

**DOCKET NO. 453-05-3365.M5
MDR NO. M5-04-4081-01**

**WEST HOUSTON
CHIROPRACTIC,
Petitioner**

v.

**TRANSPORT
INSURANCE COMPANY,
Respondent**

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**BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

West Houston Chiropractic (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 a work hardening program was medically unnecessary, denying reimbursement to West Houston Chiropractic for the program. Transport Insurance Company (Carrier), the insurance carrier providing workers' compensation coverage to the injured worker's employer, filed a motion to dismiss based on its assertion that the Petitioner failed to request a hearing within the time limits provided in Commission rules. The undersigned Administrative Law Judge (ALJ) concludes that the motion should be granted and this case should be dismissed.

I. PROCEDURAL HISTORY

The hearing for this case was scheduled to begin on July 26, 2005. However, by order dated July 21, 2005, the ALJ changed the hearing to a pre-hearing conference to consider the Carrier's motion to dismiss. The parties were informed that the hearing on the merits would be scheduled at a later date if the Carrier's motion were denied. A pre-hearing conference convened on July 26, 2005, at the State Office of Administrative Hearings (SOAH) to consider the motion. The Carrier was

represented by Shannon Simmons Pounds, Attorney. The Petitioner did not appear. The evidence presented showed that the Petitioner received notice of the pre-hearing conference.¹ After, the Carrier presented evidence to support its motion, the record closed on July 26, 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 with the Commission's Chief Clerk of Proceedings, Hearings Division, not later than 20 days after receipt of the decision. Commission Rule 28 TAC § 148.3(d) provides that a written request for hearing filed later than 20 days after the date stated in § 148.3(a) of a matter identified in § 148.3(a) (including retrospective-medical-necessity decisions) shall be dismissed.

The Commission's decision that attached the IRO determination² 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.

Commission 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 November 4, 2004.³ In accordance with 28 TAC § 102.5(d), the Petitioner was deemed to have received the decision on November 9, 2005.

¹ Ex. 2.

² Ex. 1.A.

³ Ex. 1.A.

There was no evidence of when the Petitioner actually received the Commission's decision. The evidence shows the Petitioner's request for hearing was mailed on December 6, 2004, and that the Commission's Chief Clerk of Proceedings received it on that date.⁴ Therefore, in accordance with Commission Rule 148.3(d), this case will be dismissed. This decision is in accordance with previous SOAH decisions in similar cases.⁵

III. FINDINGS OF FACT

1. On November 3, 2004, the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) issued a decision denying reimbursement to West Houston Chiropractic for a work hardening program provided to an injured worker from March 1, 2004, through March 12, 2004.
2. The MRD decision was based on an independent review organization determination that the work hardening program was not medically necessary.
3. The Commission mailed the decision denying reimbursement on November 4, 2004.
4. On December 6, 2004, West Houston Chiropractic requested a hearing on the MRD decision and the Commission's Chief Clerk of Proceedings received the request the same day.
5. There was no evidence of when West Houston Chiropractic actually received the MRD's November 3, 2004 decision.
6. Transport Insurance Company, the insurance carrier providing workers' compensation coverage to the injured worker's employer, filed a motion to dismiss based on its assertion that West Houston Chiropractic did not timely request a hearing.
7. West Houston Chiropractic received notice of a pre-hearing conference, held on July 26, 2005, to consider Transport Insurance Company's motion to dismiss.

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.

⁴ Exs. 1A and 4.

⁵ 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).

2. 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 TEX. ADMIN. CODE (TAC) § 102.5(d).
3. The great weight of evidence did not show that West Houston Chiropractic received the MRD decision any later than five days after the date it was mailed.
4. West Houston Chiropractic's request for hearing should be dismissed. 28 TAC § 148.3(d).

ORDER

IT IS THEREFORE ORDERED that the request for hearing by West Houston Chiropractic to contest a Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) decision denying reimbursement for a work hardening program provided to an injured worker from March 1, 2004, through March 12, 2004, be, and the same is hereby, dismissed.

Signed August 22, 2005.

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