



Texas Behavioral Health provided the Claimant four individual psychotherapy sessions, on August 12, 19, and 24, and September 2, 2004. St. Paul Travelers paid for the August 10, 2004, session, but refused to pay for the other three, and also refused to pay for the June 24, 2004, initial psychological evaluation.

The explanation of benefits (EOB) for the August 12, 2004, date of service, which itself was dated September 1, 2004, set out Code “V” as the reason for denial. Code “V” is “unnecessary treatment (with peer review).” Although St. Paul Travelers ultimately provided a peer review, from Gary D. Martin, D.C., that review was dated September 27, 2004, after the EOB for the August 12, 2004, date of service had been sent. Although the EOB also contained the statement, “Carrier denied the psychological problems as a compensable area of injury on PLN 11 on 7-22-04,” it only contained the “V” denial code. The applicable agency rule, 28 TEX. ADMIN. CODE (TAC) § 133.304(c), requires a carrier to use the appropriate denial code when denying coverage.

Texas Behavioral Health filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission (the Commission)<sup>3</sup> regarding the August 12, 2004, date of service. It did not list the June 24, August 24, or September 2, 2004, dates of service in that or any other request.

The Commission’s Medical Review Division ruled in Texas Behavioral Health’s favor regarding the psychotherapy provided on August 12, 2004, finding that the issue of medical necessity had already been determined because St. Paul Travelers preauthorized the disputed service. St. Paul Travelers requested a hearing before the State Office of Administrative Hearings (SOAH). After timely and proper notice, that hearing was held November 16, 2005, with ALJ Henry D. Card presiding. Both parties participated in the hearing. After arguments and evidence were presented, the hearing was adjourned the same day.

## **II. DISCUSSION**

Texas Behavioral Health has requested that SOAH consider all the dates of service for which it was not reimbursed for the Claimant’s evaluation or individual psychotherapy. Texas Behavioral Health did not file a request for medical dispute resolution, however, as required by TEX. LAB. CODE

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<sup>3</sup> Under legislation effective September 1, 2005, the Texas Workers’ Compensation Commission was abolished and its functions transferred to the Division of Workers’ Compensation at the Texas Department of Insurance.

ANN. § 413.031, for dates other than August 12, 2004. Therefore, those dates were not at issue before the Commission and SOAH does not have jurisdiction to consider them.

Under the Commission's rules at 28 TEX. ADMIN. CODE § 134.600, a carrier is precluded from contesting the necessity of health care it has preauthorized. St. Paul Travelers preauthorized the August 12, 2004, individual psychotherapy session at issue. As the MRD concluded, it is precluded from contesting the medical necessity of that session.

St. Paul Travelers noted in its EOB that it contested whether the session was related to the compensable injury. Nothing in the record shows it properly raised this issue before the Commission, however.<sup>4</sup> The Commission itself determined there was no pending issue besides medical necessity, as it ordered payment based on the preauthorization. St. Paul Travelers did not demonstrate that there was any pending issue before the Commission that would preclude payment. Therefore, the ALJ concludes St. Paul Travelers should be ordered to reimburse Texas Behavioral Health for the individual psychotherapy session provided the Claimant on August 12, 2004.

### **III. FINDINGS OF FACT**

1. The workers' compensation claimant, \_\_\_ (the Claimant), sustained a compensable injury to her ankle \_\_\_, and was terminated from her employment shortly thereafter.
2. An initial psychological evaluation was conducted June 24, 2004, because the Claimant was exhibiting symptoms of anxiety and depression. That evaluation, conducted by the Respondent, Texas Behavioral Health, determined the Claimant was experiencing psychological distress due to concerns about her health as a result of her injury.
3. The evaluation recommended four individual psychotherapy sessions over four weeks, to include cognitive behavioral therapy to develop more appropriate coping skills.
4. Texas Behavioral Health requested preauthorization for four individual psychotherapy sessions from Petitioner St. Paul Travelers Insurance Company (St. Paul Travelers), the workers compensation carrier, on July 5, 2004.
5. St. Paul Travelers initially denied the request, but granted it on reconsideration. That preauthorization determined the services to be medically necessary, with the caveat, "Denial of psychological problems as a compensable area of injury."

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<sup>4</sup> Such compensability issues are determined by the Division of Workers' Compensation, and previously were determined by the Commission, under chapter 410 of the Labor Code.

6. Texas Behavioral Health provided the Claimant four individual psychotherapy sessions, on August 12, 19, and 24, and September 2, 2004.
7. St. Paul Travelers paid for the August 19, 2004, session, but refused to pay for the other three, and also refused to pay for the June 24, 2004, initial psychological evaluation.
8. The explanation of benefits (EOB) for the August 12, 2004, date of service, which itself was dated September 1, 2004, set out Code "V" as the reason for denial. Code "V" is "unnecessary treatment (with peer review)."
9. Although St. Paul Travelers ultimately provided a peer review, from Gary D. Martin, D.C., that review was dated September 27, 2004, after the EOB for the August 12, 2004, date of service had been sent.
10. The EOB also contained the statement, "Carrier denied the psychological problems as a compensable area of injury on PLN 11 on 7-22-04."
11. Texas Behavioral Health filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission) regarding the August 12, 2004, date of service. It did not list the June 24, August 24, or September 2, 2004, dates of service in that or any other request.
12. The Commission's Medical Review Division ruled in Texas Behavioral Health's favor regarding the psychotherapy provided on August 12, 2004, finding that the issue of medical necessity had already been determined because St. Paul Travelers preauthorized the disputed service.
13. St. Paul Travelers requested a hearing before the State Office of Administrative Hearings (SOAH).
14. Notice of the hearing was sent to the parties December 15, 2004.
15. 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.
16. The hearing was held November 16, 2005, with ALJ Henry D. Card presiding. Both parties participated in the hearing. After arguments and evidence were presented, the hearing was adjourned the same day.
17. There is no pending issue before the Commission or its successor regarding whether the psychotherapy session was related to the compensable injury.

#### **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. Because Texas Behavioral Health did not file a request for medical dispute resolution, as required by TEX. LAB. CODE ANN. § 413.031, for dates other than August 12, 2004, those dates were not at issue before the Commission and SOAH does not have jurisdiction to consider them.
4. Under the Commission's rules at 28 TEX. ADMIN. CODE § 134.600, a carrier is precluded from contesting the necessity of health care it has preauthorized.
5. St. Paul Travelers is precluded from contesting the medical necessity of the August 12, 2004, individual psychotherapy session.
6. The August 12, 2004, individual psychotherapy session was medically necessary.
7. St. Paul Travelers should be ordered to reimburse Texas Behavioral Health for the individual psychotherapy session provided the Claimant on August 12, 2004.

### **ORDER**

**IT IS, THEREFORE, ORDERED;** that St. Paul Travelers Insurance Company reimburse Texas Behavioral Health for the individual psychotherapy session provided the Claimant on August 12, 2004, plus applicable interest.

**SIGNED December 19, 2005.**

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