Division, which agreed with Carrier that reimbursement was not proper because Provider had not attached copies of the EOB to its request for reconsideration.
8. Provider filed a request for hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent October 20, 2003.
10. 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.

11. The hearing convened and closed on December 18, 2003, with Steven M. Rivas, Administrative Law Judge presiding. Sam Randolph represented Provider. Patricia Eads, attorney, represented the Carrier.
12. Provider requested a copy the EOB from Carrier.
13. Carrier did not respond to Provider's request for EOB.
14. Provider was unable to attach the EOB to its request for reconsideration.
15. Carrier's failure to send a copy of the EOB to Provider as requested, caused Provider to submit an incomplete request for reconsideration.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. 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. 2003.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed in accordance with TEX. LAB. CODE ANN. § 408.021.
5. Provider's request for reconsideration did not comply with the Commission's rules under 28 TEX. ADMIN. CODE ANN. § 133.304(k).
6. Carrier's action of not responding to Provider's request for EOB prevented Provider from complying with the Commission's rule regarding requests for reconsideration.
7. Pursuant to foregoing Findings of Facts and Conclusions of Law, Provider is entitled to \$12,800 for the work hardening program rendered to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Final Stage, is entitled to \$12,800 reimbursement from the Carrier, Texas Mutual Insurance Company, for the work hardening program rendered to Claimant from December 11, 2001, through January 25, 2002.

SIGNED February 19, 2004.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**