

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

DECISION AND ORDER

Texas Mutual Insurance Company (TMIC) sought a hearing regarding an order of the Medical Review Division (the MRD) of the Texas Workers' Compensation Commission. The MRD ordered TMIC to reimburse the Claimant, ___ \$330.95 for prescription medications. The Administrative Law Judge (ALJ) agrees with the MRD and orders reimbursement.

I. HISTORY OF THE CASE

The Claimant incurred a compensable wrist fracture on ____. She underwent surgery, which was unsuccessful. She has taken the medications in dispute since the time of her injury. In 2002, TMIC began refusing to pay for those medications.

The Claimant's pharmacy sent in earlier requests for reimbursement. TMIC denied those and sent EOBs to the pharmacy, most of which stated the prescriptions were medically unnecessary. Those denials are not the subject of this dispute.

The Claimant herself paid for the following prescription medications on the following dates:

Date	Medication	Amount Paid
11-27-02	Lorcet	\$120.31
11-27-02	Valium	164.92
01-08-03	Diazepam	22.86
03-26-03	Daizepam	<u>34.19</u>
Total		\$330.95

Those are the disputed services, for which the Claimant sought reimbursement from TMIC.

TMIC denied reimbursement, but did not send explanations of benefits, or the equivalent, to the Claimant. The Claimant filed a request for medical dispute resolution with the Texas Worker' Compensation Commission (the Commission). Because there were no EOBs for those disputed dates of service, the MRD did not address the issue of medical necessity. It found the Claimant had proved she had incurred the out-of-pocket expenses and had submitted requests for reimbursement. Therefore, it ordered TMIC to reimburse her \$330.95.

TMIC requested a hearing on the MRD decision. After timely and adequate notice, the hearing was held February 14, 2005, with ALJ Henry D. Card presiding. TMIC and the Claimant participated in the hearing, with the Claimant assisted by the Commission's Ombudsman's Office. The hearing was adjourned the same day. On March 4, 2005, TMIC submitted its written closing argument and the record was closed.

II. DISCUSSION

TMIC argued the issue of medical necessity should be considered in this case although it had not sent EOBs to the Claimant. TMIC asserted, and the Claimant agreed, that EOBs usually are not generated when a Claimant applies personally for reimbursement of out-of-pocket medical expenses. Therefore, TMIC argued, it should not be barred from raising that issue. Otherwise injured workers could bypass necessity review and defeat the system for review and reimbursement. TMIC further contended that even if EOBs should have been generated, medical necessity still must be considered because that is the fundamental basis for reimbursement under the Labor Code. Ignoring the medical necessity issue, TMIC argued, would be contrary to legislative intent. In support of that position, TMIC cited three SOAH decisions: Docket No 453-02-0996.M5 (May 24, 2002, ALJ Casarez); Docket No. 453-03-4396.M5 (April 29, 2004, ALJ Lynch); and 453-01-3447.M5 (May 22, 2002, ALJ Kilgore).

The ALJ concludes TMIC should have sent EOBs or their equivalent to the Claimant for the disputed dates of service. Whatever the typical practice, the Commission's rules require Carriers to do so. TEX. LAB. CODE ANN. § 134.504 addresses pharmaceutical expenses incurred by injured employees. The relevant portions of that section state,

(a) It may become necessary for an injured employee to purchase prescription drugs or over-the-counter alternatives to prescription drugs prescribed or ordered by the treating doctor or referral health care provider. In such instances the injured employee may request reimbursement from the insurance carrier as follows:

(1) The injured employee shall submit to the insurance carrier a letter requesting reimbursement along with a receipt indicating the amount paid¹

(2) The insurance carrier shall make appropriate payment to the injured employee in accordance with §134.503, or notify the injured employee of a reduction or denial of the payment within 45 days of receipt of the request for reimbursement from the injured employee. If the insurance carrier does not reimburse the full amount requested, or denies payment the carrier shall include a full and complete explanation of the reason(s) the insurance carrier reduced or denied the payment and shall inform the injured employee of his or her right to request medical dispute resolution in accordance with §133.305 of this title (relating to Medical Dispute Resolution). The statement shall include sufficient claim-specific substantive information to enable the employee to understand the insurance carrier's position and/or action on the claim. A general statement that simply states the carrier's position with a phrase such as "not entitled to reimbursement" or a similar phrase with no further description of the factual basis does not satisfy the requirements of this section.²

Rule 134.504(a)(2) clearly requires Carriers to provide EOBs or the equivalent to claimants seeking reimbursement of pharmaceutical expenses.

The ALJ also disagrees with TMIC's assertion that it may raise the issue of medical necessity regardless of whether it provided EOBs that set out that issue. Although the cases cited by TMIC stand for that proposition, other SOAH cases have reached the opposite conclusion. *See* Docket Nos. 453-96-1446.M4 (Nov. 12, 1996, ALJ Corbitt); Docket No. 453-97-0973.M4 (ALJ Card); Docket Nos. 453-01-0309.M5 (Feb. 7, 2001, ALJ Doherty).

The Labor Code contemplates that the Commission will establish rules regarding the matters under its jurisdiction, including payment and dispute procedures. TEX. LAB. CODE ANN. § 402.061.

It would defeat the Legislature's intent if carriers, providers, or claimants were allowed to ignore those rules and procedures without good cause. In this case, TMIC did not provide an explanation under Rule 134.504(a)(2) for its failure to reimburse the Claimant for the dates of service in question. Having failed to provide an explanation when one was due, it may not raise the issue of medical necessity now.

For the reason set forth above, the ALJ does not rule on the issue of whether the prescription medications were medically necessary. The MRD was correct in limiting its inquiry to the issue of

¹ The remainder of this subsection deals with documentation requirements. TMIC did not dispute the adequacy of the Claimant's documentation.

² The rule was amended effective March 14, 2004. The amendments changed the numbering of subsections as set forth above and made other substantive changes, but did not affect carriers' responsibilities as set forth in subsection (a)(2). *See* 28 Tex. Reg. 9413 (October 31, 2003) and 29 Tex. Reg. 2346 (March 3, 2004).

whether the Claimant had submitted proof of out-of-pocket expenses and submission for reimbursement. The undisputed evidence showed the Claimant did submit such proof. TMIC should be required to reimburse the Claimant \$330.95 for the disputed dates of service.

III. FINDINGS OF FACT

1. The Claimant, ___ incurred a compensable wrist fracture on ___.
2. The Claimant underwent surgery, which was unsuccessful.
3. The Claimant has taken the medications in dispute since the time of her injury.
4. In 2002, TMIC began refusing to pay for those medications.
5. The Claimant herself paid for the following prescription medications on the following dates:

Date	Medication	Amount Paid
11-27-02	Lorcet	\$120.31
11-27-02	Valium	164.92
01-08-03	Diazepam	22.86
03-26-03	Daizepam	<u>34.19</u>
Total		\$330.95

6. TMIC denied reimbursement for the disputed dates of service set forth in the previous finding of fact, but did not send explanations of benefits (EOBs) or the equivalent to the Claimant.
7. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
8. Because there were no EOBs for those disputed dates of service, the Commission's Medical Review Division (MRD) did not address the issue of medical necessity.
9. The MRD found the Claimant had proved she had incurred the out-of-pocket expenses and had submitted requests for reimbursement. Therefore, it ordered TMIC to reimburse her \$330.95.
10. TMIC requested a hearing on the MRD decision.
11. Notice of the hearing was sent to all parties August 18, 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. The hearing was held February 14, 2005, with ALJ Henry D. Card presiding. TMIC and the Claimant participated in the hearing, with the Claimant assisted by the Commission's Ombudsman's Office. The hearing was adjourned the same day. On March 4, 2005, TMIC submitted its written closing argument and the record was closed.
14. The Claimant had out-of-pocket expenses of \$330.95 for the services in dispute.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) 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. §2001.052.
3. TMIC was required to send EOBs or their equivalent to the Claimant for the disputed dates of service, pursuant to TEX. LAB. CODE ANN. §134.504.
4. Because it did not provide EOBs or the equivalent to the Claimant, TMIC may not raise the issue of medical necessity of the disputed services in this proceeding.
5. TMIC should be required to reimburse the Claimant \$330.95 for the disputed dates of service.

ORDER

It is, therefore, ordered that Texas Mutual Insurance Company reimburse Claimant _____ \$330.95 for the disputed out-of-pocket prescription medication expenses incurred November 27, 2002, January 8, 2003, and March 26, 2003.

SIGNED May 2, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**