

**SOAH DOCKET NO. 453-05-2761.M5
MDR NO. M5-03-1804-02**

**LIBERTY INSURANCE
CORPORATION,
Petitioner**

V.

**CENTRAL DALLAS REHAB,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issues regarding this matter were previously litigated and decided by the State Office of Administrative Hearings (SOAH) in Docket No. 453-04-3601.M5. Accordingly, the Administrative Law Judge (ALJ) finds that the doctrine of res judicata applies and adopts the findings in Docket No. 453-04-3601.M5. Liberty Insurance Corporation (Carrier) should reimburse Central Dallas Rehab (Provider) \$554 for services rendered to Claimant from July 26 through August 12, 2002. Provider's remaining claims for reimbursement are denied.

I. JURISDICTION, NOTICE, AND HEARING

There were no contested issues of jurisdiction, notice, or venue; therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here. The hearing in this matter convened on August 11, 2005, at the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas, with ALJ Tommy L. Broyles presiding. Carrier was represented by its attorney Kevin J. Franta; Provider did not attend and was not represented at the hearing. The record closed that same day.

II. DISCUSSION

A. Procedural History

On January 26, 2004, the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD) issued a decision finding that no services performed by Provider for Claimant from July 26, 2002, to January 21, 2003, were medically reasonable. On February 3, 2004, Provider requested a hearing. A Notice of Withdrawal was sent to the Commission on February 18, 2004; however, the Commission did not withdraw its Findings and Decision. Instead, on March 2, 2004, the Commission issued a notice of contested case hearing at SOAH. The hearing was held on June 7, 2004, and the Decision and Order in Docket No. 453-04-3601 (Docket 3601) was issued on October 11, 2004. On November 1, 2004-after the SOAH hearing and issuance of the SOAH Decision and Order-the Commission issued its Amended Findings and Decision, withdrawing its original findings, and granting Provider reimbursement in the amount of \$4284.

Carrier argues that the original findings were properly appealed, set for hearing by the Commission, and heard at SOAH. With the issuance of the PFD in Docket 3601, Carrier argues all matters in dispute were litigated and finally decided with Petitioner awarded \$554. For these reasons, Carrier submits that the Amended Findings and Decision-subject of the present case-are void and of no effect under the principals of estoppel, res judicata, and the policy of judicial efficiency.

2. Discussion

The ALJ agrees with Carrier that the doctrine of res judicata prevents further litigation of these issues. Res judicata precludes relitigation of claims that have been finally adjudicated or that could have been litigated in a prior action.¹ To successfully invoke res judicata, one must prove: (1) a prior judgement on the merits was issued by a court of competent jurisdiction; (2) the parties in the first suit are the same as those in the second suit; and (3) the second suit is based on the same

¹ *Amstadt v. United States Brass Corp.*, 919 S.W. 2d 644, 652 (Tex. 1996).

claims as those that were raised or could have been raised in the first suit. It is also well established that the doctrine of res judicata is applicable in the administrative-agency context.²

In the present case, we have a prior judgement issued by SOAH. The parties to the first suit are the same parties to the present, and the issues in both proceedings pertain to office visits, one-on-one supervised activities, therapeutic procedures, and physical medicine treatments provided from June 12 through December 19, 2002. Both cases included the work-hardening program that began on October 17, 2002.

Having found all of the elements of res judicata proven, the ALJ concludes that adopting the findings in Docket No. 453-04-3601.M5 is appropriate. Accordingly, Carrier should reimburse Provider \$554 for services rendered to Claimant from July 26 through August 12, 2002. Provider's remaining claims for reimbursement are denied

III. FINDINGS OF FACT

1. On ____, Claimant sustained a lower back injury compensable under the Texas Workers' Compensation Act.
2. Liberty Insurance Corporation (Carrier) provides workers' compensation insurance covering Claimant's compensable injuries.
3. The Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD) issued a decision dated January 26, 2004, which found that no services that Central Dallas Rehab (Provider) rendered to Claimant from July 26, 2002, through January 21, 2003, were medically necessary.
4. On February 3, 2004, Provider requested a hearing in response to the MRD decision and Docket No. 453-04-3601.M5 (Docket 3601) was referred to the State Office of Administrative Hearings (SOAH).
5. On February 18, 2004, a notice of withdrawal was filed with the Commission.
6. In Docket 3601, a hearing was held on June 7, 2004, and a Decision and Order was issued on October 11, 2004.
7. On November 1, 2004, MRD issued its Amended Findings and Decisions, withdrawing its original findings.

² *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107-108, 111 S. Ct. 2166.

8. On November 9, 2004, Carrier requested a hearing on the Amended Findings and Decisions.
9. On December 14, 2004, proper notice of the hearing in Docket 453-05-2761.M5 was sent to all parties.
10. A hearing on the merits in Docket No. 453-05-2761.M5 was convened on August 11, 2005.
11. Claimant began a course of treatment and evaluation with Provider on June 12, 2002, and Provider continued to perform services for him beyond December 19, 2002.
12. The disputed services are office visits, one-on-one supervised activities, therapeutic procedures, and physical medicine treatments provided from June 12, 2002, through December 19, 2002.
13. Claimant's compensable injuries involve a herniated disc at L4-L5.
14. In June, 2002, Provider evaluated the necessary duration of Claimant's treatment as ending August 16, 2002.
15. On July 26, 2002, Provider extended Claimant's treatment to August 30, 2002.
16. No documented reason existed on July 26, 2002, for Provider's extension of Claimant's treatment.
17. At various times after July 26, Provider extended Claimant's treatment, and the disputed treatments ended on December 19, 2002.
18. Provider began what it designated as a work hardening program for Claimant on October 17, 2002.
19. From June 11 through October 17, 2002, Claimant did not exhibit a need for behavioral or vocational therapy.
20. Work hardening programs are interdisciplinary programs with capabilities to provide behavioral and vocational treatment as well as physical and functional treatment.
21. Provider did not design its work hardening program for Claimant's specific needs, if any, and focus the program on returning him to work.
22. The program given Claimant from October 17, 2002, through December 20, 2002, did not meet the work hardening requirements set out in the *Guideline*, Medicine Ground Rule II.E., adopted at 28 TEX. ADMIN. CODE § 134.201, because:
 - a. It was not a highly structured, goal-oriented, individualized treatment program designed to maximize Claimant's ability to return to work.

- b. It did not consist of real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks.
 - c. There was no indication that an individualized plan of treatment was created for Claimant.
 - d. The program provided to Claimant was a generalized conditioning program.
23. Claimant was not an appropriate candidate for a work hardening program because he did not have behavioral or vocational issues that needed to be addressed in a multi-disciplinary program.
24. The work hardening program noted above was not medically necessary.
25. The following services rendered on the dates shown either benefitted Claimant or were in reasonable medical probability likely to do so at the time they were rendered:

August 1	97265 - \$43	97250 - \$43	97122 - \$35
August 2	97265	97250	97122
August 9	97265	97250	97122
August 12	97265	97250	97122

26. Provider claims \$554 in reimbursement for the services described in Finding of Fact No. 25.
27. Except for the services described in Finding of Fact No. 25, Provider failed to show that the office visits, treatments, and therapies provided from June 12 through December 19, 2002, were medically necessary for Claimant.
28. In Docket 3601, a prior judgement was issued concerning the matters in controversy by a court of competent jurisdiction.
29. The parties in Docket 3601 are identical to the parties in the present case.
30. The issues in Docket 3601 and the present case both pertain to office visits, one-on-one supervised activities, therapeutic procedures, and physical medicine treatments provided from June 12 through December 19, 2002. Both dockets addressed the work-hardening program beginning on October 17, 2002.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Texas Worker's Compensation Act and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely appealed the MRD decision.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Carrier had the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.14(a) and 133.308(w); 1 TAC § 155.41.
5. In accordance with the doctrine of res judicata and the above Findings of Fact, the Decision and Order in Docket 453-04-3601.M5 is appropriately adopted in this case.
6. The doctrine of res judicata is applicable in the administrative-agency context.
7. The disputed services described above in Finding of Fact No. 25 were medically necessary for Claimant.
8. None of the remaining disputed services were medically necessary for Claimant.
9. Based on the foregoing Findings of Fact and Conclusions of Law, except for services described in Finding of Fact No. 25, Provider is not entitled to reimbursement for services rendered to Claimant from June 12 through December 19, 2002.

ORDER

It is ORDERED Carrier reimburse Central Dallas Rehab \$554 for services rendered to Claimant from July 26 through August 12, 2002. It is further **ORDERED** that Provider's remaining claims for reimbursement are denied.

SIGNED September 21, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**