

**SOAH DOCKET NO. 453-04-2851.M5
[TWCC MDR NO. M5-03-3021-01]**

STEPHEN DUDAS, D.C.,	‘	BEFORE THE STATE OFFICE
Petitioner	‘	
	‘	
V.	‘	
	‘	OF
UNIVERSITY OF TEXAS SYSTEM,	‘	
Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Stephen Dudas, D.C., (Petitioner) appealed the decision of the Texas Workers’ Compensation Commission’s Medical Review Division (MRD), which found that a nerve conduction velocity (NCV) test billed by Dr. Dudas to the University of Texas System (Respondent) was not reimbursable. MRD noted that the interpretation listed Roger S. Blaire, M.D., as the reviewing physician, not Dr. Dudas. In accordance with 28 TEX. ADMIN. CODE § 134.1(b), MRD found that a health care provider cannot bill for services he did not perform, and therefore, Petitioner is not entitled to reimbursement. After considering the evidence presented, the ALJ concludes that Petitioner did not show he is entitled to reimbursement. Therefore, his request for reimbursement is denied.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set out only in the Findings of Fact and Conclusions of Law below.

The hearing in this matter convened on July 1, 2004, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Tommy L. Broyles. Attorney Mark de Lemos represented Respondent. Petitioner appeared pro se. The record remained open until July 14, 2004, so that Petitioner could submit additional information.

II. DISCUSSION

On March 21, 2003, Petitioner performed an NCV test on claimant. The results were interpreted by Dr. Blaire, who worked for Petitioner as an independent contractor. The entire procedure was billed by Petitioner. Respondent declined payment noting that the health care provider who performed the services must also bill for the services.

During the hearing, Dr. Dudas testified that he performed the actual procedure or technical component, while Dr. Blaire read the results, referred to as the professional component. By contract, Dr. Blaire received \$50 per interpretation that he performed for Dr. Dudas. In turn, Dr. Dudas sought to collect from Respondent. Dr. Dudas argues that he was acting as a billing service and should be allowed to collect the total amount sought.

Commission rules at 28 TEX. ADMIN. CODE ' 134.801(e) require the health care provider who provided the services to submit his or her own bill. Moreover, ' 134.801(f) specifically prohibits a health care provider from submitting a bill for treatment he or she did not provide. In accordance with these rules, the ALJ finds that Dr. Dudas may not bill for the work performed by Dr. Blaire.

Based upon Dr. Dudas' representation that he performed the technical part of the procedure, the ALJ reviewed the CPT codes in an effort to separate out the technical component from the professional. However, the codes did not indicate such a separation, at least that the ALJ could find. The burden of proof in this case was on Petitioner. Given Petitioner's failure to establish the amount of reimbursement he is due for performing the technical component, no reimbursement is awarded.

III. FINDINGS OF FACT

1. On ____, Claimant sustained an injury to his right shoulder, neck and foot that was compensable under the Texas Workers' Compensation Act.
2. At the time of the compensable injury, the University of Texas System (Respondent), Claimant's employer, was self-insured for workers' compensation insurance coverage.

3. On March 21, 2002, an NCV was performed by Stephen Dudas, D.C., (Petitioner) and interpreted by Roger S. Blair, M.D.
4. Provider billed Respondent for the NCV, including the portion performed by Dr. Blair.
5. Respondent denied Petitioner's request for reimbursement for the NCV, noting that the professional component was not performed by the billing doctor, resulting in pass through billing.
6. Provider appealed the denial to the Commission's Independent Review Organization (IRO).
7. The IRO's decision upheld Respondent's denial of reimbursement on the basis that pass through billing is not allowed by Commission rule.
8. Petitioner timely appealed the IRO decision.
9. The Commission's notice of hearing stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.
10. Petitioner and Respondent participated in the hearing.
11. Petitioner's billing for the medical services performed by Dr. Blaire was pass through billing and not akin to the services provided by a billing service.

IV. CONCLUSIONS OF LAW

12. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB CODE ANN. ' 413.031.
13. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
14. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE ' 133.308.
15. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT. CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE ' 133.308(u).

16. Adequate and timely notice of the hearing was provided in accordance with TEX. GOVT. CODE ANN. ' ' 2001.051 and 2001.052.
17. Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE ' ' 148.21(h) and (i); 1 TEX. ADMIN. CODE ' 155.41.
18. The pass through billing, detailed in the above Findings of Fact, is not allowed by the Commission ' s rules. 28 TEX. ADMIN. CODE ' 134.801(e) and (f).
19. Petitioner is not entitled to reimbursement from Respondent for the NCV performed on claimant on March 21, 2002.

ORDER

It is ORDERED that Stephen Dudas not be reimbursed by the University of Texas System for the NCV performed on claimant on March 21, 2002.

SIGNED August 25, 2004.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**