

**DOCKET NO. 453-05-2773.M4**  
**MDR Tracking No. M4-04-4502-01**

<b>COMMERCE &amp; INDUSTRY INSURANCE COMPANY,</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>NORTH TEXAS PAIN CENTER,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Commerce & Industry Insurance Company (CIIC) is challenging the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission)<sup>1</sup> that the North Texas Pain Center (Pain Center) is due reimbursement for chronic pain management (CPM) provided to Claimant\_\_. This decision concludes that CIIC should pay for the CPM provided from December 16, 2002, through January 28, 2003, because CPM for those dates of service was pre-authorized. Reimbursement is not due however, for the CPM provided on February 10-13, 2003, because those dates of service were not pre-authorized.

**I. BACKGROUND,<sup>2</sup> PROCEDURAL HISTORY,  
NOTICE, AND JURISDICTION**

Claimant suffered a compensable injury on\_\_\_\_. On May 10, 2002, CIIC issued a TWCC-21 (Notice of Refused or Disputed Claim). CIIC accepted an injury to Claimant=s lower back, but denied entitlement to benefits contending that any disabling injuries were due to a subsequent motor vehicle accident of April 16, 2002. The Pain Center requested pre-authorization from CIIC to provide CPM to Claimant. On December 11 and 30, 2002, CPM was pre-authorized. The Pain Center provided Claimant with 35 CPM sessions from December 16, 2002, through February 14, 2003. When the Pain Center billed for the CPM, CIIC denied payment using the denial code E (entitlement to benefits) and the explanation--Athis workers= compensation claim has been denied.@

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<sup>1</sup> Now known as the Texas Department of Insurance, Division of Workers' Compensation, effective September 1, 2005.

<sup>2</sup> The background information was largely provided in CIIC's December 23, 2005, Response to Order No. 3, Provider's Response to Chronology from Carrier filed on February 2, 2006, and in both parties' responses filed on April 24, 2006, to Order No. 5.

On March 11, 2003, the Pain Center requested a benefit review conference at the Commission. On December 17, 2003, the Pain Center filed a request for medical dispute resolution with the Commission. A benefit contested case hearing (CCH) was held on January 9, 2004; a decision determining that the compensable injury included Claimant=s left shoulder was issued on January 12, 2004; the decision became final on February 10, 2004. CIIC issued an EOB<sup>3</sup> on May 28, 2004, denying payment for the CPM provided on February 10 to 14, 2003, for the following reasons: not treating doctor, unnecessary medical treatment, and not pre-authorized.

The MRD issued its decision on October 22, 2004, determining that the Pain Center is due reimbursement of \$47,600.00 for 35 sessions of CPM provided to Claimant from December 16, 2002, to February 13, 2003, because CIIC failed to review the services for other denial reasons after the CCH.<sup>4</sup> On November 10, 2004, CIIC filed a request for hearing at the State Office of Administrative Hearings (SOAH). The notice of hearing was issued on December 16, 2004. CIIC filed a Motion to Abate and Remand on July 18, 2005. The hearing originally scheduled for August 15, 2005, and then November 10, 2005, was continued. On November 17, 2005, the Pain Center filed a motion for summary judgment. A telephonic hearing was held on February 9, 2006, before Katherine L. Smith, Administrative Law Judge (ALJ), to hear argument on the motion for summary judgment and the motion to remand. CIIC was represented by Attorney Steven M. Tipton. The Pain Center was represented by Attorney Peter Rogers. On April 17, 2006, Order No. 5 was issued denying the motion to remand and requiring additional responses. The record closed on May 1, 2006. Other than the motion to remand, no jurisdictional challenge was raised.

## II. DISCUSSION

An ALJ may dispose of a case by summary disposition if the pleadings, affidavits, materials obtained in discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its

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<sup>3</sup> Explanation of Benefit.

<sup>4</sup> MRD found that 36 sessions were provided and denied reimbursement for the session provided on February 14, 2003, due to lack of pre-authorization.

favor as a matter of law. 1 TEX. ADMIN. CODE (TAC) ' 155.57(a).

As noted previously, CIIC filed a motion to remand, which was denied. The original basis for the remand was so that CIIC could raise the issue of lack of medical necessity at MRD. On February 8, 2006, CIIC raised for the first time in its response to the Pain Center's motion for summary judgment an additional reason for remanding the case. CIIC contends that the CPM was not prescribed by Claimant's treating doctor and that the pre-authorization was induced by misrepresentation. In support of its response, CIIC attached an affidavit from Claimant's treating doctor, Nicole Tran, D.C. CIIC also contends that the Commission should have abated the MRD proceeding until the conclusion of the CCH.

The issue in this proceeding closely resembles the primary issue raised in *National Union Fire Insurance Company of Pittsburgh, PA v. Texas Workers' Compensation Comm. and Back and Joint Clinic*, 453-01-3456.M5 (May 7, 2003). In that case the carrier argued that it could contest the medical necessity of the treatments, despite its pre-authorization, because the provider misrepresented or fraudulently stated the facts in its pre-authorization request. The ALJ concluded, however, that the carrier was precluded from asserting that the pre-authorization was procured through fraud/misrepresentation because it did not assert that matter when it denied the claim or in its response to the provider's request for medical dispute resolution.

One element distinguishing this case from Docket No. 453-01-3456.M5 is the intervening CCH proceeding in this case. The ALJ finds CIIC's argument that the MRD proceeding should have been abated until the conclusion of the CCH to be questionable. Although the MRD proceeding may not have been formally abated, it was in actuality. The CCH decision became final on February 10, 2004. MRD did not issue its decision until October 22, 2004. More problematic is what did not occur when the CCH decision became final. There is no indication that the Pain Center sent new billings to CIIC, but there also does not appear to be any requirement by statute or rule that it do so. CIIC was put on notice, however, through Claimant's testimony at the CCH hearing on January 9, 2004, that the CPM may not have been prescribed by Claimant's treating doctor. Attachment C to the Pain Center's Motion for Summary Judgment at 87-89. At that time CIIC could have issued new EOBs for all the disputed dates of service using the denial reason "not treating-doctor approved treatment," as it did on May 28, 2004, when it denied payment for the CPM provided on February 10

to 14, 2003. Attachment A at 009.

Although CIIC argues that its position in this dispute is not limited to what it could place on EOBs, indeed it is, based on SOAH precedent. Moreover, the remedy that CIIC is requesting in this proceeding, remanding this case to MRD, makes little sense. There are no additional EOBs, and it is questionable whether MRD has the procedural mechanism to evaluate Dr. Tran's affidavit.

According to the HCFA 1500 forms in Attachment B at Ex. 10, the Pain Center provided Claimant with 35 sessions of CPM: December 16, 17, 18, 19, 20, 23, 24, 26, 27, 30, 31, 2002; January 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28; and February 10, 11, 12, 13, 14, 2003. Eighty hours of CPM were pre-authorized on December 11, 2002, and again on December 30, 2002. Attachment B at Exs. 2 & 3. As of a letter dated January 15, 2003, 20 sessions of CPM had been provided. Attachment B at Ex. 4. In a letter dated January 24, 2003, 10 more visits were preauthorized. Attachment B at Ex. 5. In a letter dated January 28, 2003, pre-authorization for additional pain management was denied. Attachment B at Ex. 6. The 30 pre-authorized sessions extended from December 16, 2002, to January 28, 2003.<sup>5</sup> CIIC is precluded from retrospectively reviewing the medical necessity of the medical bills for the CPM that the Pain Center provided Claimant on those dates of service, because the treatment was pre-authorized. 28 TAC § 133.301(a), eff. through Dec.31, 2002.

Furthermore, as noted previously, the only dates of service denied based on "not treating doctor" were those of February 10 to 14, 2003. Although Dr. Tran's affidavit raises the question of whether the CPM was properly prescribed in accordance with TEX. LABOR CODE ANN. §408.021(c), which requires that health care be approved or recommended by the injured employee's treating doctor, CIIC is precluded from raising that issue at SOAH. CIIC was required to notify the Commission, the provider, and the Claimant that it was raising that issue when CIIC became aware of it. TEX. LABOR CODE ANN. § 408.027(d) Acts 1993, 73<sup>rd</sup> Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79<sup>th</sup> Leg., ch. 265, §3.089, eff. Sept. 1, 2005.

### III. CONCLUSION

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<sup>5</sup> Referring to a letter dated February 7, 2003, MRD determined that 35 sessions of chronic pain management had been pre-authorized. No such letter is in the record, however.

Because the evidence clearly reflects that 30 sessions of CPM were pre-authorized by CIIC and billed by the Pain Center, the Pain Center is due reimbursement for those dates of service. Reimbursement is not due however, for the CPM provided on February 10-13, 2003, because those dates of service were not pre-authorized.

#### **IV. FINDINGS OF FACT**

1. On\_\_\_\_, Claimant \_\_\_\_suffered a compensable injury.
2. On May 10, 2002, Commerce & Industry Insurance Company (CIIC) filed a TWCC-21 (Notice of Refused or Disputed Claim). CIIC accepted an injury to Claimant's lower back, but denied entitlement to benefits because it alleged that any disabling injuries were due to a subsequent motor vehicle accident of April 16, 2002.
3. The North Texas Pain Recover Center (the Pain Center) requested pre-authorization from CIIC to provide Claimant with chronic pain management (CPM).
4. The CPM was pre-authorized on December 11 and 30, 2002.
5. The Pain Center provided Claimant with 20 sessions of CPM, as of January 14, 2003. Ten additional CPM sessions were pre-authorized on January 24, 2003. The Pain Center provided 10 sessions of CPM from January 15 to 28, 2003.
6. Additional pre-authorization was denied on January 28, 2003.
7. The Pain Center provided Claimant with a total of 35 CPM sessions from December 16, 2002, through February 14, 2003.
8. When the Pain Center billed for the service, CIIC denied payment using the denial code E (entitlement to benefits) and the explanation Athis workers= compensation claim has been denied.@
9. On March 11, 2003, the Pain Center requested a benefit review conference at the Texas Workers= Compensation Commission (Commission).
10. On December 17, 2003 the Pain Center filed a request for medical dispute resolution with the Commission.
11. A benefit contested case hearing (CCH) was held on January 9, 2004; a decision was issued on January 12, 2004, determining that the compensable injury included Claimant=s left shoulder; the decision became final on February 10, 2004.
12. CIIC issued another EOB on May 28, 2004, denying payment for the CPM provided on February 10 to 14, 2003, for the following reasons: not treating doctor, unnecessary medical treatment, and not pre-authorized. CIIC did not address the other CPM dates of service in

dispute.

13. The Commission's Medical Review Division (MRD) issued a decision on October 22, 2004, determining that the Pain Center is due reimbursement of \$47,600.00 for 35 sessions of CPM provided to Claimant from December 16, 2002, to February 13, 2003, because CIIC failed to review the services for other denial reasons after the CCH. MRD denied reimbursement for the session provided on February 14, 2003, because it was not pre-authorized.
14. On November 10, 2004, CIIC filed a request for hearing at the State Office of Administrative Hearings (SOAH).
15. The Commission issued the notice of hearing on December 16, 2004, that provided the parties with 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.
16. CIIC filed a motion to abate and remand on July 18, 2005.
17. The hearing originally scheduled for August 15, 2005, and then November 10, 2005, was continued.
18. The Pain Center filed a motion for summary judgment on November 17, 2005. A telephonic hearing was held on February 9, 2006, before Katherine L. Smith, Administrative Law Judge, to hear argument on the motion for summary judgment and the motion to remand.
19. In its response to the motion for summary judgment filed on February 8, 2006, CIIC contended for the first time that the CPM pre-authorizations were obtained by misrepresentation and were not prescribed by the treating doctor.

## **V. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. A case may be disposed of by summary disposition if the pleadings, affidavits, materials obtained in discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TEX. ADMIN. CODE (TAC) ' 155.57(a).

4. CPM is health care that requires pre-authorization. 28 TAC§134.600(h)(10)(B), eff. through Dec. 31, 2002.
5. CIIC is precluded from retrospectively reviewing the medical necessity of the Pain Center=s medical bills for the CPM that it provided Claimant from December 16, 2002 through January 28, 2003, because the treatment sessions were pre-authorized. 28 TAC § 133.301(a), eff. through Dec. 31, 2002.
6. CIIC is precluded from asserting that the CPM treatment was obtained by misrepresentation, because it did not notify the Commission, the Pain Center, and the Claimant that it was alleging that the treatment was not approved by the treating doctor. TEX. LABOR CODE ANN. § 408.027(d) Acts 1993, 73<sup>rd</sup> Leg., ch. 269, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79<sup>th</sup> Leg., ch. 265, § 3.089, eff. Sept. 1, 2005.
7. Because 30 sessions of CPM provided Claimant from December 16, 2002, through January 28, 2003 were pre-authorized, the Pain Center is due reimbursement for those dates of service.
8. Reimbursement is not due however, for the CPM provided Claimant from February 10 to 13, 2003, because they were not pre-authorized.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that Commerce & Industry Insurance Company shall pay the North Texas Pain Center for the 30 sessions of CPM that it provided to Claimant from December 16, 2002, through January 28, 2003, plus interest.

**SIGNED May 26, 2006.**

**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**