

____, § BEFORE THE STATE OFFICE
Petitioner §
V. §
AMERICAN HOME ASSURANCE § OF
COMPANY, §
Respondent § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

____¹ contested a Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) decision, dismissing her request for medical dispute resolution because ____ failed to comply with a Commission rule requiring that she file her request within 45 days after the insurance carrier denied approval of her request for reconsideration of the treatment.² The Administrative Law Judge (ALJ) concludes that MRD had authority to dismiss the case and that the case should be dismissed.

I. PROCEDURAL HISTORY

A hearing convened and closed in this case on February 18, 2005, before the undersigned ALJ at the State Office of Administrative Hearings, Austin, Texas. ____ appeared and represented herself. American Home Assurance Company (American Home) appeared and was represented by Dan C. Kelley, Attorney. The ALJ previously issued a conditional order dismissing this case when ____ failed to appear at a hearing that convened on November 29, 2004. However, the conditional dismissal was set aside for good cause, and the hearing was reset for February 18, 2005. There were no objections to notice or jurisdiction.

II. DISCUSSION

MRD issued an order dated September 30, 2004, dismissing the medical dispute resolution request based on the Commission's rules at 28 TEX. ADMIN. CODE (TAC) § 133.308(e)(2),³ which provide the following:

1 For privacy reasons, the Claimant's initials are used.

2 ____ requested preauthorization of an anterior/posterior lumbar fusion procedure (treatment).

3 In its order, MRD misstated the rule number as 133.308(c)(2).

(5) Timeliness. A person or entity who fails to timely file a request waives the right to independent review or medical dispute resolution. The commission shall deem a request to be filed on the date the division receives the request, and timeliness shall be determined as follows:

...

(2) A request for prospective necessity dispute resolution shall be considered timely if it is filed with the division no later than the 45th day after the date the carrier denied approval of the party's request for reconsideration of denial of health care that requires preauthorization or concurrent review pursuant to the provisions of § 134.600.

MRD also cited 28 TAC § 133.308(i), which provides the following:

(1) Dismissal. A dismissal does not constitute a decision. The commission may dismiss a request for medical necessity dispute resolution if:

(1) The request for dispute resolution is untimely.

(2) The commission determines that good cause exists to dismiss the request.

In its decision, MRD stated that the date American Home denied ___'s request for reconsideration of the treatment was July 27, 2004, and the medical dispute resolution request was received by the Commission on September 16, 2004. The ALJ took official notice of the order.

___ did not dispute the dates stated in the MRD order and presented no evidence to the contrary. On that basis, the ALJ concludes that ___ failed to prove that MRD did not have authority to dismiss the case. This case should therefore be dismissed.

III. FINDINGS OF FACT

1. ___ contested a decision of the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) dismissing her request for preauthorization of an anterior/posterior lumbar fusion procedure (treatment).
2. MRD dismissed the request because it was not filed within 45 days after American Home Assurance Company (American Home), ___'s employer's workers' compensation insurance carrier, denied approval of ___'s request for reconsideration of the treatment.
3. The date of American Home's denial of ___'s request for reconsideration of the treatment was July 27, 2004, and the medical dispute resolution request was received by the Commission on September 16, 2004.

4. A hearing convened and closed in this case on February 18, 2005, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Austin, Texas.
5. 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.
6. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
7. There were no objections to notice or jurisdiction.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. ___ has the burden of proving the MRD's order was erroneous. 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).
3. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. ___ failed to carry her burden of proof.
5. MRD had authority to dismiss the case. 28 TEX. ADMIN. CODE § 133.308(e)(2) and (i) (5).
6. This case should be dismissed.

ORDER

IT IS THEREFORE ORDERED that ___'s September 16, 2004, medical dispute resolution request regarding a denial by American Home Assurance Company of her request to preauthorize treatment, be, and the same is hereby, dismissed.

IT IS ORDERED FURTHER, in accordance with 28 TAC § 133.308(i), that this order does not constitute a decision on the merits of ___'s request for preauthorization.

Signed March 15, 2005

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**