

**SOAH DOCKET NO. 454-17-4188.M4-NP**  
**MR NO. \_\_\_\_\_**

<b>(Injured Worker),</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>CARRIER,</b>	§	
<b>Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Injured worker \_\_\_\_\_ challenges the Medical Fee Dispute Findings and Decision of the Texas Department of Insurance, Division of Worker’s Compensation (Division or DWC) that (Carrier) is not required to reimburse him \$3,000 for the purchase of a full body massage chair that was not preauthorized by Carrier. The Administrative Law Judge (ALJ) concludes that the necessary preauthorization was not obtained prior to the purchase of the full body massage chair and that (Injured Worker) is not entitled to reimbursement from Carrier.

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

There are no disputed issues regarding jurisdiction. Therefore, that matter is set out in the Conclusions of Law without further discussion here.

(Injured Worker) requested \$3,000 reimbursement from Carrier for purchase of a full body massage chair. Carrier denied reimbursement because there was no preauthorization for the purchase. (Injured Worker) filed a request for Medical Fee Dispute Resolution (MFDR) at the Division on September 23, 2016, and Carrier responded on September 30, 2016. The Division issued its initial MFDR Findings and Decision (Findings and Decision) on October 18, 2016. The Division withdrew its initial Findings and Decision on October 24, 2016, and issued a new Findings and Decision on March 3, 2017.

In its March 3, 2017 Findings and Decision the Division concluded that (Injured Worker) was not entitled to reimbursement because preauthorization was required for the service in

dispute. (Injured Worker) filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.

The Division sent notice of the hearing to both parties on May 22, 2017. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. Specifically, the notice informed the parties that the hearing would be held at 9:00 a.m. on August 7, 2017, at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas.

The hearing was convened at 9:00 a.m. on August 7, 2017, by ALJ at SOAH's offices at the address set out in the notice of hearing. Attorney J.F appeared for Carrier. (Injured Worker) and his spouse appeared by telephone.<sup>1</sup> Carrier presented documentary evidence while (Injured Worker) presented both documentary evidence and the testimony of his spouse. The record closed that day at the conclusion of the hearing.

## **II. DISCUSSION**

### **A. Evidence**

The essential facts are not in dispute. On an unspecified date, (Injured Worker) underwent a multi-level cervical fusion. In June 2016, LR, M.D., was treating (Injured Worker) with medications for cervicgia, neck pain, ICD-10-CM Diagnosis Code M54.2. On June 7, 2016, Dr. R prescribed via a Letter of Medical Necessity a "Human Touch Reclining Massage Chair or Titan Massage Chair" for pain and circulation of a cervical disc disorder, ICD-10-CM Diagnosis Code M50.01.<sup>2</sup> (Injured Worker) purchased a full body massage chair from Titan Chair LLC on June 22, 2016. (Injured Worker) paid a total of \$3,000 for the chair, including sales tax of \$228.64. On or prior to September 23, 2016, (Injured Worker) requested \$3,000

---

<sup>1</sup> (Injured Worker) filed an unopposed request to participate by telephone under 1 Tex. Admin. Code (TAC) § 155.405.

<sup>2</sup> (Injured Worker) Exhibit 1 at 1.

reimbursement from Carrier for the purchase of the chair. On September 23, 2016, (Injured Worker), via his spouse, sent a second request for reimbursement by e-mail to L.H., a claims specialist at Corvel, Carrier’s third-party administrator (TPA). Approximately 30 minutes later, L.H. replied by e-mail that the item required preauthorization before it could be reimbursed and that retrospective authorization was not possible. An additional string of e-mails followed during the next 30 minutes regarding the approval process for durable medical equipment (DME) and whether the DME preauthorization requirement applied to this transaction. Carrier denied reimbursement because the purchase of the chair had not been preauthorized.

## **B. Applicable Law**

Texas Labor Code § 413.014 authorizes the Division to adopt rules regarding preauthorization. Texas Labor Code § 413.014(d) states “[t]he insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner.” Once a specified health care treatment or service is preauthorized, the treatment or service is not subject to retrospective review for medical necessity of the treatment or service.<sup>3</sup> The Division may investigate a carrier that pays medical charges inconsistent with the medical policies or fee guidelines.<sup>4</sup>

A medical fee dispute is a dispute that involves an amount of payment for medically necessary and appropriate non-network health care rendered to an injured employee.<sup>5</sup> A medical fee dispute includes an injured employee’s dispute of “reduction or denial of a refund request for health care charges paid by the injured employee.”<sup>6</sup> The Division’s rule at 28 TAC § 134.600 sets out the parameters for prospective and concurrent review of health care. Preauthorization is “a form of prospective utilization review by a payor or payor’s utilization review agent of health

---

<sup>3</sup> Tex. Lab. Code § 413.014(e).

<sup>4</sup> Tex. Lab. Code § 413.016(b).

<sup>5</sup> 28 TAC § 133.305(a)(4).

<sup>6</sup> 28 TAC § 133.305(a)(4).

care services proposed to be provided to an injured employee.”<sup>7</sup> The carrier is liable for all reasonable and necessary medical costs relating to health care listed in 28 TAC § 134.600(p) or (q) if, and only if, (1) it is an emergency,<sup>8</sup> (2) preauthorization of any health care listed in 28 TAC § 134.600(p) was approved prior to providing the health care;<sup>9</sup> or (3) when ordered by the commissioner.<sup>10,11</sup> Non-emergency health care requiring preauthorization includes all durable medical equipment DME in excess of \$500 billed charges per item (either purchased or expected cumulative rental).<sup>12</sup> Additionally, non-emergency health care requiring preauthorization includes treatments and services that exceed or are not addressed by the commissioner’s adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier.<sup>13</sup> The requestor or injured employee shall request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in 28 TAC 134.600(p).<sup>14</sup>

### **C. ALJ’s Analysis**

The operative facts are not disputed. (Injured Worker), the injured employee, received a doctor’s order/letter of medical necessity from a treating physician, Dr. R, to purchase a full body massage chair. Fifteen days later (Injured Worker) acquired the chair from a vendor. (Injured Worker) sought reimbursement from Carrier for his purchase price of the full body massage chair. (Injured Worker) did not seek preauthorization from Carrier for the purchase of the chair and no preauthorization was sought on his behalf by Dr. R, the vendor, or anyone else. There is no evidence that the chair is addressed by the commissioner’s adopted treatment

---

<sup>7</sup> 28 TAC § 134.600(a)(8).

<sup>8</sup> 28 TAC § 134.600(c)(1)(A).

<sup>9</sup> 28 TAC § 134.600(c)(1)(B).

<sup>10</sup> 28 TAC § 134.600(c)(1)(D).

<sup>11</sup> There is an additional exception, not applicable here, for health care costs listed in 28 TAC § 134.600(q).

<sup>12</sup> 28 TAC § 134.600(p)(9).

<sup>13</sup> 28 TAC § 134.600(p)(12).

<sup>14</sup> 28 TAC § 134.600(f).

guidelines or protocols or is contained in a treatment plan preauthorized by the insurance carrier. There is no evidence that an emergency existed.

The parties do not dispute that the full body massage chair is, in this case, DME and that the purchase price was \$3,000. Medical necessity for the chair is not disputed because Carrier did not deny reimbursement based on medical necessity.<sup>15</sup>

At issue is the interpretation of 28 TAC § 134.600. (Injured Worker) contends that no preauthorization is required for out-of-pocket expenses paid by the injured employee for DME. Relying upon the language of 28 TAC § 134.600(p)(9), (Injured Worker) contends that preauthorization is only required for “billed charges.” He contends that “billed charges” refers only to the charges billed by health care providers.

The ALJ relies upon a more straightforward reading of the statute and the Division’s rules. The Division is statutorily authorized to adopt rules regarding preauthorization. Carrier is not liable for treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner. As applicable to this case, the injured employee must obtain preauthorization from the insurance carrier prior to receiving health care listed in 28 TAC 134.600(p). Among the health care listed in 28 TAC 134.600(p) is all DME in excess of \$500 billed charges per item. The full body massage chair is durable medical equipment. The full body massage chair vendor’s billed charge for which (Injured Worker) is seeking reimbursement is \$3,000.

While the ALJ is sympathetic to the avoidable situation in which (Injured Worker) finds himself, the ALJ finds that the law is unambiguous and that preauthorization was required to purchase the \$3,000 chair. Because the requisite preauthorization was not requested and was not obtained, Carrier is not required to reimburse (Injured Worker) for any of the purchase price of the chair at issue in this case.

---

<sup>15</sup> Had medical necessity been an issue, the dispute resolution would have followed a different course pursuant to the Division’s rules.

### III. FINDINGS OF FACT

1. Injured worker (Injured Worker) underwent a multi-level cervical fusion on an unspecified date.
2. In June 2016, LR, M.D., was treating (Injured Worker) with medications for cervicalgia, neck pain, ICD-10-CM Diagnosis Code M54.2.
3. On June 7, 2016, Dr. R prescribed for (Injured Worker) a Human Touch Reclining Massage Chair or, alternatively, a Titan Massage Chair for pain and circulation of a cervical disc disorder, ICD-10-CM Diagnosis Code M50.01.
4. (Injured Worker) purchased a full body massage chair from Titan Chair LLC on June 22, 2016.
5. (Injured Worker) paid a total of \$3,000 for the chair, including sales tax of \$228.64.
6. On an unspecified date prior to September 23, 2016, (Injured Worker) requested \$3,000 reimbursement from Carrier for the purchase of the chair.
7. Carrier denied reimbursement because the purchase of the chair had not been preauthorized.
8. (Injured Worker) then filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Worker's Compensation (Division) seeking reimbursement.
9. The Division issued a Medical Fee Dispute Resolution Findings and Decision (Findings and Decision) dated October 18, 2016, but withdrew its initial Findings and Decision on October 24, 2016.
10. On March 3, 2017, the Division issued a new Findings and Decision concluding that (Injured Worker) was not entitled to reimbursement for the services in dispute.
11. (Injured Worker) filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) to contest the Division's determination.
12. The Division sent notice of the hearing to both parties on May 22, 2017.
13. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. Specifically, the notice informed that parties that the hearing would be held at 9:00 a.m. on August 7, 2017, in SOAH's fourth floor hearing complex

of the William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas.

14. Administrative Law Judge (ALJ) convened the hearing at 9:00 a.m. on August 7, 2017, at SOAH's offices at the address set out in the notice of hearing. Attorney JF appeared for Carrier. (Injured Worker) and his spouse appeared by telephone. Carrier presented documentary evidence while (Injured Worker) presented both documentary evidence and the testimony of his spouse. The record closed that day at the conclusion of the hearing.
15. The full body massage chair qualifies as durable medical equipment.
16. Medical necessity for the chair is not disputed because Carrier did not deny reimbursement based on medical necessity.
17. (Injured Worker) did not seek preauthorization from Carrier for the purchase of the chair and no preauthorization was sought on his behalf by Dr. R, the vendor, or anyone else.
18. (Injured Worker) is not entitled to reimbursement.

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

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.0312 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052
3. (Injured Worker) has the burden of proof in this proceeding by a preponderance of the evidence. 1 Tex. Admin. Code (TAC) § 155.427.
4. The Division may adopt rules regarding preauthorization and the insurance carrier is not liable for treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and obtained from either the insurance carrier or ordered by the commissioner. Tex. Lab. Code § 413.014.
5. A medical fee dispute includes an injured employee's dispute of denial of a refund request for health care charges paid by the injured employee. 28 TAC § 133.305(a)(4).
6. Preauthorization is a form of prospective utilization review by a payor or payor's utilization review agent of health care services proposed to be provided to an injured employee. 28 TAC § 134.600(a)(8).
7. Non-emergency health care requiring preauthorization includes all durable medical equipment in excess of \$500 billed charges per item (either purchased or expected cumulative rental). 28 TAC § 134.600(p)(9).

8. The requestor or injured employee must request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in 28 TAC 134.600(p). 28 TAC § 134.600(f).
9. None of the exceptions to the requirement to obtain preauthorization prior to receiving the health care listed in 28 TAC 134.600(p) are applicable in this case.
10. (Injured Worker) failed to seek or obtain the requisite preauthorization for the purchase of durable medical equipment in excess of \$500 billed charges per item.
11. Carrier does not owe reimbursement to (Injured Worker) for any of the purchase price of the chair at issue in this case.

### **ORDER**

Carrier is not required to reimburse (Injured Worker) for any of the purchase price of the chair at issue in this case.

### **NONPREVAILING PARTY DETERMINATION**

Texas Labor Code § 413.0312(g) and 28 TAC § 133.307(h) require the nonprevailing party to reimburse the Division for the cost of services provided by SOAH. Texas Labor Code § 413.0312(i) requires SOAH to identify in its final decision the nonprevailing party and any costs for services provided by SOAH. For purposes of Texas Labor Code § 413.0312, (Injured Worker) is the nonprevailing party. If the injured employee is the nonprevailing party, Texas Labor Code § 413.0312(g) and 28 TAC § 133.307(h)(3) provide that the insurance carrier shall reimburse the Division for the cost of services provided by SOAH. Therefore, Carrier is the party responsible for reimbursing the Division for the cost of services provided by SOAH. The costs associated with this decision are set forth in Attachment A to this Decision and Order and are incorporated herein for all purposes.

**SIGNED September 14, 2017.**

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