

SOAH DOCKET NO. 453-04-4197.M5  
TWCC NO. M5-03-3160-01

<b>LIBERTY MUTUAL INSURANCE COMPANY, Petitioner</b>	’	<b>BEFORE THE STATE OFFICE</b>
	:	
	:	
<b>V.</b>	:	<b>OF</b>
	:	
<b>NETWORK OF PHYSICIANS MANAGEMENT, Respondent</b>	:	
	:	<b>ADMINISTRATIVE HEARINGS</b>

DECISION AND ORDER

Liberty Mutual Insurance Company (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Workers’ Compensation Commission ordering reimbursement of \$489 to Network of Physicians Management (Provider) for services provided to Claimant. The Carrier urged in this proceeding that Explanation of Benefits (EOB) forms pertaining to the disputed services had been submitted to the MRD, so that the MRD should have considered Carrier’s denial based upon medical necessity, rather than reviewing those charges lacking EOBs as fee disputes. The Administrative Law Judge (ALJ) finds that Carrier timely raised the medical necessity before the MRD and that the disputed charges were for services that were not medically necessary. Accordingly, no reimbursement is ordered.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

There was no issue concerning notice and jurisdiction, and those matters are addressed in the Findings of Fact. The hearing convened and concluded on July 12, 2004, before Administrative Law Judge (ALJ) Charles Homer III. Attorney Kevin Franta represented Carrier. Provider did not appear at the hearing.<sup>1</sup>

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<sup>1</sup> Provider filed a motion for telephonic appearance, but Provider’s representative did not answer at the number provided.

## II. DISCUSSION

### 1. Procedural History

Claimant sustained a compensable workers' compensation injury on \_\_\_\_\_. Provider delivered medical services to Claimant for some time, including dates from November 27, 2002, through June 13, 2003. Carrier denied payment for all services rendered during that period, issuing EOBs coded AV@ for, allegedly, all dates and all services. After Provider requested review, the MRD submitted the claims to an IRO, which found that the services for all but six dates were not medically necessary. For six dates,<sup>2</sup> however, the MRD found that the IRO did not address the services provided, and requested additional documentation from the Provider. Apparently, Provider submitted nothing. In its decision, the MRD states that both parties failed to submit EOBs, hence it decided the charges lacking in EOBs according to the Medical Fee Guidelines<sup>3</sup>, and ordered the Carrier to pay an additional \$489 based on its review of the charges for those services. The Carrier then requested this appeal from the MRD decision.

### B. The Dispute

Carrier alleges that EOBs flagging the disputed services as not medically necessary were in the MRD's file and that MRD overlooked them when its rendered its adverse decision. It seeks a finding that EOBs were before the MRD, thus raising the issue of medical necessity of the services provided on the six dates. It also urges that the services were not medically necessary.

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<sup>2</sup> November 27, 2002; December 3, 2002; December 5, 2002; January 28, 2003; May 9, 2003; May 22, 2003.

<sup>3</sup> Pet. Exh. A, p. 6.

### **C. Evidence and Analysis**

Carrier requests the ALJ to review its records and determine that it raised the issue of medical necessity concerning the disputed rates before the MRD. Having made such a finding, it argues, the ALJ may then decide the medical necessity issue concerning the disputed charges. The ALJ agrees that he may only decide the medical necessity issue if Carrier raised it before the MRD, and concludes from the evidence that it did so. From the uncontroverted testimony and records presented, the ALJ concludes that the disputed services were not medically necessary.

Carrier's documentary evidence<sup>4</sup> contains EOBs for the dates at issue, as well as claim forms, SOAP notes, and medical evaluations of Claimant. The EOBs are coded AV, asserting lack of medical necessity.

Carrier presented the testimony of Kevin Tomcic, D.C., concerning medical necessity. Dr. Tomcic testified that Claimant's initial diagnosis was a lumbar spine sprain or strain, without positive neurological findings. According to Dr. Tomcic, Claimant's treatment began with conservative care, including physical therapy, moist heat, and instruction for home strengthening exercises. Claimant improved and progressed in exercise level of difficulty from January through March of 2002. Dr. Tomcic testified that Claimant's original lumbar sprain/strain had resolved and stabilized by the time an MRI was done on Claimant September 21, 2002. Therefore, in Dr. Tomcic's view, no treatment after September 2002 was medically necessary. Dr. Tomcic reviewed each of the disputed services individually, and came to the same conclusion regarding each of them.

### **D. Conclusion**

The ALJ finds that the services in dispute were not medically necessary, because Claimant's compensable injury had resolved well before the first disputed date, and there is no evidence of an aggravation of the initial injury. Consequently, reimbursement is not required.

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<sup>4</sup> Pet. Exh. A and Exh. B.

### III. FINDINGS OF FACT

1. Claimant sustained a compensable workers' compensation injury on \_\_\_\_.
2. At the time of the compensable injury, Liberty Mutual Insurance Company (Carrier) was responsible for the Claimant's workers' compensation coverage.
3. Provider provided Claimant the following coded services on the dates listed:
  - \$ November 27, 2002 - 99205;
  - \$ December 3, 2002 - 99213-MP, 97124, 97014, 97010;
  - \$ December 5, 2002 - 99213-MP, 97124, 97014, 97010;
  - \$ January 28, 2003 - 99213-MP, 97124, 97014;
  - \$ May 9, 2003 - 99358-52;
  - \$ May 22, 2003 - 99080-73.
4. Carrier denied payment for the services listed in Finding of Fact No. 3 based on code AV, not medically necessary.
5. Provider filed a request for medical dispute resolution, claiming that services denied by Carrier were medically necessary.
6. Claimant's original lumbar sprain/strain had resolved and stabilized by the time an MRI was done on Claimant September 21, 2002.
7. Carrier provided EOBs to Provider for the disputed dates of service.
8. EOBs for the disputed dates of service were presented to the MRD.
9. On February 13, 2004, the MRD ordered Carrier to pay \$489 for the services listed in Finding of Fact No. 3.
10. Carrier filed a request for hearing on February 19, 2004, a copy of which was sent to Provider at the address previously provided by Provider.
11. Notice of the hearing was sent to all parties on March 24, 2004.
12. 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.
13. Although called several times before and during the July 12, 2004, hearing at the telephone number listed in Provider's June 3 request to appear by telephone, Provider's witness or representative did not answer.

#### IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031 of the Act and TEX. GOVT. CODE ANN. ch. 2003.
2. Carrier timely requested a hearing in accordance with 28 TEX. ADMIN. CODE ' 148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.
4. As the party appealing the MRD decision, Carrier has the burden of proof in this matter pursuant to 1 TEX. ADMIN. CODE (TAC) ' 155.41(b) and 28 TAC ' 148.21(h).
5. In the MRD proceeding, Carrier properly raised medical necessity regarding the disputed services.
6. The services listed by code in Finding of Fact No. 3 were not medically necessary.
7. Based on the foregoing Findings of Fact and Conclusions of Law, Carrier owes Provider no reimbursement for the services at issue in this proceeding.

#### ORDER

**IT IS ORDERED THAT Liberty Mutual Insurance Company is not required to pay reimbursement to Physicians Management Network.**

**SIGNED September 10, 2004**

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**CHARLES HOMER III  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**