

_____	:	BEFORE THE STATE OFFICE
Petitioner	:	
	:	
V.	:	OF
	:	
TPCIGA FOR RELIANCE NATIONAL INDEMNITY COMPANY, AN IMPAIRED COMPANY,	:	ADMINISTRATIVE HEARINGS
Respondent	:	

DECISION AND ORDER

_____, Claimant, requested a hearing following the issuance of a January 13, 2004, decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying her request for reimbursement from Respondent for prescriptions. This Decision and Order finds that \$1,348.92 of the disputed prescriptions were actually purchased by her and were prescribed for conditions related to her compensable injury, and orders the Texas Property and Casualty Insurance Guaranty Association (TPCIGA) to reimburse that amount.

I. DISCUSSION

A. Procedural History

The Medical Review Division of the Commission issued its decision January 13, 2004, determining that Claimant was not entitled to reimbursement. Petitioner requested a hearing. After a continuance of the first setting, the hearing was convened on July 13, 2004, before the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Charles Homer III. Claimant appeared by telephone and was assisted by Juan Mireles, Ombudsman with the Commission.

TPCIGA, for Reliance National Indemnity Company, an Impaired Company (Carrier), appeared through its attorney, Steven M. Tipton. The hearing adjourned and the record closed on the same day. Except as discussed below regarding Carrier's Motion to Dismiss, there were no issues

raised concerning notice and jurisdiction, and those matters are set forth in Findings of Fact and Conclusions of Law.

2. The Disputed Charges and the MRD Decision

Since suffering a compensable injury on _____, _____ has remained under medical care.¹ Care has, in recent years, consisted of several prescription medications for chronic back pain,² charges for which were paid by Carrier's predecessor before its impairment. Either the predecessor or Carrier ceased reimbursing Claimant's dispensing pharmacy for some or all of those prescription drugs before January 2002. Claimant continued to buy them, and testified that she paid for them herself. In January 2003 she filed a claim for reimbursement with the Carrier and appealed its denial to the MRD. Claimant testified that she accompanied her request for review with appropriate receipts, although she does not make that claim about prescriptions. The MRD, however, found that Claimant had submitted only a "prescription profile" from her pharmacy, and that there were no prescriptions or medical documentation in the MRD's file specifying which medications were in dispute and the reason they were prescribed. MRD issued its decision determining that she was not entitled to reimbursement for any amount.³

II. CARRIER'S MOTION TO DISMISS

Carrier urges that Claimant failed to invoke the authority of the MRD or SOAH because she failed to provide proper documentation of her claim for reimbursement. SOAH Rule 155.56 limits the grounds for dismissal to the five listed there. Of those, only lack of jurisdiction could apply here. TEXAS LABOR CODE ANN. 413.031(k) provides;⁴

¹ Pet. Exh. 1. pp. 24, 26, 27, 31, 54.

² *Id.*, p. 54.

³ *Id.*, p. 2.

⁴ TEXAS LABOR CODE ANN. ' 413.031(a) reads as follows: AA party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is: (1) denied payment or paid a reduced amount for the medical service rendered Claimant's dispensing pharmacy was denied reimbursement for prescriptions that Carrier=s predecessor had previously paid for. Claimant's request for review was, therefore, properly before the MRD.

Except as provided by Subsection (l) [concerning spinal surgery], a party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings within 90 days of receipt of a request for a hearing in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law).

The statute confers jurisdiction on SOAH to hear appeals of ' 413.013 medical disputes that are unresolved after a review of the medical service. Carrier argues that because there was no IRO review, there is nothing to appeal under 28 TEX. ADMIN. CODE (TAC) ' 133.304(u). But IRO review is not required for an employee reimbursement dispute.⁵ Further, in this case the MRD issued a decision reciting that the MRD conducted a review of a medical fee dispute between Claimant and Carrier, and determined it adversely to Claimant because it found her documentation to be insufficient. Claimant may request a hearing on that decision, as she did.⁶ The Commission then issued a notice of hearing reflecting that SOAH would hear the matter, as provided by TEXAS LABOR CODE ANN. 413.031(k). Therefore, SOAH has jurisdiction to decide this case.

Carrier also urges that dismissal is appropriate because Claimant failed to comply with TWCC rules concerning submissions of requests for dispute resolution. As authority, it cites several provisions of the TAC: 28 TAC ' 133.307(m)(3), (5), and (6); 28 TAC 133.308(i)(3), (5), (7) and (8). All of these provisions, however, state only that the Commission may dismiss a case. However, the Commission did not dismiss this case, but rather referred this case to SOAH, which it had the authority to do.⁷ Accordingly, Carrier's motion to dismiss is denied.

⁵ 28 TAC ' 133.307.

⁶ TEX. LABOR CODE ANN. 413.031(k).

⁷ *Id.*

III. ANALYSIS, EVIDENCE, AND CONCLUSION

A. Analysis

The MRD decided Claimant's request for review on the basis that Claimant's documentation of her claim for reimbursement was insufficient. The Commission has defined a "medical fee dispute" to include "an employee dispute of a carrier reduction or denial of a request for reimbursement of health care charges paid by the employee (employee reimbursement dispute)[.]"^{8,9} That is exactly what this case presents, so this appeal is concerned only with whether the record before SOAH is sufficient to support her claim by a preponderance of the evidence.¹⁰ That is, Claimant must show that the medications for which she seeks compensation were prescribed for her compensable injury by a physician, and that she paid for them herself. Claimant's evidence demonstrates those facts with regard to Oxycontin, carisoprodol, and amytriptiline, so the ALJ concludes that Carrier should reimburse Claimant \$1,348.92 for charges for those drugs. Claimant's evidence did not prove that the prescription charges for bumetanide and Accupril were related to her compensable injury, and reimbursement is denied for them.

B. Description of the Evidence

_____ testified that she paid for the prescriptions identified with a "Cash" notation on the billing form, and spoke concerning her transactions with the pharmacy from which she says she bought the prescriptions. She testified that the Carrier or its predecessor stopped reimbursing her dispensing pharmacy and was unresponsive to calls and mail to various locations in Houston, Dallas, San Antonio, and Austin. She described the conditions or symptoms that each prescription was

⁸ 28 TAC ' 133.305(a)(2)(B).

⁹ ALJ's Exh. 1, p. 6. Under Rationale, the MRD stated that Claimant (requestor at the MRD) did not provide prescriptions and/or medical documentation to specify which medications were in dispute and the reason they were prescribed. The TWCC 60, table of disputed services, did not clearly identify the specific items in dispute as required by [28] TAC ['] 133.307(d)(2)(C). Its decision stated that Based on the review of the disputed healthcare services within this request, the Division has determined that the requestor is not entitled to reimbursement (ALJ Exh. 1, p. 6) After disposition of Carrier's Motion to Dismiss, that decision is the only issue remaining in this appeal.

¹⁰ 1 TAC ' 155.41.

intended to treat. Specifically, Claimant testified that each of the following medications was prescribed by her treating physician for conditions arising from her compensable injury, and that during 2002 she paid out of her pocket the amounts shown for each:

- § Oxycontin for pain - \$1,107.78;
- § Bumetanide (a diuretic) for swelling - \$56.97;
- § Carisoprodol (Soma) for muscle spasms - \$196.17;
- § Amitriptyline (Elavil) for sleep - \$44.97;
- § Accupril for hypertension - \$41.99.

Regarding the Accupril, Claimant stated that she never had hypertension before the compensable injury. Claimant stated that in each case, she paid out of her pocket, by cash or check, the amount shown in the pharmacy prescription profile entries that are marked "CASH," and that she did submit receipts to Carrier or its predecessor.

Claimant's evidence includes evaluations and correspondence by the following doctors dating from 1993 to 2004:

- § A.C. Paproski, M.D.
- § Beverly Walker, M.D.
- § Donald Kramer, M.D.
- § Eric Scheffey, M.D.
- § Saeed Kahkeshani, M.D.
- § David J. MacDougall, D.O.

In particular, Claimant referenced correspondence from her treating physician, Dr. Paproski, that reflects the doctor's opinion that Claimant suffers from chronic back pain and needs the medications he prescribed.

The Carrier offered no evidence except by cross-examination of Claimant.

The record in this case is sketchy, and the ALJ understands Carrier's reluctance to pay on the documentation presented to it. However, it is undisputed that Claimant's troubles with payment did not arise until Carrier's predecessor (Reliance National Indemnity Company) became impaired, and

that when Reliance was failing, it ceased communicating with Claimant and, so far as this case is concerned, with TWCC as well. Thus, the documentary deficiencies cannot entirely be attributed to Claimant. In fact, it appears that the disputed medications had been prescribed for Claimant and paid for by Reliance for years, and that only Reliance's difficulties caused this dispute.

The evidence shows that Dr. Paproski has treated Claimant's compensable injury for years and that he prescribed Oxycontin, carisoprodol, and amitriptyline respectively for her chronic pain, muscle spasms, and sleep disorder, and that each of these conditions is more likely than not related to her compensable injury. Lacking a specific record or testimony from a physician about how hypertension and edema are related to a back injury, the ALJ cannot find that charges for medications for those conditions should be paid by Carrier.

IV. FINDINGS OF FACT

1. Claimant, _____, suffered a compensable injury on _____.
2. TPCIGA, for Reliance National Indemnity Company, an Impaired Company, (Carrier) is the workers' compensation insurer with respect to the claims at issue in this case.
3. During 2002, Claimant paid the following amounts for prescriptions:
 - Oxycontin for pain - \$1,107.78;
 - Bumetanide (a diuretic) for swelling - \$56.97;
 - Carisoprodol (Soma) for muscle spasms - \$196.17;
 - Amitriptyline (Elavil) for sleep and nerve damage - \$44.97;
 - Accupril for hypertension - \$41.99.
4. Carrier declined to reimburse Claimant for charges for the prescriptions reflected in Finding of Fact No. 3.
5. Claimant's treating physician, A. C. Paproski, M.D., prescribed each of the medications listed in Finding of Fact No. 3.
6. Dr. Paproski treated Claimant's compensable injury for years before 2002.
7. When Reliance National Indemnity Company (Reliance) was failing, it ceased communicating with Claimant and her dispensing pharmacy.
8. The disputed medications had been prescribed for Claimant and paid for by Reliance for years

9. Dr. Paproski prescribed Oxycontin, carisoprodol, and amytriptiline for Claimant's chronic pain, muscle spasms, and sleeplessness arising from her compensable injury.
10. Claimant paid \$1,348.92 of her own money for the three medications listed in Finding of Fact No. 6.
11. Accupril and Bumetanide were not prescribed for Claimant's compensable injury.
12. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its decision January 13, 2004, finding that Claimant was not entitled to reimbursement for the prescriptions described in Finding of Fact No. 3.
13. On January 19, 2004, Claimant requested a hearing, and the Commission issued a notice of hearing at the State Office of Administrative Hearings February 23, 2004.
14. 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.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
2. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. TEX. LAB. CODE § 408.021.
3. Claimant timely filed a request for hearing as specified in 28 Texas Administrative Code § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE §§2001.051 and 2001.052.
5. Claimant has the burden of proof in this matter. 1 TEX. ADMIN. CODE (TAC) ' 155.141 and 28 TAC §148.21(h).
6. Based on the Findings of Fact and foregoing Conclusions of Law, and pursuant to § 408.021 of the Texas Labor Code, Carrier must reimburse Claimant \$1,348.92 for Oxycontin, carisoprodol, and amytriptiline purchased by her in 2002.

ORDER

IT IS THEREFORE ORDERED that Texas Property and Casualty Insurance Guaranty Association, for Reliance National Indemnity Company, an Impaired Company, reimburse _____, Claimant, \$1,348.92.

SIGNED September 13, 2004.

**CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**