

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 022112-91

Arthur Davidson
Southern Redi Mix Corp.
Transportation Insurance Company

Employee
Employer
Insurer

REVIEWING BOARD DECISION
(Judges Levine, Maze-Rothstein & Carroll)

APPEARANCES
Michael A. Rudman, Esq., for the employee
Paul M. Scannell, Esq., for the insurer

LEVINE, J. The insurer appeals from a decision in which an administrative judge concluded that the employee need not exhaust the utilization review (UR) procedures set out in 452 Code Mass. Regs. § 6.00 et seq. before bringing a claim for G.L. c. 152, § 30, medical benefits. The insurer argues that the employee must comply with the procedures in those regulations, including exhausting all appeals from an adverse determination, prior to claiming medical benefits in the traditional dispute resolution process.¹ Because the insurer did not take the initial step to begin the UR procedure -- issuing a utilization review card to the employee -- we do not reach the issue of exhaustion. We affirm the decision on the basis that the insurer's conduct obviated the UR procedure.

The employee's § 30 claim was for eight visits to his chiropractor, from March 11, 1996 to April 5, 1996. In 1995, the employee had settled, by approved lump sum agreement, his claim for weekly indemnity payments attributable to his accepted May 9, 1991 industrial injury. (Dec. 3-5.) The employee had not sustained any new injuries subsequent to the 1991 industrial accident. (Dec. 5.) However, since that accident, the

¹ See Code Mass. Regs. § 6.04 (4)(a), (c), 1 for the procedure to be followed in appealing an adverse UR determination.

employee continued to have headaches, neck pain and back spasms. (Dec. 6, 7.) The employee sought payment for the chiropractic treatment of these headaches. (Dec. 5.)

The employee never received a utilization review card (Dec. 6) from the insurer, pursuant to 452 Code Mass. Regs. § 6.04(4)(e). The employee filed his claim for the eight visits to the chiropractor without exhausting UR procedures. The insurer argued that this failure should preclude the employee from bringing his § 30 claim before the judge. (Dec. 8.) The judge, in response, concluded that the employee was not obligated to exhaust UR procedures before bringing a claim pursuant to § 30. (Dec. 11.) The judge ordered payment for the eight visits to the chiropractor. (Dec. 12.)

The insurer appeals the judge's conclusion. We do not reach the merits of the insurer's argument that the employee must exhaust UR procedures. This is because there is no basis for the application of the UR procedures in this case since the insurer did not take the first step in the UR process. 452 Code Mass. Regs. § 6.04(4)(e) states, in pertinent part:

Once an insurer has commenced payments for a work related injury under M.G.L. c. 152, it must issue the employee a card listing the employee name, an identification number assigned to the employee, the name and telephone number of the utilization review agent, and the name of the insurer. When the employee seeks further care, he or she must contact the utilization review agent for approval.

It is undisputed that the insurer never issued the employee the above-described card, (Dec. 6); thus, the insurer failed to take the first step necessary to activate utilization review.² In this circumstance where the employee was not provided the card with the

² This card appears to be similar to an insurance card commonly given to people with health insurance policies. Since an injured employee "must contact the utilization review agent for approval" of further care, 452 Code Mass. Regs. § 6.04(4)(e), the information contained on the card may be crucial to the employee's receipt of the care to which he is entitled. Receipt of this card is thus an integral part of the requirements of UR set out in 452 Code Mass. Regs. § 6.04. These requirements include that the UR agent must provide materials designed to inform employees of the requirements of the UR program and their rights and responsibilities under the UR program. *Id.* at § 6.04(2)(d). Without supplying the employee with the required card, there can be no assurance that the employee has an essential tool needed to navigate within the UR system.

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important information contained on it, we need not reach the exhaustion issue.³ We therefore affirm the decision. Pursuant to § 13A(6), the insurer is ordered to pay attorney's fees in the amount of \$1,000.00, plus necessary expenses.

So ordered.

Frederick E. Levine
Administrative Law Judge

Susan Maze-Rothstein
Administrative Law Judge

Martine Carroll
Administrative Law Judge

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Filed: **May 23, 2000**

³ We also leave open the question whether the UR regulations, should they be interpreted to require exhaustion before resort may be had to the dispute resolution process, run afoul of G.L. c. 152, § 5 (St. 1991, c. 398, § 17). Section 5 states, in relevant part, that "if in any proceeding within the division of dispute resolution it is found that the application of any section of this chapter is made impossible by the enforcement of any particular regulation, the ... reviewing board shall not apply such regulation" See, e.g., G.L. c. 152, § 10 (procedure for filing claims).