

**SOAH DOCKET NO. 453-03-3875.M5  
TWCC MDR NO. M5-03-1875-01**

<b>ST. JOSEPH REGIONAL HEALTH CENTER,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>TEXAS MUTUAL INSURANCE COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

St. Joseph Regional Health Center (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Ziroc, an Independent Review Organization (IRO), finding physical therapy treatments were not medically necessary for the treatment of injured worker \_\_\_ (Claimant).

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Texas Mutual Insurance Company (Respondent) is not liable for reimbursing Petitioner for the physical therapy treatments.

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

The hearing convened on February 24, 2004, with State Office of Administrative Hearings ALJ Stephen J. Pacey presiding. Petitioner appeared through its employee, Pam Hunnicut. Respondent appeared through its attorney, Patricia Eads. Kelly W. Lobb, M.D., Ivar Gjolberg, P.T., and Renee Blume, P.T., testified for Petitioner. N.F. Tsourmas, M.D., Board Certified in Orthopaedic Surgery, and by deposition, John Miller, P.T., testified for Respondent. The hearing concluded and the record closed February 24, 2004. Neither party objected to notice or jurisdiction.

**II. DISCUSSION**

Claimant, then 27-years old, suffered a work related injury on \_\_\_, while stepping through a window. As a result of this injury, Claimant had two back surgeries, one in 2000 and one in 2001. Approximately two weeks after Claimant's second surgery, his pain was exacerbated when a policeman "body-slammed" Claimant following an altercation with Claimant's wife. He complained of pain in the right lower to middle back which radiates into bilateral legs, right greater than left. Claimant's pain was sharp in quality with a pain rating of 8 on a 10 point scale. His pain is frequent and aggravated by standing.

Kelly Lobb, M.D., testified that on May, 2002, a neurosurgeon referred Claimant to him. To alleviate Claimant's pain, Dr. Lobb prescribed 12 weeks of slowly-progressive physical therapy. On or about June 19, 2002, Petitioner began treating Claimant on a three-visits-per-week schedule for severe pain in Claimant's lower back. The treatment consisted of electrical stimulation, therapeutic

procedures and activities, a 16-30 minute evaluation, hot and cold packs, ultrasound, and gait training.

### **III. EVIDENCE AND DECISION**

#### **A. Petitioner**

Ivar Gjolberg, PT, said that the records indicated that Claimant was progressing.<sup>1</sup> Mr. Gjolberg said that the treadmill and bicycle exercises were supervised because Claimant could not walk without great pain. He testified that Claimant was loaded and unloaded from these treatment devices. After reviewing the records, Renee Blume, PT, testified that Claimant's pain had subsided and that the therapy was medically necessary.

Dr. Lobb said that he prescribed physical therapy on the basis that Claimant had little or no physical therapy after his second back surgery. Dr. Lobb testified his goals for Claimant were to ambulate him, enabling Claimant to walk without a walking device and to return him to employment. In Dr. Lobb's opinion, Claimant could not return to his welding job, but, with improvement, he could perform a sedentary job. According to Dr. Lobb, Claimant was progressing until he went on a trip and missed three weeks of treatments. Dr. Lobb also pointed out that in November 2002, Claimant was walking without a cane.

#### **B. Respondent.**

Nicholas Tsourmas, M.D., reviewed Claimant's medical history and determined that the type of physical therapy administered to Claimant was not medically necessary. He said that the physical therapy records indicated little, if any, improvement. Dr. Tsourmas said that Petitioner did not alter the treatment even though Claimant was not progressing. Dr. Tsourmas said that the treatments administered to Claimant were passive modalities which are inappropriate for treatment of acute pain. He indicated that Claimant required active modalities such as a home-exercise program

John Miller, PT, testified through deposition. Mr. Miller said that there is no indication Claimant's response to therapy was ever taken into consideration. According to Mr. Miller, Claimant showed no progression, but Petitioner continued to administer the same passive modalities. Mr. Miller pointed out that Petitioner's physical therapist admitted on Claimant's discharge summary that "pt [patient] showed slow response to therapy." Mr. Miller suggested that Claimant should have been in a home-exercise program or other active modalities. He indicated the passive therapy applied by Petitioner cannot break down the scar tissue created by two surgeries. Mr. Miller concluded that only active therapy would have helped Claimant.

#### **C. Analysis.**

It appears that Claimant had a chronic pain disorder following two back surgeries. Passive modalities such as hot and cold packs, ultrasound, electrical stimulation are not appropriate in treating long-term chronic pain. Petitioner should have recognized that the treatments did not result in any medical progression by Claimant. Petitioner should have recognized this and changed the

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<sup>1</sup> Mr. Gjolberg reviewed the records, but did not provide any of Claimants treatments.

treatment. Initially, this type of therapy was not recommended by Dr. Lobb. In a letter dated May 2, 2002, he recommended the active aquatic therapy treatments. Both Mr. Miller and Dr. Tsourmas recommended a home-exercise regime. Petitioner's own therapist noted that Claimant was slow to respond. The ALJ concludes that the treatments were inappropriate. Petitioner should have changed the treatment when it was evident that Claimant was not responding to them. Therefore, Petitioner is not entitled to reimbursement for the treatments from June 19, 2002, through September 24, 2002.

#### IV. FINDINGS OF FACT

1. \_\_\_\_ (Claimant) suffered a work related injury on \_\_\_\_, while stepping through a window.
2. As a result of this injury, Claimant had two back surgeries, one in 2000 and one in 2001.
3. Approximately two weeks after Claimant's second surgery, his pain was exacerbated when a policeman "body-slammed" Claimant following an altercation with Claimant's wife. He complained of pain in the right lower to middle back which radiates into bilateral legs.
4. After Dr. Lobb prescribed 12 weeks of slowly progressive physical therapy, Petitioner began treating Claimant on a three visits per week schedule for severe pain in Claimant's lower back.
5. The treatment consisted of electrical stimulation, therapeutic procedures and activities, a 16-30 minute evaluation, hot and cold packs, ultrasound, and gait training.
6. Petitioner did not change the treatment regime, after Claimant failed to respond to the original treatments.
7. Passive modalities such as hot and cold packs, ultrasound, electrical stimulation are not appropriate in treating long-term chronic pain.
8. Respondent denied reimbursement for physical therapy treatments from June 19, 2002, through September 24, 2002, as not medically necessary.
9. The Texas Workers' Compensation Commission (Commission) acting through Ziroc, an Independent Review Organization (IRO), found that the physical therapy treatments provided by Petitioner were not medically necessary for the treatment of Claimant.
10. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
11. The hearing convened on February 24, 2004, with State Office of Administrative Hearings ALJ Stephen J. Pacey presiding. Petitioner appeared through its employee, Pam Hunnicut. Respondent appeared through its attorney, Patricia Eads. The hearing concluded and the record closed that same day.

### III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. The physical therapy treatments provided by Petitioner to Claimant from June 19, 2002, through September 24, 2002, were not medically necessary.

### ORDER

**THEREFORE IT IS ORDERED** that Texas Mutual Insurance Company is not required to reimburse St. Joseph Regional Health Center for charges associated with physical therapy treatments provided to injured worker \_\_\_ from June 19, 2002, through September 24, 2002.

**SIGNED April 20, 2004.**

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**STEPHEN J. PACEY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**