

**DOCKET NOS. 453-04-8625.M4 and 453-05-0034.M4
MRD Tracking Nos. M4-04-8683-01 and M4-04-8775-01**

TAC WC SELF INSURANCE FUND,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
	§	
vs.	§	OF
	§	
EDWARD F. WOLSKI, M.D.	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

TAC WC Self Insurance Fund (Carrier) challenges two Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) orders granting a request for payment of certain services provided by Edward F. Wolski, M.D. (Provider). MRD concluded that Carrier waived its right to reimbursement because it failed, in both dockets, to file a timely response to Medical Dispute Resolution per the Commission's rules at 28 TEX. ADMIN. CODE (TAC) 133.307(e)(3)(C). This decision concludes that the MRD's decisions should be vacated because the evidence indicates Petitioner complied with the 14 calendar day requirement of rule 133.307(e)(3)(C) and that it already reimbursed Provider the dates of service at issue.

I. PROCEDURAL HISTORY

A hearing was convened on March 21, 2005, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier was represented by William E. Weldon, attorney. Provider did not appear.

II. DISCUSSION

This is a simple case where Carrier is seeking to vacate two different orders of the MRD: a July 13, 2004 order requiring it to pay Provider \$36.01 and a July 23, 2004 order requiring it to pay Provider \$150.31. The only legal issue is whether Carrier is precluded by rule 133.307 (e)(3)(C) from asserting its defense that it paid the ordered amount already. The ALJ finds it is not so precluded because Carrier did timely respond within 14 days as required, even as calculated by the

MRD's first order of July 13, 2004.¹ Once that legal issue is settled, the only issue remaining is Carrier's factual assertion that it has already paid. The explanations of benefits and letters from the Carrier are the only evidence on this issue and they indicate the Carrier has reimbursed Provider for the dates of service in question.

This decision concludes that the two MRD orders at issue should be vacated and that Carrier owes no additional reimbursement to Provider.

III. FINDINGS OF FACT

1. On April 29, 2004, TAC WC Self Insurance Fund (Carrier) received Notice of Medical Dispute Resolution in this matter.
2. On May 13, 2004, the Carrier's response was received by Medical Dispute Resolution.
3. There are 14 calendar days spanning April 29, 2004 and May 13, 2004.
4. Carrier has reimbursed Provider for all disputed dates of service in question as evidenced by the letter in the record from Carrier and the explanations of benefits.
5. The Texas Workers' Compensation Commission Medical Review Division (MRD) ruled against Carrier because it believed Carrier had failed to comply with the 14 calendar day requirement of the Commission's rules at 28 TEX. ADMIN. CODE § 133.307(e)(3)(C).
6. Carrier requested a hearing not later than the twentieth day after receiving notice of the MRD decision.
7. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

¹ The order reflects that April 29, 2004, is the date the Carrier's Notice of Medical Dispute Resolution was signed and May 13, 2004, is the date the Carrier's response was received. The ALJ calculates that as exactly 14 calendar days.

3. Carrier complied with the 14 calendar day requirement of 28 TEX. ADMIN. CODE §133.307(3)(C).
4. Provider has fully reimbursed Carrier for the dates of service in question.

ORDER

IT IS THEREFORE ORDERED that the MRD orders in this matter, designated with tracking numbers M4-04-8683-01 and M4-04-8775-01, are vacated. TAC WC Self Insurance Fund owes no additional reimbursement to Edward F. Wolski, M.D., for the dates of service in question.

SIGNED April 4, 2005.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**