

**SOAH DOCKET NO. 453-05-3659.M**  
**TWCC CASE NO. 05-0431**

<b>TOWN EAST REHABILITATION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>NEW HAMPSHIRE INSURANCE CO.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Town East Rehabilitation (“Petitioner”), has challenged a determination by the Texas Workers’ Compensation Commission’s Medical Review Division (“MRD”) in a dispute regarding preauthorization for a chronic pain management program. The MRD found that Petitioner’s case should be dismissed because Petitioner failed to make a timely request for reconsideration after New Hampshire Insurance Co. (“Respondent”) denied the initial request for preauthorization.

This decision generally agrees with the MRD’s action and concludes that preauthorization of the disputed services should be denied.

**I JURISDICTION AND NOTICE**

The Texas Workers’ Compensation Commission (“Commission”) has jurisdiction over this matter pursuant to § 413.031 of the Texas Worker’s Compensation Act (“the Act”), TEX. LABOR CODE ANN. § 401.001 *et seq.* The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction or notice.

**II. STATEMENT OF THE CASE**

The hearing in this docket was convened on February 17, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by Trenton Weeks, D.C.<sup>1</sup> Respondent failed to

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<sup>1</sup> Dr. Weeks stated at the hearing that the claimant, not Town East Rehabilitation, should be considered the actual requestor and Petitioner in this case. The claimant, \_\_\_\_, also testified and confirmed this viewpoint. However, to maintain consistency with previous proceedings and pleadings in this matter, and because the participants have not demonstrated how changing the designation of the Petitioner would meaningfully change any substantive or procedural aspect of the proceeding, the ALJ will continue to refer to Town East Rehabilitation as

appear through any representative and failed to inform SOAH, either before or after the hearing, of any reason for its non-appearance. After presentation of evidence and argument by Petitioner, the hearing was adjourned and the record was closed on that same date.<sup>2</sup>

The record revealed that on \_\_\_\_, the claimant suffered a compensable knee injury. Since that time, she has received extensive therapy and surgical treatment to address persisting pain and lack of function.

On July 28, 2004, Petitioner sought preauthorization for a chronic pain management program (“CPMP”). On August 6, 2004,<sup>3</sup> Respondent denied preauthorization on the grounds that the proposed treatment was medically unnecessary, with a lack of objective clinical findings to justify it. However, Respondent’s physician advisor recommended a work hardening program as an alternative to a CPMP. Accordingly, Petitioner shortly thereafter obtained preauthorization for a work hardening program, and the claimant participated in the program for two weeks, with marked worsening of her physical condition.

In light of the work hardening program’s poor results, Petitioner again sought preauthorization for a CPMP from Respondent on September 10, 2004. Respondent replied that this request for reconsideration of Respondent’s previous denial of preauthorization was untimely under Commission rules. After Dr. Weeks reassessed the claimant’s condition, Petitioner again submitted a request for preauthorization of a CPMP on October 20, 2004. Respondent categorized this request as a “final appeal of our medical determination” and rejected it in a letter dated October 28, 2004. Petitioner submitted yet another request for reconsideration, prompting a message from Respondent on November 5, 2004, which described additional appeals as improper and declined to address them. Petitioner then sought medical dispute resolution through the Commission.

The MRD issued findings on December 16, 2004, concluding that the matter should be “dismissed without any additional action taken,” because Petitioner had failed to satisfy Commission rules B specifically 28 TEX. ADMIN. CODE (“TAC”) § 134.600(g)(1). That rule requires, as a prerequisite for contesting a carrier’s denial of preauthorization, that a requestor or employee seek reconsideration from the carrier within 15 days of the initial denial. In this case, the MRD found, the

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Petitioner.

<sup>2</sup> The staff of the Commission formally elected not to participate in this proceeding, although it filed a general AStatement of Matters Asserted@ with the notice of the hearing.

<sup>3</sup> The letter reflecting Respondent’s initial denial was dated August 5, 2004.

15-day period for seeking reconsideration ended on August 27, 2004, but Petitioner did not request Respondent to reconsider its initial denial until October 20, 2004.

Petitioner subsequently made a timely request for review of the MRD's action before SOAH.

### **III. THE PARTIES' EVIDENCE AND ARGUMENTS**

#### **A. Petitioner**

Petitioner presented the testimony of Dr. Weeks, a licensed chiropractor who has treated the claimant for much of the time since her injury. Dr. Weeks stated that during the summer of 2004, he had considered placing the claimant on a work hardening or conditioning program, to improve her strength, but felt that first controlling her persistent pain, through a CPMP, would be a more effective strategy. In the actual event, dispensing with a CPMP and going directly to work hardening, as Respondent's physician advisor advocated, led to a marked decline in the condition of the claimant's knee. The patient herself testified that after she began the work hardening program, the swelling in her injured knee became "unreal," pain increased drastically, and she needed to apply ice packs to the injured area constantly.

According to Dr. Weeks, the request submitted to Respondent on October 20, 2004, was intended to be an entirely new request for preauthorization, based upon recently changed conditions in the patient's case. Dr. Weeks said that he did not regard the request as another appeal for the carrier to reconsider its previous denial of a CPMP for the claimant, as Respondent characterized it.

#### **B. Respondent**

Respondent did not submit any documents to SOAH for the hearing or appear at the hearing to offer evidence or argument.

### **IV. ANALYSIS**

Petitioner bears the burden of proving those deficiencies that it contends should invalidate the MRD's decision in this case. In the ALJ's view, it has not sufficiently discharged that burden of proof.

The most clearly dispositive issue in this case is whether Petitioner has satisfied the prerequisites for submitting a separate, new request for preauthorization of services, when the requestor has already sought preauthorization of the same services earlier. The process for such repetitive requests is governed primarily by 28 TAC § 134.600(g)(4), which states:

A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective documentation to support that a substantial change in the employee's medical condition has occurred.

The evidentiary record in this case includes no documentation whatsoever that the claimant's medical condition changed substantially between Respondent's initial denial of preauthorization on August 6, 2004, and Petitioner's second request for preauthorization (as Petitioner describes it) on October 20, 2004. Instead, the record on this subject reflects only the very general and mostly subjective oral testimony of Dr. Weeks and the claimant.

The ALJ must conclude that Petitioner has failed to demonstrate compliance with § 134.600(g)(4). Under those circumstances, Petitioner's only apparent alternative in pursuing preauthorization is to treat its filing on October 20, 2004, as a request for reconsideration of Respondent's initial denial of preauthorization. However, as both Respondent and the MRD have noted, a request for reconsideration as of that date was untimely and was properly denied for that reason.

## **V. CONCLUSION**

The ALJ finds that, under the record provided in this case, the MRD's action dismissing Petitioner's request for preauthorization of a CPMP was not shown to be in any way erroneous. Accordingly, preauthorization for these services should be denied, in accordance with the prior action by the MRD.

## **VI. FINDINGS OF FACT**

1. On \_\_\_\_, the claimant suffered a knee injury that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. Since the injury, the claimant has received extensive therapy and surgical treatment to address persisting pain and lack of function.
3. When Town East Rehabilitation ("Petitioner") sought preauthorization to provide the claimant a comprehensive pain management program ("CPMP"), New Hampshire Insurance Co. ("Respondent"), the insurer for claimant's employer, denied that preauthorization on August 6, 2004, on grounds that the proposed treatment was medically unnecessary.
4. Petitioner again submitted a request for preauthorization of a CPMP on October 20, 2004, which the claimant's treating physician intended as a second, separate request, based upon recent changes in the claimant's medical condition.

5. Respondent interpreted the request noted in Finding of Fact No. 4 as a request to reconsider the Respondent's initial denial of preauthorization (as noted in Finding of Fact No. 3) and rejected it in a letter dated October 28, 2004.
6. Petitioner then submitted another request for reconsideration, prompting a message from Respondent on November 5, 2004, which described additional appeals as improper and declined to address them.
7. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested preauthorization.
8. The Commission's Medical Review Division ("MRD") issued findings on December 16, 2004, concluding that the matter should be dismissed because Petitioner had failed to satisfy 28 TEX. ADMIN. CODE ("TAC") § 134.600(g)(1), which requires, as a prerequisite for contesting a carrier's denial of preauthorization, that a requestor or employee seek reconsideration from the carrier within 15 days of the initial denial.
9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the MRD action.
10. The Commission mailed notice of the scheduling of a hearing in this matter to the parties at their addresses on January 24, 2005.
11. A hearing in this matter was convened on February 17, 2005, at the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner was represented. Respondent did not appear.
12. Petitioner produced for the record in this case no documentation that the claimant's medical condition changed substantially between Respondent's initial denial of preauthorization on August 6, 2004, and Petitioner's second request for preauthorization on October 20, 2004.

## **VII. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 413.031.
2. 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE ("TAC") § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, Petitioner, in seeking to characterize its filing on October 20, 2004, as a new, separate request for preauthorization from Respondent, failed to comply with 28 TAC § 134.600(g)(4), which requires that a repetitive request for preauthorization “shall only be resubmitted when the requestor provides objective documentation to support that a substantial change in the employee’s medical condition has occurred.”
7. None of the filings made to Respondent by Petitioner, with respect to preauthorization of the services noted in Finding of Fact No. 3, constituted a timely request for reconsideration in accordance with 28 TAC § 134.600(g)(1).
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and dismissal in this matter issued by the Commission’s MRD on December 16, 2004, were appropriate; accordingly, preauthorization for the requested CPMP should be denied.

### **ORDER**

**IT IS THEREFORE, ORDERED** that the action of Petitioner Town East Rehabilitation, challenging the Findings and Dismissal issued by the Texas Workers’ Compensation Commission’s Medical Review Division on December 16, 2004, is denied, and Respondent New Hampshire Insurance Co. is accordingly not required to preauthorize the chronic pain management program sought by Petitioner to treat a claimant’s chronic knee pain.

**SIGNED February 23, 2005.**

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**MIKE ROGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**