

TML INTERGOVERNMENTAL RISK §  
POOL, §  
Petitioner §  
V. §  
MHHS HERMANN HOSPITAL, §  
Respondent §

BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

## DECISION AND ORDER

### I. DISCUSSION

The City of Rosenberg (Rosenberg) appeals a determination by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission)<sup>1</sup> requiring Rosenberg to reimburse MHHS Hermann Hospital (Hermann) \$101,874.40 for the 2003 hospitalization of claimant \_\_\_\_\_. Rosenberg argues that, following \_\_\_\_\_ emergency trauma admission, Hermann failed to seek necessary pre-authorization (or concurrent review) for the continuation of hospital care, including multiple surgeries. The Administrative Law Judge (ALJ) orders that Rosenberg need not reimburse Hermann for the medical services at issue.<sup>2</sup>

**Background.** \_\_\_\_ had an accident involving an asphalt machine on \_\_\_\_, and sustained a severe crush injury of the lower right extremity, with near-complete amputation, numerous fractures and burns, and considerable soft tissue loss. He was life-flighted to Hermann and admitted through the emergency room on the date of the accident, remaining hospitalized through November 27, 2003. \_\_\_\_ underwent a series of surgeries to reconstruct his leg and foot but his pain was so severe that he finally requested amputation. The amputation was performed. He was discharged on November 27, 2003.<sup>3</sup>

**Rosenberg's position and evidence.** Workers' compensation rules require that non-emergency inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay, be preauthorized.<sup>4</sup> Therefore, an emergency admission need not be preauthorized. The rules also provide that concurrent review must be sought for an extension for previously approved services, including length of inpatient stay.<sup>5</sup>

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

<sup>2</sup> Rosenberg does not dispute the necessity of paying for the first two days of care - \_\_\_\_\_, 2003. To the extent that the services provided on those days may have not been reimbursed, they shall be.

<sup>3</sup> Carrier's Exhibit 1 at 162-228. For an overview, *see id.* at 203-205 (discharge summary).

<sup>4</sup> 28 TEX. ADMIN. CODE § 134.600(p)(1).

<sup>5</sup> 28 TEX. ADMIN. CODE § 134.600(q)(1).

According to Rosenberg, Hermann should have sought pre-authorization for \_\_\_ continued care after the initial period of emergency treatment had passed.

Nick Tsourmas, M.D., testifying for Rosenberg based on his review of the records, stated that the first two days of treatment constituted emergency care for which no pre-authorization was required.<sup>6</sup> Medical personnel were too busy during that period, while the patient's life and limb were at risk, to worry about coordination of insurance benefits.

According to Dr. Tsourmas, however, by \_\_\_\_\_ - when the initial surgeries had been performed and the patient's leg was undergoing irrigation and debridement - \_\_\_life was no longer in jeopardy and the hospital should have contacted the carrier to obtain approval for continued services. Dr. Tsourmas stated that \_\_\_ leg was in jeopardy throughout the month of his hospitalization, but that serious jeopardy- when \_\_\_life was threatened - probably ended on the morning of \_\_\_\_\_. He agreed that the original admission to the hospital was an emergency, but testified that once \_\_\_. was stabilized on the \_\_\_ or \_\_\_\_\_, hospital personnel should have obtained concurrent review and pre-authorization. In Dr. Tsourmas's experience, hospitals routinely contact the carrier within a day or so following an emergency admission. That \_\_\_complained of severe pain throughout his hospital stay and eventually asked that the injured limb be amputated does not mean that the entire hospitalization constituted emergency care.

Marie Coleman also testified for Rosenberg. Ms. Coleman is a utilization review manager with Corvel Corporation. Ms. Coleman reviewed the records in connection with \_\_and could find no requests for pre-authorization or concurrent review for length of stay. There was no record of any phone calls, correspondence, or other communication from Hermann to Rosenberg or Corvel in connection with the extended hospital stay. She testified that usually, for a worker's compensation patient who has been admitted to the hospital on an emergency basis, the carrier is contacted within 24 hours (or two to three days at most) concerning the treatment.

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<sup>6</sup> The ALJ notes that part of Dr. Tsourmas's testimony was not captured on the tape recording of the hearing. His testimony was not long or complicated, however, and the ALJ's thorough hearing notes and recollection are sufficient to re-create all essential aspects of his testimony.

***Hermann's position.*** Hermann offered no evidence, but argued that all of the care provided to \_\_\_ during his stay constituted ongoing emergency care that did not require preauthorization under the applicable rules. The definition of an “emergency” under the rules is as follows:

Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

- (i) placing the patient's health or bodily functions in serious jeopardy, or
- (ii) serious dysfunction of any body organ or part.<sup>7</sup>

Hermann argues that \_\_\_ was suffering from severe pain and that his right legs, and therefore his health, were at serious risk up until the time of the amputation. According to Hermann, Rosenberg’s use of the testimony of Dr. Tsourmas and Ms. Coleman about 24-hour and one- to two-day standards is an attempt to write into the TWCC rules a definite standard that is not there.

***The MRD decision.*** The carrier denied reimbursement in part because of the lack of preauthorization.<sup>8</sup> Hermann requested medical dispute resolution. The MRD, in a decision dated April 4, 2005, ordered that Hermann be reimbursed in the amount of \$101,874.40.<sup>9</sup> The decision discussed the determination of the appropriate fair and reasonable reimbursement but did not address the preauthorization question.

***Analysis and conclusion.*** The ALJ agrees with Rosenberg that the care at issue, by \_\_\_, 2003, was not emergency care. The rules define a medical emergency as the “sudden onset” of a condition requiring immediate medical attention to preserve the patient’s health or body functions. While it is undisputed that \_\_\_leg was in jeopardy up until the amputation, the “sudden onset” component of his condition was no longer present after he had been hospitalized for two days. In other words, by \_\_\_\_\_ he had a very serious condition requiring ongoing medical care,

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<sup>7</sup> 28 TEX. ADMIN. CODE § 133.2(3).

<sup>8</sup> Carrier’s Exhibit 1 at 144-155.

<sup>9</sup> Carrier’s Exhibit 1 at 2-3.

but it was no longer of a “sudden” nature. The language of the rule does not specifically state that all resulting care arising from the emergency admission is also considered to be part of the emergency. Therefore, preauthorization or concurrent review of his continued care was necessary. Since Hermann did not seek such review, reimbursement is not warranted.<sup>10</sup>

## II. FINDINGS OF FACT

1. The City of Rosenberg was the employer of claimant \_\_ at the time of \_\_ work-related injury and was self-insured for workers’ compensation purposes.
2. \_\_\_\_ had an accident involving an asphalt machine on \_\_\_\_\_, and sustained a severe crush injury of the lower right extremity, with near-complete amputation, numerous fractures and burns, and considerable soft tissue loss.
3. On the same day, \_\_\_\_ was life-flighted to MHHS Hermann Hospital (Hermann) and admitted through the emergency room.
4. \_\_\_\_\_ remained hospitalized through November 27, 2003.
5. During his hospitalization, \_\_\_\_\_ underwent a series of surgeries to reconstruct his leg and foot, but his pain was so severe that he finally requested amputation, which was performed.
6. Rosenberg declined to pay for most of the hospital services in part because Hermann had not sought preauthorization or concurrent review for the services provided from \_\_\_\_\_, forward.
7. Hermann requested medical dispute resolution.
8. The Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (TWCC or Commission), in a decision dated April 4, 2005, ordered that Hermann be reimbursed in the amount of \$101,874.40. The decision discussed the determination of the appropriate fair and reasonable reimbursement but did not address the preauthorization question.
9. Rosenberg requested a hearing.

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<sup>10</sup> This result feels unsatisfactory because Dr. Tsourmas, testifying on behalf of Rosenberg, came very close to saying that the care was necessary. Dr. Tsourmas stated that \_\_ limb was in jeopardy throughout most of his hospitalization. It is undisputed that \_\_. was in severe pain. The record makes it obvious that he needed considerable highly skilled care. A carrier may only deny preauthorization based on medical necessity concerns. 28 TEX. ADMIN. CODE § 134.600(h). One could certainly imagine Rosenberg’s choosing to waive the preauthorization requirement after the fact for a patient with such dire injuries clearly needing so much medical attention. However, the ALJ does not believe the record is sufficient to support a finding that all aspects of the disputed care were clearly reasonable and necessary. Therefore, the ALJ must order no reimbursement.

10. Notice of the hearing was issued June 14, 2005.
11. 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.
12. The hearing was convened on April 26, 2006, before State Office of Administrative Hearings (SOAH) Judge Suzanne Form by Marshall. Steven Tipton appeared on behalf of Carrier; Bill Nelson appeared by telephone for Hermann. The hearing adjourned, and the record closed, the same day.
13. The care provided by Hermann to \_\_\_on \_\_\_\_, including \_\_hospital admission, was emergency care.
14. By \_\_\_\_, the care provided by Hermann to\_\_\_. was in the nature of ongoing care, but was not treatment of a condition of sudden onset.
15. By \_\_\_\_\_, the care provided by Hermann to \_\_\_\_\_. was no longer emergency care.
16. Hermann did not seek preauthorization or concurrent review for the services provided to \_\_\_\_\_.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
4. Rosenberg has the burden of proof in this matter. 28 TEX. ADMIN. CODE § 148.14; TEX. LABOR CODE § 413.031.
5. Workers' compensation rules require that non-emergency inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay, be preauthorized. 28 TEX. ADMIN. CODE §134.600(p)(1).
6. Concurrent review must be sought for an extension for previously approved services, including length of inpatient stay. 28 TEX. ADMIN. CODE § 134.600(q)(1).

7. For workers' compensation purposes, a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health or bodily functions in serious jeopardy, or serious dysfunction of any body organ or part. 28 TEX. ADMIN. CODE § 133.2(3).
8. Preauthorization or concurrent review was required for the services provided by Hermann to \_\_\_\_\_ from October 25 through November 27, 2003.

**ORDER**

**IT IS THEREFORE ORDERED** that the City of Rosenberg need not reimburse MHHS Hermann Hospital for the disputed services provided to claimant \_\_\_\_\_ from October 25 through November 27, 2003.<sup>11</sup>

**Signed June 26, 2006.**

\_\_\_\_\_  
**SUZANNE FORMBY MARSHALL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>11</sup> To the extent that the services provided by Hermann to \_\_\_\_\_ on \_\_\_\_\_, may not have been reimbursed, they shall be.