

**SOAH DOCKET NO. 453-05-2933.M5
TWCC MR NO. M5-04-4295-01**

**SOUTHEAST HEALTH SERVICES,
INC.,**

Petitioner

V.

—,

Respondent

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Southeast Health Services, Inc. (Petitioner) requested a hearing to contest a Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) decision, issued on the basis of an independent review organization (IRO) determination that certain services provided to an injured worker from September 3, 2003, through September 23, 2003, were medically unnecessary. ___ (___), the workers' compensation insurance provider, submitted a motion to dismiss based on its assertion that the Petitioner failed to request a hearing within the time limits required by Commission rules. The Administrative Law Judge (ALJ) concludes that the motion should be granted and this case should be dismissed.

I. PROCEDURAL HISTORY

The hearing convened on September 1, 2005, at the State Office of Administrative Hearings before the undersigned ALJ. The Petitioner was represented by Bryan L. Weddle, D.C. ___ was represented by Steven M. Tipton, Attorney. Neither party raised notice or jurisdictional issues. At the beginning of the hearing, ___ argued and presented evidence to support its motion. The ALJ took the motion under advisement, and the hearing on the merits was postponed. The ALJ said if the motion were overruled, the hearing would be reset at a later date. The hearing adjourned on September 1, 2005.

II. DISCUSSION

The Commission's rules, at 28 TEX. ADMIN. CODE (TAC) § 148.3(a)(2), provide that a person requesting a hearing on an IRO decision of the type in this case must file a written request that must be received by the Commission's Chief Clerk of Proceedings, Hearings Division, not later than 20 days after the requestor received the decision. Section 148.3(d) provides that a written request for hearing filed later than 20 days after the due date stated in § 148.3(a) for a matter identified in § 148.3(a) (including retrospective-medical-necessity decisions) shall be dismissed.

The Commission's decision that attached the IRO determination¹ said: either party to the medical dispute may disagree with all or part of the decision and has a right to request a hearing; a request for hearing must be in writing and it must be received by the Commission's Chief Clerk of Proceedings/Appeals Clerk within 20 days of the receipt of a decision; and a decision is deemed received five days after it is mailed.

Rule 28 TAC § 102.5(d) provides, in a case such as this, for the purposes of determining the date of receipt by the Petitioner of the Commission's order, unless the great weight of evidence indicates otherwise, the Commission shall deem the date of receipt to be five days after the date mailed via United States Postal Service regular mail.

The MRD mailed its decision to the Petitioner on October 22, 2004.² In accordance with 28 TAC § 102.5(d), the Petitioner was deemed to have received the decision on October 27, 2004. The Petitioner's representative Dr. Weddle was not able to say when the Petitioner actually received the Commission's decision. Twenty days after October 27, 2004, was November 16, 2004. The evidence shows the Commission's Chief Clerk of Proceedings received the Petitioner's request for hearing on November 19, 2004.³ Therefore, in accordance with § 148.3(d), this case will be dismissed. This decision is in accordance with previous SOAH decisions in similar cases.⁴

¹ Ex. 1.

² *Id.*

³ Ex. 2.

⁴ See, for example, Docket No. 453-99-2604.M2 (December 10, 1999, ALJ Landeros) and Docket No. 453-01-2194.M4 (October 11, 2001, ALJ Rusch).

III. FINDINGS OF FACT

1. On October 22, 2004, the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) issued a decision denying reimbursement to Southeast Health Services for services provided to an injured worker from September 3, 2003, through September 23, 2003.
2. The MRD decision was based on an independent review organization determination that the treatments were not medically necessary.
3. The Commission mailed the decision denying reimbursement on October 22, 2004.
4. On November 19, 2004, the Commission's Chief Clerk of Proceedings received from Southeast Health Services a request for hearing on the MRD decision.
5. There is no evidence of when Southeast Health Services actually received the MRD's October 22, 2004 decision.
6. ____, the entity providing workers' compensation insurance coverage in this case, filed a motion to dismiss based on its assertion that Southeast Health Services did not timely request a hearing.

IV. 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. A person requesting a hearing on an IRO decision of the type in this case must file a written request that must be received by the Commission's Chief Clerk of Proceedings, Hearings Division, not later than 20 days after the requestor receives the decision. 28 TEX. ADMIN. CODE (TAC) § 148.3(a)(2).
3. For the purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be the earliest of: five days after the date mailed via United States Postal Service regular mail; the first working day after the date the written communication was placed in the insurance carrier's Austin representative box; or the date the communication was faxed or electronically transmitted. 28 TAC § 102.5(d).
4. The great weight of evidence did not show that Southeast Health Services received the MRD decision any later than five days after the date it was mailed.
5. Southeast Health Service's request for hearing should be dismissed. 28 TAC § 148.3(d).

ORDER

IT IS THEREFORE ORDERED that the request for hearing by Southeast Health Services to contest a Texas Workers' Compensation Commission Medical Review Division decision denying reimbursement for services provided to an injured worker from September 3, 2003, through September 23, 2003, be, and the same is hereby, dismissed.

SIGNED September 16, 2005.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**