

**ACTION CARE REHABILITATION
CENTER,**
Petitioner

V.

**AMERICAN HOME ASSURANCE
COMPANY,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Action Care Rehabilitation Center (Petitioner) requested a hearing following the August 27, 2004 Independent Review Organization's decision to deny preauthorization for 30 sessions of a chronic pain management program (requested services).

The Administrative Law Judge (ALJ) concludes that Petitioner failed to timely request from the American Home Assurance Company (Respondent) reconsideration of its preauthorization denial and is, therefore, not entitled to seek relief.

The hearing convened and adjourned on October 20, 2004, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Respondent filed on October 20, 2004, a Motion to Dismiss (Motion). By Order No. 2 dated October 21, 2004, the ALJ allowed Petitioner until 5:00 p.m. on October 29, 2004, to file a response to the Motion. The hearing on the merits proceeded subject to the Motion. Petitioner did not file a response and the record closed on November 1, 2004.

Respondent contends that Petitioner did not timely request reconsideration of Respondent's initial denial of the request for preauthorization of the requested services. Petitioner was represented by Dwayne D. Marrott, Ph.D., and Steven M. Tipton represented Respondent.

Petitioner sought preauthorization for the requested services on April 14, 2004. Respondent denied the preauthorization request on April 19, 2004. Pursuant to 28 TEX. ADMIN. CODE § 134.600(g), Petitioner had 15 days to file a request for reconsideration. A party is entitled to file an appeal with the Texas Workers' Compensation Commission of a denial of a request for reconsideration.¹ If Petitioner did not file a request for reconsideration by May 4, 2004, it waived its right to dispute resolution under 28 TEX. ADMIN. CODE § 133.308.

On June 11, 2004, Petitioner filed an appeal letter that identified itself as, "an appeal for (sic) an adverse determination...."² Although the appeal letter offers to "mitigate" the request to "15 sessions/days,"³ the clear context of the letter is an appeal⁴ rather than a new request for preauthorization.⁵ Thus, Petitioner did not file its request for reconsideration until 53 days after the initial denial.

Petitioner is not entitled to review of the Respondent's decision denying preauthorization of the requested services.

II. FINDINGS OF FACT

1. On April 14, 2004, Action Care Rehabilitation Center (Petitioner) requested preauthorization for 30 sessions of a chronic pain management program (requested services).
2. American Home Assurance Company (Respondent) denied the preauthorization request on

¹ 28 TEX. ADMIN. CODE § 134.600(g)(3).

² Petitioner's Exhibit 1, pp. 10-11.

³ *Id.* at 10.

⁴ Because the appeal letter is treated as a request for reconsideration of the April 14, 2004 preauthorization request, the ALJ does not address whether it would satisfy the requirements of 28 TEX. ADMIN. CODE § 134.600(g)(4) or whether Respondent's assertions regarding the prerequisites for filing under this provision are correct.

⁵ Petitioner closes the appeal letter with the request that Respondent will "reconsider" its decision. Petitioner's Exhibit 1 at 11.

April 19, 2004.

3. On June 11, 2004, Petitioner filed a request for reconsideration of the April 19, 2004 denial.
4. Petitioner did not file its request for reconsideration until 53 days after the initial denial.
5. Petitioner requested a hearing following the August 27, 2004 Independent Review Organization's decision to deny preauthorization for the requested services.
6. The hearing on the merits convened and adjourned on October 20, 2004, with State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Howard S. Seitzman presiding.
7. Respondent filed on October 20, 2004, a Motion to Dismiss (Motion). By Order No. 2 dated October 21, 2004, the ALJ allowed Petitioner until 5:00 p.m. on October 29, 2004, to file a response. The hearing on the merits proceeded subject to the Motion. Petitioner did not file a response and the record closed on November 1, 2004.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 28 TEX. ADMIN. CODE ch. 148.
3. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Pursuant to 28 TEX. ADMIN. CODE § 134.600(g), Petitioner had 15 days to file a request for reconsideration from the Respondent's April 19, 2004 denial of the requested services.
5. A party is entitled to file an appeal with the Texas Workers' Compensation Commission of a denial of a request for reconsideration. 28 TEX. ADMIN. CODE § 134.600(g)(3).
6. If Petitioner did not file a request for reconsideration by May 4, 2004, it waived its right to dispute resolution under 28 TEX. ADMIN. CODE § 133.308.
7. Petitioner waived its right to dispute resolution pursuant to 28 TEX. ADMIN. CODE § 133.308.
8. Petitioner is not entitled to review of the Respondent's decision denying preauthorization of the requested services.

ORDER

THEREFORE IT IS ORDERED that Action Care Rehabilitation Center is not entitled to review of American Home Assurance Company's April 19, 2004 decision denying the preauthorization of the requested services.

SIGNED November 3, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**