

ACTIVE BEHAVIORAL HEALTH,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
	§	
LUMBERMENS MUTUAL	§	
CASUALTY COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Active Behavioral Health (Petitioner) challenges the denial of reimbursement by Lumbermens Mutual Casualty Company (Respondent) for psychological evaluation services associated with an intake interview of an injured worker. Respondent denied reimbursement based on Petitioner’s failure to obtain preauthorization for the services. The Administrative Law Judge (ALJ) concludes that preauthorization was not required. Consequently, reimbursement to Petitioner is granted.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on April 14, 2004. Both Petitioner and Respondent appeared at the hearing. Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Parties’ Positions

The issue in this case is whether certain psychological services provided to an injured worker amounted to psychological testing, thus requiring preauthorization. The Administrative Law Judge concludes they did not.

Petitioner argued that the services provided, which consisted of BDI-II and BAI evaluations, were not formal tests.¹ Instead, they amounted to less formal evaluations aimed at establishing the extent to which more formal psychological testing might be required. In support of this position, Provider’s witness, Licensed Professional Counselor Phil Bohart, made the following assertions:

¹ “BDI-II” and “BAI” are abbreviations for “Beck Depression Inventory” and “Beck Anxiety Inventory,” respectively.

- ! The BDI-II and BAI are not formal testing; they are “self-report questionnaires” that can be completed in about five minutes apiece. They are relatively simple questionnaires used to create a general assessment regarding the potential severity of a patient’s anxiety or depression, and they provide no profile or pattern of response and no interpretive analysis. Formalized testing is much more detailed and comprehensive and can take up to three hours.
- ! Use of these evaluations was in response to carriers who had argued that with simple interviews alone there was no objective assessment before proceeding to more formal testing. The BDI-II and BAI provide the objective, quantifiable assessment.
- ! Neither the former *Mental Health Treatment Guidelines*, which are still considered standards in the industry, nor any other industry standards require preauthorization for the evaluation/assessment phase of patient treatment. The *Guideline*, which defines the formal testing procedures requiring preauthorization, does not include the initial, informal methods of assessment as utilized in this case. It does not reference either the BDI-II or BAI.
- ! When formal psychological testing is determined to be necessary based on the BDI-II and BAI evaluations, Provider seeks preauthorization consistent with the *Guideline*.
- ! Under §133.304(c), Carrier was required to state why preauthorization was required, but it failed to do so. Provider was not informed of the reason underlying Carrier’s denial until the parties were involved in the medical dispute resolution process.
- ! The carrier is not going to be convinced by a referral alone when it is made by a medical professional without expertise in behavioral medicine, such as the referring chiropractor in this case.

In support of its position that the services constituted psychological testing requiring preauthorization, Carrier argued the following:

- ! Even though more formal testing is available, the services provided clearly constituted testing as contemplated in 28 TEX. ADMIN. CODE §134.600(h)(4).

B. Analysis and Conclusion

Section 134.600(h)(4) of the Texas Workers' Compensation Commission's rules provides that non-emergency health care requiring preauthorization includes "all psychological testing and psychotherapy, repeat interviews, and biofeedback; except when any service is part of a preauthorized or exempt rehabilitation program." The ALJ concludes that this language does not contemplate evaluation services such as those utilized in this case.

Particularly persuasive was Mr. Bohart's testimony that Petitioner has resorted to the BDI-II and BAI in response to carrier challenges that simple interviews alone do not provide objective, quantifiable information on the need for more formal testing. Without some mechanism for establishing a reasonable need for services requiring preauthorization, including the psychological testing addressed in §134.600(h)(4), the accessibility of such services would be compromised.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury on ____.
2. Petitioner, Active Behavioral Health, evaluated Claimant on November 7, 2002, using the Beck Depression Inventory (BDI-II) and Beck Anxiety Inventory (BAI).
3. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Lumbermens Mutual Casualty Company (Respondent).
4. Respondent denied reimbursement for BDI-II and BAI based on Petitioner's failure to obtain preauthorization for them.
5. Notice of the hearing was mailed to the parties February 20, 2004. 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.
6. Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on April 14, 2004.
7. The BDI-II and BAI are not formal testing; they are self-report questionnaires that can be completed in about five minutes apiece and are used to create a general assessment regarding the potential severity of a patient's anxiety or depression.
8. The BDI-II and BAI provide no profile or pattern of response and no interpretive analysis.

9. Formalized psychological testing is much more detailed and comprehensive than the BDI-II and BAI and can take up to three hours to complete.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to §413.031(k) of the Act 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. ' ' 2001.051 and 2001.052.
3. Preauthorization is not required for BDI-II and BAI evaluations.
4. Based on the foregoing Findings and Conclusions, Petitioner is entitled to reimbursement for the BDI-II and BAI evaluations.

ORDER

IT IS ORDERED that Lumbermens Mutual Casualty Company reimburse Active Behavioral Health for the BDI-II and BAI evaluations provided on November 7, 2002.

Signed June 14, 2004.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**