DOCKET NO. 453-05-3286.M4
TWCC MR. NO. M4-03-5441-01

S. O. R. M., **Petitioner**	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
JOHN SAZY, M.D., **Respondent**	:	**ADMINISTRATIVE HEARINGS**

CONDITIONAL DEFAULT DECISION AND ORDER

The State Office of Risk Management (Carrier) challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission[1] ordering reimbursement in the amount of $71.00 to John A. Sazy, M. D., for treatment administered on December 20, 2002, to ___ (Claimant). The MRD concluded that Provider had documented the provision of care on that date.

The hearing in this matter convened on July 18, 2005, in Austin, Texas, with Administrative Law Judge (ALJ) Cassandra Church presiding. The record closed that day. Carrier was represented by J. Red Tripp, attorney for Carrier. Provider did not appear.

The ALJ concluded that Carrier did not meet its burden of proof to show that Provider's documentation of the disputed visit was inadequate so must reimburse the Provider.

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Worker's Compensation at the Texas Department of Insurance.

I. PROCEDURAL HISTORY

Although, Provider's failure to appear would, under other circumstances, entitle the requesting party to a default, the procedural history presented in this case represents something of an anomaly which does not fit squarely under State Office of Administrative Hearings (SOAH) rules. The usual parties in a case at SOAH the are a State agency and a regulated entity or person as the parties. In this matter, the disputants are two private parties who have been afforded a contested-case hearing on medical fee disputes under provisions of the Texas Labor Code and Commission administrative rules.

Although the party aggrieved by the decision by the MRD initiates the proceeding at SOAH, it does not issue the notice of hearing; the Commission does. The moving party has no control over the process of issuing notice, including the means by which it is mailed, the addresses to which the notice is sent, or the handling of any mail returns. Presumably, that information be retrieved from the Commission.

In the usual default proceeding at SOAH, any factual allegations made in the agency's notice of hearing are deemed admitted and form the basis for evidentiary findings against the respondent in a proposal for decision or decision. In order for the ALJ to deem these facts, the notice of hearing must contain a disclosure, in at least 12-point, boldface type, that upon failure to appear at the hearing, the factual allegations in the notice can be deemed admitted and the relief sought in the notice of hearing granted by default. 1 TEX. ADMIN. CODE § 155.55.[2] In this case, the notice of hearing does not contain this specific warning although it does advise fee disputants that there may be adverse consequences to failing to appear.[3] Further, although it references the statutes and rules under which the dispute will proceed, the Commission's notice of the hearing on a

[2] SOAH's rules also provide for a dismissal for failure to prosecute in the event it is the party with the burden of proof who fails to appear. 1 TEX. ADMIN. CODE § 155.56. However, this rule does not specifically apply in this case since Carrier has the burden of proof pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE § 148.21(h).

[3] The notice of hearing appears in SOAH's pleadings file. Official notice is taken of this file and its contents.

medical fee dispute does not contain the specific factual allegations being made by the moving party. Requests for a contested-case hearing need not, and frequently do not, list any factual allegations, although in this case they did in some detail.

Thus, although Provider's failure to appear would appear to entitle Carrier, as the moving party, to a default on its pleadings, and appeared so to the ALJ at the hearing, the notice requirements in SOAH's rules dictate otherwise.

Upon considering the unusual circumstances presented in this case the ALJ had concluded that the appropriate course of action is issuing a Conditional Default Order and Decision, in order to assure fairness to all parties and provide adequate procedural safeguards before the disposition of this matter becomes final.

> The parties are hereby advised that this Conditional Default Order and Decision, including all Findings of Fact, Conclusions of Law, and the ordering provision, will become final upon the expiration of 20 days from the date it is signed, unless a motion to re-open the record that specifies the bases for the motion is filed with the ALJ within 20 days of the date on which this Conditional Default Order and Decision is signed.

I. DISCUSSION

Claimant was injured on ___. On December 20, 2002, Provider saw Claimant in his office and billed for an evaluation and management visit of moderate complexity for an established patient (CPT Code 99214). On December 13, 2004, the MRD concluded that Provider had documented performance of the services for which he had billed. On February 2, 2005, Carrier requested a contested case hearing to contest the MRD conclusion. Carrier asserted Provider had not documented the provision of the service as billed.

The hearing on the matter was convened at 1:30 p.m. on July 18, 2005, as provided in the Notice of Hearing sent to Provider on February 2, 2005. Provider did not appear in person and had

filed no request for a telephone appearance. As the requesting party, Carrier has the burden of proof.

Carrier relied in this case on materials appearing in its request for a hearing and its allegations. Carrier asserted that in the last seven years, Provider had billed for visits of moderate complexity for virtually all visits for claimants with all types of injuries, and also had submitted the same documentation information for every visit. To support its claim, Carrier included a table represented to be Provider's total billings to Carrier between 1996 and 2004 for all types of services and for a variety of injuries. The table listed approximately 150 billings for services, many of which were CPT Code 99214-level office. However, the table is not coded by injury type or by claimant, so the ALJ was unable to conclude whether this information directly supported Carrier's claim, or was sufficient to support a reasonable inference that this level of visit was unwarranted under the facts in this case. No evidence about the nature of the injuries ___ sustained or details of the treatment offered on December 20, 2002, is in the record.

The visit that Provider billed occurred two years after the date of Claimant's injury. This fact alone raises the question of why treatment above a simple monitoring of Claimant's injury would have been warranted that long after the date of injury.

The MRD decision, also attached to Carrier's request for hearing, does not contain, describe, or reference any of the documents on which the agency hearing officer's conclusion is based. The statement regarding sufficient documentation is simply that officer's legal conclusion.

In sum, the ALJ concluded that Carrier failed to carry its burden of proof to show that a visit of moderate complexity was not warranted. Even if Provider displayed a pattern of billing for that level of visit, Carrier did not establish that those other visits were consistently billed above the level of service provided. Had that fact been established, it might have supported an inference in this case. The length of time between the injury and the treatment at issue raised some doubts about the need for the treatment billed, but-standing alone-is not sufficient to meet Carrier's burden of proof. Carrier should reimburse Provider for the office visit.

II. FINDINGS OF FACT

1. On ___, ___ (Claimant) was injured in the workplace; the nature of the injury is unknown.

2. The State Office of Risk Management (Carrier) was the responsible insurer.

3. On December 20, 2002, Provider saw Claimant in his office and billed Carrier $71.00 for an evaluation and management visit of moderate complexity for an established patient (CPT Code 99214).

4. Carrier denied payment for the December 20, 2002, office visit on the grounds that the level of care billed was not adequately documented.

5. Provider appealed the Carrier's denial of reimbursement to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).

6. On December 13, 2004, the MRD concluded that Provider had documented the level of care provided and issued a decision ordering reimbursement to Provider in the amount of $71.00.

7. The December 13, 2004, MRD Decision listed Provider's address of record as 431 Omega Drive, Suite 104, Arlington, Texas 76104.

8. On December 23, 2004, Carrier requested a contested case hearing on the MRD decision, asserting that the MRD had erred in concluding that Provider had documented the level of care for which he billed Carrier and asserting that Provider had failed to document that level of service.

9. Carrier sent its December 23, 2004, request for a hearing to Provider at 431 Omega Drive, Suite 104, Arlington Texas, 76014, via regular mail.

10. On January 11, 2005, the Commission referred the dispute to SOAH for setting a contested case hearing and supplied a current service list as required by 28 TEX. ADMIN. CODE § 144.3.

11. The service list provided by the Commission showed Provider's address to be 431 Omega Drive, Suite 104, Arlington Texas 76014.

12. On February 2, 2005, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.

13. The February 2, 2005, notice of hearing set the hearing on the merits for 1:30 p.m. on July 18, 2005, at the SOAH hearing facility in the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin Texas.

14. The February 2, 2005, notice of hearing does not contain a statement in 12-point, or larger, boldface type that upon failure to appear at the hearing, the factual allegations in the notice could be deemed admitted and the relief sought in the notice of hearing might be granted by default.

15. The February 2, 2005, notice of hearing was sent to Provider at 431 Omega Drive, Suite 104, Arlington, Texas 76014, by certified mail, return receipt requested.

16. There was no showing of actual receipt by Provider of the notice of hearing.

17. Administrative Law Judge Cassandra Church convened a hearing on the merits of this case on July 18, 2005, and the record closed that day.

18. Provider did not appear in person at the hearing on July 18, 2005, and had not filed a request for a telephone appearance.

19. Provider billed Carrier for approximately 150 items of medical services rendered for workers' compensation claimants between 1996 and 2004.

20. The number of claimants or the types of injuries for which Provider billed between 1996 and 2004 are unknown.

21. Most billings for office visits by Provider between 1996 and 2004 were for visits of moderate complexity, *i.e.*, CPT Code 99214.

22. There was insufficient evidence to find that the December 20, 2002, office visit was not performed by Provider at the level of service billed.

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) (repealed)[4] and TEX. GOV'T CODE ANN. ch. 2003.

2. Carrier timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.

3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Carrier, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE §§ 148.21(h) (repealed) and 148.14(a).

5. Carrier failed to meet its burden of proof to show that Provider failed to document that it conducted an office visit of moderate complexity (CPT 99214) on December 20, 2002, in accordance with 28 TEX. ADMIN. CODE § 134.201 (1996 Medical Fee Guideline).

ORDER

SUBJECT TO THE TIME PERIOD STATED ABOVE, IT IS ORDERED that the State Office of Risk Management reimburse John A. Sazy, M. D., for an office visit (CPT Code 99214) conducted on December 2, 2002, to treat Claimant.

SIGNED September 16, 2005.

CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[4] Act of May 30, 2005, 79th Leg., R.S. ch. 265, H.B. § 3.245 (to be codified as an amendment of § 413.031(k)).