

SOAH DOCKET NO. 453-04-3588.M4R

AMERICAN HOME ASSURANCE COMPANY,	§	BEFORE THE
Petitioner	§	
vs.	§	
LORRAINE M. RUDDER, M.D.	§	STATE OFFICE OF
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) appealed a Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) order denying its request for a refund of a claim it paid to Lorraine M. Rudder, M.D. (Provider). MRD concluded that Carrier waived its right to reimbursement because it did not request a refund from Provider within the 45-day deadline stated in the Commission's rules at 133.304(b)(3). This decision concludes that Carrier's refund request should be granted because it is not precluded by the 45-day deadline in this case.

I. PROCEDURAL HISTORY

A hearing was convened on April 22, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier was represented by Dan Kelley, attorney. Provider did not appear.

II. DISCUSSION

A. Background

This is a simple case where Carrier is seeking a refund from provider in the amount of \$32.00 for a December 18, 2002, date of service. Carrier's original review was January 20, 2003, and payment was made to Provider on January 22, 2003. Carrier submitted an appeal panel decision dated February 6, 2003, and the appeals judge ruled that Carrier was not liable. Carrier requested a refund on June 26, 2003. The only legal issue is whether Carrier is precluded by Rule 133.304 (a) and (b)(3) from requesting a refund approximately seven months after the receipt of the bill from Provider.

B. Analysis

This decision concludes that Provider should be ordered to repay Carrier \$32.00 based on evidence in this case. While Rule 133.304 (a) generally provides that an insurance carrier shall take final action on a medical bill not later than the 45th day after the date the insurance carrier received a

complete bill, a close analysis of the rule, in conjunction with the preamble to the rule, indicates it does not apply in this case. Specifically, the preamble to the rules adopted on March 13, 2000, states in relevant part that:

If an insurance carrier pays a medical bill for services that are finally adjudicated to be not compensable, the insurance carrier may pursue refund from the health care provider, and the refund request is then outside the scope of the time frames in Section 133.304 governing refund requests because this rule only applies to compensable injuries and illnesses.

25 TexReg 2123 (2000).

Although the ALJ thinks disputes such as this could be avoided if this language was included in the rule rather than in a preamble, there is no question from the preamble language that non-compensable injuries are not covered by the 45-day limitation period discussed in 133.304. Consequently, Provider should reimburse Carrier \$32.00 plus interest.

III. FINDINGS OF FACT

1. On January 20, 2003, American Home Assurance Company (Carrier) received a bill for the date of service December 18, 2003 from Loraine M. Rudder, M.D. (Provider).
2. Provider charged \$32.00 for that date of service.
3. On January 22, 2003, Carrier paid Provider this \$32.00.
4. Carrier submitted an appeals panel decision dated February 6, 2003, and the appeals judges ruled that Carrier was not liable for this service.
5. The Texas Workers' Compensation Commission Medical Review Division (MRD) ruled against Carrier because it did not request a refund from Provider within 45 days of receiving a complete medical bill.
6. Carrier requested a hearing not later than the twentieth day after receiving notice of the MRD decision.
7. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
8. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

IV. 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 ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. The Labor Code does not provide that Carrier waives its right to refund by not requesting a refund from Provider within 45 days of receiving a complete medical bill.
4. The Commission's rules do not provide that Carrier waives its right to a refund by not requesting the refund from Provider within 45 days from receiving a complete medical bill when the services provided did not treat a compensable injury.
5. Provider should pay Carrier \$32.00, plus interest. 28 TEX. ADMIN. CODE § 133.304(r).

ORDER

IT IS THEREFORE ORDERED that Lorraine M. Rudder, M.D. pay American Home Assurance Company \$32.00 plus interest.

SIGNED April 23, 2004.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS