SOAH DOCKET NO. 453-04-6619.M4
TWCC MDR NO. M4-04-2832-01

ARCH INSURANCE COMPANY, **Petitioner**	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
OXYMED, INC., **Respondent**	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. DISCUSSION

Arch Insurance Company (Petitioner) requested a hearing following the May 28, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission) that Oxymed, Inc., (Respondent) was entitled to additional reimbursement of $225.00 related to a neuromuscular stimulator.

The Administrative Law Judge (ALJ) concludes that Respondent failed to timely assert its claim before the Commission and is, therefore, not entitled to reimbursement.

Arch Insurance Company (Petitioner) filed on September 23, 2004, a Motion to Dismiss and Motion for Summary Disposition (Motion). By Order No. 1 dated September 30, 2004, the ALJ set arguments on the Motion for the same date and time as the hearing on the merits, 9:00 a.m. on October 5, 2004. The hearing convened on October 5, 2004, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Petitioner contends that Respondent did not timely file its request for medical dispute resolution with the Commission. Petitioner was represented by Steven M. Tipton and Respondent failed to appear. The hearing concluded and the record closed that same day.

The date of service in issue was October 9, 2002. Respondent filed its dispute resolution request with the Commission on October 23, 2003. The request for dispute resolution was filed by Respondent more than one year after the date of service. Respondent waived its right to dispute resolution pursuant to 28 TEX. ADMIN. CODE ' 133.307(d).

Respondent is not entitled to additional reimbursement of $225.00 for services provided Claimant on October 9, 2002.

II. FINDINGS OF FACT

1. Oxymed, Inc., (Respondent) filed its dispute resolution request with the Commission on October 23, 2003.

2. The date of service in issue was October 9, 2002.

3. Arch Insurance Company (Petitioner) filed on September 23, 2004, a Motion to Dismiss and Motion for Summary Disposition (Motion).

4. Petitioner contends that Respondent did not timely file its request for medical dispute resolution with the Texas Workers' Compensation Commission.

5. The Administrative Law Judge set arguments on the Motion for the same date and time as the hearing on the merits, 9:00 a.m. on October 5, 2004.

6. The hearing convened on October 5, 2004, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Petitioner was represented by Steven M. Tipton and Respondent failed to appear. The hearing concluded and the record closed that same day.

7. The request for dispute resolution was filed by Respondent more than one year after the date of service.

8. The amount in dispute is $225.00, plus any applicable interest.

III. 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. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).

6. Respondent waived its right to dispute resolution pursuant to 28 TEX. ADMIN. CODE ' 133.307(d).

7. Respondent is not entitled to additional reimbursement of $225.00 for services provided Claimant on October 9, 2002.

ORDER

THEREFORE IT IS ORDERED that Oxymed, Inc., is not entitled to additional reimbursement of $225.00 from Arch Insurance Company for charges associated with services provided on October 9, 2002.

SIGNED November 3, 2004.

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HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS