

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-02-3489.M5
[TWCC File No. _____]

OXYMED, INC.,	'	BEFORE THE STATE OFFICE
<i>Petitioner</i>	'	
	'	
VS.	'	
	'	OF
TEXAS WORKERS= COMPENSATION	'	
COMMISSION AND TASB RISK	'	
MANAGEMENT,	'	ADMINISTRATIVE HEARINGS
<i>Respondents</i>	'	

DECISION AND ORDER

This case is a dispute over whether Oxymed, Inc., should be reimbursed for the cost of a water circulating unit, cold therapy cooler wrap, and water circulating pad¹ provided to the workers= compensation claimant. The amount in controversy is \$724.00.

The Administrative Law Judge (ALJ) concludes the Petitioner did not meet its burden of proving the equipment and supplies were medically necessary under the Texas Workers= Compensation Commission (the Commission=s) Spine Treatment Guidelines. Therefore, this decision denies reimbursement.

I. NOTICE AND HEARING

There were no contested issues regarding notice of the hearing. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened November 20, 2002, at the hearings facility of the State Office of Administrative Hearings (SOAH) before SOAH Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner was represented by Peter N. Rogers, who appeared by telephone; the Carrier was represented by David Swanson. After receipt of evidence, the record was closed the same day.

II. EVIDENCE AND BASIS FOR DECISION

The documentary record in this case consists of documentation provided to the Independent Review Organization. Additionally, John Wey, M.D., testified on behalf of the Petitioner, and Nick Tsourmas, M.D., testified on behalf of the Carrier.

Nobody disputed that Cryotherapy was appropriate for the Claimant after she underwent outpatient arthroscopic surgery on her right knee on December 4, 2001. The issue is whether ice packs

¹ These items will be referred to collectively as the "cold therapy unit."

should have been used for this purpose rather than the \$724 cold therapy unit prescribed by Dr. Wey. Dr. Wey acknowledged that application of ice bags would provide the same therapeutic benefit as the cold therapy unit in dispute in this proceeding. He mentioned that, on extremely rare occasions, ice bags can cause soft tissue or nerve damage. Additionally, he testified that the cold therapy unit he prescribed would provide a more uniform temperature, and would allow this overweight Claimant to dispense with making trips to the refrigerator to refill ice bags.

Dr. Tsourmas testified that application of ice bags is a safe and time honored treatment, that cold should be applied for only about 20 minutes per hour and that, in any event, it is good for arthroscopic knee surgery patients to get up and move around following surgery. In his view, cold therapy would be required for only a few days after the type of arthroscopic surgery performed on the Claimant, which he characterized as “probable the simplest, least invasive, and least aggressive of all orthopedic surgeries done to the knee.” Dr. Tsourmas further testified that most patients found the wrap-on cold therapy units more cumbersome than ice packs. Under these circumstances, Dr. Tsourmas viewed the cold therapy unit prescribed by Dr. Wey not to be cost effective.

Based on the record, the ALJ concurs with Dr. Tsourmas’s assessment that the cold therapy unit was not shown to be cost effective and is therefore not reimbursable pursuant to 28 TAC §134.1001(e)(2)(A)(4). The preponderance of the evidence shows that application of ice bags after a relatively simple out-patient operation is as effective as the far more expensive cold therapy unit prescribed here. The record also reflects that the proper application of ice poses no significant hazard and is no more cumbersome than the unit in dispute. Accordingly, reimbursement should be denied.

II. Findings of Fact

1. The Claimant sustained a compensable injury on _____, and subsequently underwent arthroscopic knee surgery.
2. TASB Risk Management Fund was the worker’s compensation provider for the Claimant’s employer.
3. The Claimant’s treating physician, John Wey, M.D., prescribed cryotherapy in the form of water circulating unit, cold therapy cooler wrap, and water circulating pad (cold therapy unit), to decrease the Claimant’s pain and allow her to perform daily activities more easily.
4. The Carrier declined to pay for the cold therapy unit.
5. Oxymed, Inc., which had provided the unit, filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Carrier.
7. Oxymed filed a timely appeal of the IRO decision.
8. Notice of the hearing was sent September 18, 2002.
9. 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 matters asserted.

10. The hearing was held November 20, 2002, with Administrative Law Judge (ALJ) Kerry D. Sullivan presiding and representatives of Oxymed and the Carrier participating. The hearing was adjourned the same day.
11. The amount in controversy is \$724.00.
12. The cold therapy unit in dispute in this proceeding was more expensive than ice bags.
13. The evidence does not demonstrate that the use of the cold therapy unit would be medically more beneficial to the Claimant than the use of ice bags.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. Oxymed has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
5. Oxymed did not meet its burden of proving the cold therapy unit was cost effective pursuant to 28 TAC §134.1001(e)(2)(A)(4).
6. Oxymed's request for reimbursement should be denied.

ORDER

IT IS, THEREFORE, ORDERED that Oxymed, Inc.'s request for additional reimbursement of \$724.00 from TASB Risk Management Fund for a water circulating unit, cold therapy cooler wrap, and water circulating pad, is denied.

Signed November 26th 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kerry D. Sullivan
Administrative Law Judge