

**SOAH DOCKET NO. 453-05-9071.M2
TWCC NO. M2-05-1370-01**

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE
VS.		OF
DAVID B. GRAYBILL, D.O., Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) challenged the decision of the Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) granting preauthorization for an epidural steroid injection with flouroscopy and epidurogram under intravenous (IV) sedation prescribed by David B. Graybill, D.O. (Provider). In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of proving the requested services are not reasonable and necessary medical care that should be preauthorized. Therefore, the ALJ does not order preauthorization of the requested epidural steroid injection with flouroscopy and epidurogram under IV sedation.

The hearing convened and closed on December 5, 2005, before ALJ Steven M. Rivas. Carrier appeared and was represented by Dan Kelley, attorney. Provider did not appear and was not represented at the hearing.

I. DISCUSSION

1. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance, under 28 TAC § 134.600, preauthorization is required for the prescribed epidural steroid injection with flouroscopy and epidurogram under IV sedation.

2. Evidence and Analysis

The requested shoulder surgery should not be preauthorized based on the deemed admission of Provider that the requested epidural steroid injection with flouroscopy and epidurogram under IV sedation was not medically necessary. On August 26, 2005, Carrier propounded discovery on Provider, which included requests for admissions, interrogatories, and requests for production. Carrier's first request for admission called for Provider to admit that the request for an epidural steroid injection with flouroscopy and epidurogram under IV sedation is not medically necessary. Provider failed to respond to Carrier's discovery requests, including the foregoing request for admission. By failing to deny that the requested service was not medically necessary, Carrier moved for its admission.

The ALJ believes that Provider's failure to deny the requested admission and Provider's failure to appear at the hearing is sufficient ground to have the discovery request deemed admitted. Hence, by admitting the requested service was not medically necessary; the ALJ is compelled to hold in favor of the Carrier in this matter. Therefore, the ALJ finds that the requested epidural steroid injection with flouroscopy and epidurogram under IV sedation should not be preauthorized.

II. FINDINGS OF FACT

1. Claimant sustained a compensable back injury on ____.
2. Claimant was treated by David B. Graybill, D.O. (Provider) for her injury.

3. Provider sought preauthorization for epidural steroid injection with flouroscopy and epidurogram under intravenous (IV) sedation, which was denied by American Home Assurance Company (Carrier) as not medically necessary.
4. Provider sought medical dispute resolution with the Texas Workers' Compensation Commission's (the Commission) Medical Review Division, which ordered Carrier to preauthorize the epidural steroid injection with flouroscopy and epidurogram under IV sedation.
5. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
6. Notice of the hearing in this case was mailed to the parties on August 24, 2005. 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.
7. The hearing convened and closed on December 5, 2005, before ALJ Rivas. Carrier appeared and was represented by Dan Kelley, attorney. Provider did not appear. The hearing was adjourned and the record closed the same day.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* ("the Act").
2. SOAH has jurisdiction over 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Carrier, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE § 148.21(h).
5. Carrier has proven by a preponderance of the evidence that the requested epidural steroid injection with flouroscopy and epidurogram under IV sedation is not medically necessary under TEX. LAB. CODE ANN. § 408.021, *et seq.*
6. The epidural steroid injection with flouroscopy and epidurogram under IV sedation is not medically necessary pursuant to Provider's deemed admissions.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the epidural steroid injection with flouroscopy and epidurogram under IV sedation is denied.

SIGNED on December 14, 2005.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**