

APPEAL NO. 052063-s

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 8, 2005. The hearing officer resolved the disputed issue by deciding that the Independent Review Organization's (IRO) decision is supported by a preponderance of the evidence. The appellant (self-insured) appealed, arguing that the IRO decision was fundamentally flawed because it was labeled a "prospective" decision but the respondent's (claimant) surgery took place prior to the Medical Dispute Resolution Request submitted by the claimant. The claimant responded, urging affirmance of the decision and order. The self-insured subsequently filed a response to the claimant's response. There being no provision for a reply to a response to a request for review, the additional filing will not be considered. See Sections 410.202 and 410.203(a).

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The following facts were undisputed: March 8, 2005, the self-insured denied a request for preauthorization of the claimant's proposed spinal surgery; March 16, 2005, the claimant had spinal surgery; March 17, 2005, the self-insured denied the reconsideration request for the claimant's spinal surgery and an IRO decision dated July 1, 2005, recommended approval of the spinal surgical procedure.

The decision and order listed the issue for the CCH as "[w]hether the [IRO's] decision is supported by a preponderance of the evidence?" The parties agreed that was the issue in dispute. However, the self-insured contended at the CCH that the true nature of the dispute was a fee reimbursement dispute and that it was inappropriate to appoint an IRO because the claimant had already had spinal surgery. The self-insured contends on appeal that this was not a prospective necessity dispute but rather was a reimbursement dispute and any appeal should be to the State Office of Administrative Hearings (SOAH). The parties actually litigated an additional issue in this case: whether the appointment of the IRO in this case was still part of the preauthorization process despite the fact that the claimant's spinal surgery had already been performed. The hearing officer failed to address this issue.

Section 413.014 provides that the Texas Department of Insurance, Division of Workers' Compensation (Division) by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier and specifically provides that Division rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for spinal surgery, as provided by Section 408.026. 28 TEX. ADMIN. CODE § 134.600(a)(5) (Rule 134.600(a)(5)) defines preauthorization as prospective approval obtained from the insurance carrier by the requestor or injured employee prior to

providing health care treatment or services. Rule 134.600(b)(1) provides in part that the carrier is liable for all reasonable and necessary medical costs relating to the health care listed in subsection (h) or (i) of this section, only when the following situations occur: an emergency, as defined in Rule 133.1 of this title; preauthorization of any health care listed in subsection (h) of this section was approved prior to providing the health care; or when ordered by the Division. Rule 134.600(h)(3) provides that the non-emergency health care requiring preauthorization includes spinal surgery as provided by Texas Labor Code Section 408.026.

Rule 133.305(3) defines prospective necessity disputes as involving a review of the medical necessity of health care requiring preauthorization or concurrent review. It further provides that the dispute is reviewed by an IRO pursuant to Division rules including Rule 133.308. Rule 133.308(u) provides in part that, “[e]xcept with respect to a prospective necessity dispute regarding spinal surgery, a party to a prospective or retrospective necessity dispute may appeal the IRO decision by filing a written request for a SOAH hearing.” Rule 133.308(v) provides that a party to a prospective necessity dispute regarding spinal surgery may appeal the IRO decision by requesting a CCH.

The initial request for preauthorization of the spinal surgery of the claimant was made prior to surgery. However, prior to receiving the response for the reconsideration of the first denial, the surgery was performed. The claimant did not follow the steps provided in the applicable Rules and statutory provisions to obtain preauthorization or Division approval for surgery prior to receiving the spinal surgery. The dispute ceased being a prospective necessity dispute when the claimant received the surgery. The surgery was performed prior to requesting an IRO decision. The IRO decision was not a prospective review. Therefore, we reverse the hearing officer’s determination that the IRO was supported by a preponderance of the evidence, and render a decision that the hearing officer was without authority to rule on the issue of whether the IRO was supported by a preponderance of the evidence when there was no longer a preauthorization issue on spinal surgery to be decided because spinal surgery had already occurred.

The true corporate name of the insurance carrier is **CITY OF HOUSTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**ANNA RUSSELL, CITY SECRETARY
900 BAGBY
HOUSTON, TEXAS 77002.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge