

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TASB RISK MANAGEMENT FUND,	§	
Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

An injured worker, ___ (Petitioner), appealed the Texas Workers’ Compensation Commission’s Medical Review Division’s (MRD’s) dismissal of his request for reimbursement of a prescription medication. In this decision, the Administrative Law Judge (ALJ) finds that the Petitioner is due \$7.49 in reimbursement.

I. INTRODUCTION

The notice of hearing was sent to Petitioner at his address of record and placed in Box 12, the box assigned to TASB Risk Management Fund (Respondent), at the Commission. The hearing convened on March 30, 2005, at the William P. Clements Building, 300 W. 15th Street, Austin, Texas. Petitioner represented himself, but Respondent was not represented at the hearing. The record closed at the conclusion of the hearing.

II. EVIDENCE

The issue in the case is whether the prescription for which Petitioner seeks reimbursement was medically necessary to treat his compensable injury. Petitioner’s documentation was admitted into evidence as Exhibit 1 and included receipts for the prescription. The exhibit shows that the Respondent received the documentation on April 28, 2004, and the Commission received it on

June 9, 2004. The exhibit also includes a letter from Petitioner's physician¹ to the Commission, dated March 18, 2004, in which the physician states:

[Petitioner] was injured at work. He suffered a shoulder and arm injury. The patient continues to have pain and spasm[s]. I have prescribed Lortab (Hydrocodone) for pain. . . . These medications are considered "Standard of Care" medications by pain management physicians in this area. Use of these medications has allowed the patient to have some relief of his pain, meeting the definition of reasonable and necessary care under the Texas Labor Code. . . . Therefore, according to the Texas Labor Code this medication is both reasonable and necessary in the treatment of my patient's medical condition, caused by his work injury. (Emphasis in the original.)

Not only did Petitioner seek reimbursement for the one prescription, he asked the ALJ to order Respondent to begin paying for his prescribed medications. However, Exhibit 1 does not include any documentation of other prescriptions for which Respondent has denied payment. Petitioner testified that he incurred prescription expenses for four to five months before Respondent notified him that it would no longer pay for his prescriptions. Petitioner argued that this failure violated 28 TEX. ADMIN. CODE §134.600 (f) (3)(4), which requires a carrier to notify an injured employee within one working day of its decision to deny payment for benefits.

III. ANALYSIS

Health care includes all reasonable and necessary medical services.² An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.³ Prescription medications do not require preauthorization.⁴

Oddly, the notice of hearing issued by the Commission's staff on September 13, 2004, not

¹ Daniel J. Boyle II, D.O. Dr. Boyle is certified in various medical specialties and is a fellow of the American Academy of Disability Evaluating Physicians.

² TEX. LAB. CODE ANN. §401.011(19)(A).

³ TEX. LAB. CODE ANN. §408.021(a).

⁴ 28 TEX. ADMIN. CODE §134.600(h).

only states that this case concerns a request for medical dispute resolution. It also refers to an Independent Review Organization (IRO) decision, even though this case was not referred to an IRO. Even more puzzling is this statement in the notice, this dispute concerns whether medical services should be preauthorized.

While the ALJ understands Petitioner's dilemma and recognizes that the Commission's staff may have intended for the ALJ to make a decision that exceeded the issues MRD considered, the ALJ is not authorized to do so. The ALJ may resolve only those matters that were presented to MRD and left unresolved by MRD's decision.⁵ Reimbursement for only one prescription was pending before MRD, and MRD incorrectly found that it had not received copies of Petitioner's receipt. Further, Petitioner's evidence proved that the prescription was medically necessary. Therefore, Respondent must reimburse Petitioner for his out-of-pocket amount, \$7.49.

The ALJ cannot authorize additional or prospective reimbursement for other prescriptions. In order to receive reimbursement for his out-of-pocket expenses for them, Petitioner must file another request with MRD. Also, if the Petitioner believes the Respondent has violated Commission rules, he should file a complaint against the Respondent.

IV. FINDINGS OF FACT

1. A workers' compensation claimant, Petitioner, sustained a compensable injury to his arm and shoulder on ____.
2. At the time of the Petitioner's injury, his employer had workers' compensation insurance with the Respondent, TASB Risk Management Fund.
3. After the Respondent denied payment for a prescription, Petitioner paid \$7.49 out-of-pocket for the prescription on April 19, 2004, and sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD).
4. On June 9, 2004, the Commission's staff received copies of Petitioner's receipts for the prescription.
5. By decision dated August 17, 2004, MRD dismissed Petitioner's request, asserting that it had not received a receipt or payment information for the prescription.

⁵ TEX. LAB. CODE ANN. §413.031(k)

6. The Commission received Petitioner's request for a contested case hearing on August 23, 2004.
7. Notice of the hearing was mailed or hand-delivered to the parties on September 13, 2004.
8. The notice contained the date, time and place of the hearing; a statement of the nature of and legal authority and jurisdiction for the hearing; a reference to the statutes and rules involved; and a short, plain statement of the matters asserted.
9. Although the notice of hearing also included inaccurate surplusage stating that this is a preauthorization dispute and that the request was reviewed by an Independent Review Organization, the notice included a statement regarding medical dispute resolution. The latter statement is correct and apprised parties of the nature of the hearing.
10. The hearing convened on March 30, 2004, at the William P. Clements, Jr. Building, 300 W. 15th Street, Austin, Texas. Petitioner represented himself. Respondent was not represented at the hearing.
11. As a result of Petitioner's work-related injury, he continues to have pain and spasms.
12. Petitioner's treating doctor has prescribed Lortab (Hydrocodone) to treat Petitioner's pain.
13. The Lortab has provided some relief of Petitioner's pain.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
5. The Lortab prescription for which Petitioner paid was medically reasonable and necessary to treat his compensable injury.
6. Based upon the foregoing Findings of Fact, the Respondent should reimburse the Petitioner the amount of \$7.49.

ORDER

IT IS THEREFORE, ORDERED that Petitioner's appeal is granted, and Respondent is ordered to reimburse him the amount of \$7.49.

SIGNED May 27, 2005.

**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**