

**SOAH DOCKET NO. 454-08-1436.M5
MR NO. M5-07-10296-01**

NORTH TEXAS REHABILITATION CENTER, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
LIBERTY MUTUAL INSURANCE CO., Respondent		

DECISION AND ORDER

On April 11, 2008, before the scheduled hearing in this case, Respondent Liberty Mutual Insurance Company (LMIC) filed its Motion to Dismiss for Lack of Jurisdiction. The Administrative Law Judge (ALJ) concludes that motion should be granted, this case should be dismissed with prejudice from the docket of the State Office of Administrative Hearings (SOAH) and the hearing on the merits should be canceled.

I. PROCEDURAL HISTORY

This case was referred to SOAH on January 15, 2008, and initially set for a hearing to be held on February 27, 2008. The hearing was continued to April 16, 2008. On April 11, 2008, LMIC filed its motion to dismiss. Because of a family emergency affecting North Texas Rehabilitation Center's (NTRC's) representative, the hearing was again continued, to a date to be determined. The hearing date ultimately was set at October 9, 2008.

In the second order of continuance, the ALJ established a deadline of May 22, 2008, for NTRC to respond to the motion to dismiss. He later extended that deadline to September 5, 2008. No response was filed. In Order No. 5, which set the most recent hearing date, the ALJ admitted into evidence Exhibits A and B, which were attached to LMIC's motion.

II. DISCUSSION

LMIC Exhibit A is the Independent Review Organization (IRO) decision at issue in this case. That decision was issued and sent to the parties on November 7, 2007. NTRC received the decision on that date, as shown by the fax stamp on the copy of the decision it filed with SOAH and by 28 TEX. ADMIN. CODE (TAC) § 102.5(d). That rule states:

For 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 a carrier's Austin representative box; or the date faxed or electronically transmitted

LMIC Exhibit B is NTRC's appeal and request for a SOAH hearing regarding that decision. That request was filed December 12, 2007.

Under 28 TEX. ADMIN. CODE (TAC) § 148.3(a)(2), the deadline for NTRC to file its appeal of the IRO decision was twenty days after receipt of that decision, which was November 27, 2007. The request for hearing was filed after that date. Therefore, as argued by LMIC, this case should be dismissed pursuant to 1 TAC §155.56(b) (2).

III. FINDINGS OF FACT

1. The Independent Review Organization (IRO) decision at issue in this case was issued and sent to the parties November 7, 2007.
2. North Texas Rehabilitation Center (NTRC) received the IRO decision on November 7, 2007.
3. NTRC's appeal and request for a SOAH hearing regarding that decision was filed December 12, 2007.

IV. CONCLUSIONS OF LAW

1. Under 28 TEX. ADMIN. CODE (TAC) § 148.3(a) (2), the deadline for NTRC to file its appeal of the IRO decision was November 27, 2007.
2. NTRC's appeal was not timely filed.
3. This case should be dismissed pursuant to 1 TAC §155.56(b) (2).

ORDER

North Texas Rehabilitation Center's request for hearing is dismissed with prejudice pursuant to 1 TEX. ADMIN. CODE §155.56(b) (2). The hearing on the merits, previously set for October 9, 2008, is canceled.

SIGNED October 2, 2008.

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