

**SOAH DOCKET NO. 453-05-1472.M4
TWCC MR NO. M4-04-9963-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

**POSITIVE PAIN MANAGEMENT,
Respondent**

§ **BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This unusual case concerns reimbursement for chronic pain management services provided the Claimant, ___, by the Respondent, Positive Pain Management (PPM). It is unusual because the only contested issue is whether the Petitioner, American Home Assurance Company (AHAC) properly filed a dispute with the Texas Workers' Compensation Commission (the Commission) over whether the services were related to the compensable injury. The Administrative Law Judge (ALJ) concludes the Commission's Medical Review Division (MRD) already determined that the dispute was not properly filed. He further concludes the State Office of Administrative Hearings (SOAH) has no jurisdiction over compensability issues. The only remaining issue is whether the services were medically necessary, which AHAC does not dispute and which in any event is shown by the evidentiary record. Therefore, AHAC is ordered to reimburse PPM for the disputed services, plus interest as applicable, as ordered by the MRD.

I. FACTUAL AND PROCEDURAL HISTORY

The Claimant incurred a compensable injury to his lower back on_____. PPM provided chronic pain management treatments for the Claimant's lower back from June 23, 2003, through August 19, 2003. AHAC denied reimbursement. The reasons for denial cited on the Explanations of Benefits (EOBs) were "V–Unnecessary medical per peer review" for June 23, 2003, and "E & I–Unrelated to compensable injury" for the remaining dates. Despite the "V" code used for June 23, AHAC does not contend the services were unnecessary.

PPM filed a timely request for medical dispute resolution.

The MRD acknowledged AHAC's contention that the services were related to an earlier fusion surgery rather than to the compensable injury. It found, however, that "the insurance company did not submit any convincing evidence with their response to indicate a TWCC-21 disputing the lumbar region was filed." Therefore, it found the services to have been medically necessary, and ordered reimbursement. AHAC filed a timely request for a hearing before SOAH.

After several continuances, the hearing was convened January 5, 2006. At that hearing, AHAC requested the matter be abated and remanded to the Texas Department of Insurance, Division of Workers' Compensation¹ for a benefits review conference. The ALJ granted that motion.

On November 15, 2006, AHAC filed a Motion for Summary Judgment. AHAC argued that the Commission's rules at the time in question did not require the filing of a TWCC-21 or any specific form and that the EOBs and the peer review that accompanied them expressed in plain language that AHAC was contesting the relationship of the treatment to the compensable injury. AHAC argued that because PPM had not shown a decision in its favor on the compensability issue, AHAC was entitled to summary judgment.

PPM responded that AHAC had requested a benefits review conference in accordance with the ALJ's order of abatement. However, AHAC did not pursue the issue when the benefits review conference was convened. PPM contended that AHAC, as the party seeking to overturn the MRD

¹ Most of the duties of the Texas Worker's Compensation Commission have been transferred to the Texas Department of Insurance, Division of Workers' Compensation.

decision, had the responsibility of pursuing the issue of whether the compensability issue had been properly raised.

In response to PPM, AHAC argued that although a workers' compensation carrier has the responsibility of raising a disputed issue when it denies reimbursement, the health care provider must ask for a hearing on that issue. PPM did not do so on the compensability issue. AHAC contended that although it ultimately asked for the benefits review conference in response to the ALJ's order, PPM had the burden of going forward on the issue at that conference.

In Order No. 7, on February 13, 2007, the ALJ admitted the various documents provided by the parties into evidence and ordered them to provide citations to the portions of the Texas Labor Code that supported their positions. The ALJ admitted additional documents into the record on March 26, 2007, and closed the record on April 4, 2007.

II. DISCUSSION

In its Findings and Decision, the MRD effectively ruled that the filing of a TWCC-21 was necessary to raise the compensability issue. By abating the case and requiring a benefits review conference, the ALJ allowed AHAC to challenge that ruling at the Division of Worker's Compensation. For whatever reason, that issue was not raised at the conference.

Except in limited circumstances that do not apply to this case, SOAH does not have jurisdiction to issue decisions on issues of compensability. TEX. LAB. CODE ANN. ch. 410. The MRD determined that AHAC did not properly raise the compensability issue under the Commission's rules. The services were medically necessary. Therefore, AHAC should be required to reimburse PPM for those services, plus interest as applicable.

III. FINDINGS OF FACT

1. Claimant ____ incurred a compensable injury to his lower back on ____.

2. Respondent Positive Pain Management (PPM) provided chronic pain management treatments for the Claimant's lower back from June 23, 2003, through August 19, 2003.
3. Petitioner American Home Assurance Company (AHAC) denied reimbursement for those services.
4. The reasons for denial cited on the Explanations of Benefits (EOBs) were "V–Unnecessary medical per peer review" for June 23, 2003, and "E & I–Unrelated to compensable injury" for the remaining dates.
5. Despite the "V" code used for June 23, AHAC does not contend the services were unnecessary.
6. PPM filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission.
7. The Commission's Medical Review Division (MRD) acknowledged AHAC's contention that the services were related to an earlier fusion surgery rather than to the compensable injury. It found, however, that "the insurance company did not submit any convincing evidence with their response to indicate a TWCC-21 disputing the lumbar region was filed."
8. The MRD found the services to have been medically necessary, and ordered reimbursement.
9. AHAC filed a timely request for a hearing before the State Office of Administrative hearings (SOAH).
10. Notice of the hearing was sent to the parties December 29, 2004.
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. After several continuances, the hearing was convened January 5, 2006. At that hearing, AHAC requested the matter be abated and remanded to the Texas Department of Insurance, Division of Workers' Compensation, the successor to the Commission, for a benefits review conference. The ALJ granted that motion.
13. AHAC requested a benefits review conference and one was convened. However, the issue of whether AHAC had properly contested whether the services were related to the compensable injury was not raised at the conference, which was adjourned without any decision.
14. In Order No. 7, on February 13, 2007, the ALJ admitted the various documents provided by the parties into evidence and ordered them to provide citations to the portions of the Texas

Labor Code that supported their positions. The ALJ admitted additional documents into the record on March 26, 2007, and closed the record on April 4, 2007.

15. In its Findings and Decision, the MRD effectively ruled that the filing of a TWCC-21 was necessary to raise the compensability issue.
16. In its Findings and Decision, the MRD determined that AHAC did not properly raise the compensability issue under the Commission's rules.
17. The disputed services were medically necessary.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over 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. Except in limited circumstances that do not apply to this case, SOAH does not have jurisdiction to issue decisions on issues of compensability. TEX. LAB. CODE ANN. ch. 410.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. Pursuant to its appeal of the MRD decision, AHAC has a right to a SOAH decision on the issue of medical necessity.
5. Under 28 TEX. ADMIN. CODE § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
6. AHAC should be required to reimburse PPM for the disputed services, plus interest as applicable.

ORDER

It is, therefore, ordered that American Home Assurance Company shall reimburse Positive Pain Management for the services in dispute in this proceeding, plus interest as applicable.

SIGNED July 19, 2007.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

