

**SOAH DOCKET NO. 453-04-5762.M4  
TWCC MR NO. M4-03-7489-01**

<b>STUART J. NATHAN, Ph.D.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>vs.</b>	§	<b>OF</b>
	§	
<b>ACE INSURANCE COMPANY OF TEXAS</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue involved is whether Ace Insurance Company of Texas (Carrier) correctly denied payment of \$270 billed by Stuart J. Nathan, Ph.D., (Provider) for a psychological diagnostic interview provided to an injured worker (Claimant) on June 4, 2002. Carrier denied reimbursement because Provider did not obtain preauthorization. Prior to the hearing, Provider contended preauthorization was not necessary. At the hearing, Provider asserted that it had obtained preauthorization. The Administrative Law Judge (ALJ) finds Provider failed to secure preauthorization, as required.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On October 12, 2004, ALJ Georgie B. Cunningham conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney John D. Pringle represented Carrier, and Office Manager Pamela Jones represented Provider. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the hearing on October 12, 2004, following the presentation of evidence.

**II. DISCUSSION**

At the hearing, Carrier presented the telephonic testimony of Dr. Jenny Murray, a psychiatrist. Ms. Jones testified for Provider. Both parties presented documentary evidence. According to the documentary evidence, Claimant had a compensable back injury on \_\_\_\_\_. Although Claimant reached statutory MMI with a 26 percent whole-body impairment on August 31, 1999, he continued to suffer from chronic pain, depression, and other problems. During the spring of 2002, Claimant was referred by his treating doctor, John Randolph, D.C., to Provider to determine whether psychological services were appropriate. At issue here is Provider's claim for the psychological diagnostic interview conducted on June 4, 2002.

Initially, Provider asserted preauthorization was not necessary. Then Provider contended it had obtained preauthorization from the Carrier. First, the ALJ finds that the Commission has established that preauthorization is required for repeated psychological tests and interviews, as set forth in 28 TEX. ADMIN. CODE § 134.600(h) (4). Dr. Murray had reviewed the medical records and testified that Claimant had been under the care of a psychiatrist for approximately two years, had been tested previously, and had been taking several different psychotropic drugs. Provider did not offer evidence to refute the testimony.

In support of its contention that it had obtained preauthorization, Ms. Jones pointed to her handwritten note dated June 24, 2002. The ALJ finds that this note does not substantiate the assertion that Provider had secured preauthorization. First, in its rule at 28 TEX. ADMIN. CODE § 134.600(a) (5), the Commission defines *preauthorization* as prospective approval obtained from the Carrier. A provider's handwritten note made twenty days after a service is provided does not meet the test for preauthorization. Furthermore, this note appeared to address a treatment or service other than the testing. Thus, the ALJ concludes that Provider failed to show by a preponderance of the evidence that it is entitled to reimbursement by the Carrier for the June 4, 2002 psychological diagnostic interview.

### III. FINDINGS OF FACT

1. On \_\_\_\_, Claimant suffered a compensable workers' compensation injury to his back.
2. Provider Stuart J. Nathan, Ph.D., evaluated Claimant on June 4, 2002, to determine whether psychological services were appropriate.
3. Ace Insurance Company of Texas (Carrier) denied reimbursement of \$270 for Provider's psychological diagnostic interview conducted on June 4, 2002.
4. Provider requested medical dispute resolution based on Carrier's denial.
5. On April 15, 2004, the Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its decision that Provider had not prevailed on its claim for reimbursement because it had not secured the required preauthorization.
6. On April 22, 2004, Provider requested a hearing on this matter before the State Office of Administrative Hearings (SOAH).
7. On May 27, 2004, the Commission sent a hearing notice advising the parties of the matters to be determined; the right to appear and be represented by counsel; the date, time, and place of the hearing; and the statutes and rules involved.
8. Both Provider and Carrier were represented at the hearing conducted on October 12, 2004.
9. On August 31, 1999, Claimant reached statutory MMI with a 26 percent whole-body impairment.
10. Claimant continued to suffer from chronic pain, depression, and other problems after reaching MMI.
11. As of June 1, 2002, Claimant had received extensive medical treatment including multiple surgeries following his injury.
12. As of June 1, 2002, Claimant had been under the care of a psychiatrist for approximately two years, had been evaluated previously, and had been taking several different psychotropic drugs.

13. During the spring of 2002, Claimant's treating doctor referred him to Provider for the evaluation to determine whether psychological services were appropriate.
14. On June 24, 2002, Provider contacted Carrier to secure preauthorization of treatment under CPT Code 90844.
15. Provider billed its diagnostic evaluation of Claimant under CPT Code 90801.
16. A psychologist may use CPT Code 90801 to bill for psychological testing.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
2. Provider had the burden of proving it was entitled to reimbursement for the claim, pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.21(h) and (I).
3. As specified in 28 TAC § 134.600(h) (4), preauthorization was required for repeated psychological testing and interviews.
4. According to 28 TAC § 134.600(a) (5), preauthorization requires prospective approval from a carrier.
5. Based on the findings of fact, Provider failed to show it had secured preauthorization from the Carrier for the psychological testing provided Claimant on June 4, 2002, as required by 28 TAC § 134.600(h)(4).

#### **ORDER**

IT IS, THEREFORE, ORDERED that Provider Stuart J. Nathan, Ph.D., is not entitled to reimbursement from Ace Insurance Company of Texas for the psychological testing conducted on June 4, 2002.

**SIGNED December 13, 2004.**

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**GEORGIE B. CUNNINGHAM  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**