

**SOAH DOCKET NO. 453-03-1289.M5
[MDR TRACKING NO. M5-02-2487-01]**

INDUSTRIAL MEDICAL ASSOCIATES, PETITIONER	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
PACIFIC EMPLOYERS INSURANCE COMPANY, RESPONDENT	§	
	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Industrial Medical Associates (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Independent Review Incorporated, an Independent Review Organization (IRO). The Commission's October 28, 2002 Order denied Petitioner's request for office visits on eight occasions because they were not medically necessary. The Commission determined that the office visits were not medically necessary within the meaning of Section 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 et seq. (the Act).

This decision denies the requested reimbursement for the eight office visits.

A one-day hearing convened April 7, 2003. A.J. Morris, M.D. appeared by telephone for Petitioner. Steven M. Tipton represented Pacific Employers Insurance Company (Respondent). There were no contested issues of notice or jurisdiction. By agreement, the record remained open until April 17, 2003, for the filing of additional documents.

A.J. Morris, M.D. is the treating physician for _____ (Patient). Patient, an approximately 66-year-old female, was a cashier when she sustained a work related injury on _____, while attempting to pull a full trash bag from a trash can. Patient experienced pain in her low back with radiation into the lower extremities. Patient received a CT scan on April 24, 2000, and an MRI on May 7, 2000. On August 28, 2000, Patient underwent a fluoroscopically guided caudal epidural steroid injection and an extradural myelogram. Patient, who is not considered a surgical candidate, reported a 25-pound weight gain between the date of the injury and August 17, 2000. In addition, Patient has been prescribed a TENS unit, home exercise, and a brace. Patient's medications include Vanadom, Hydrocodone, APAP, Prozac and Vioxx. Patient's prior medical history includes high blood pressure, high cholesterol, heart disease, a heart attack, a lumbar discectomy in 1972 and a bilateral hernia repair in 1996-1997. Patient has essentially not worked since her March 13, 2000 injury.

Petitioner requested payment for office visits with Patient on May 9, 2000, June 6, 2001, July 2, 2001, August 8, 2001, August 23, 2001, September 25, 2001, October 25, 2001, November 21, 2001, December 19, 2001, and January 16, 2002. Respondent contended the office visits were not medically necessary.

By letter dated October 3, 2002, the IRO concluded the May 9, 2000 and November 21, 2001 office visits were medically necessary while the balance of the office visits were not medically necessary for the diagnosis and treatment of Patient's condition. Given Patient's condition, her reaching maximum medical improvement, and no indication of any change in treatment, diagnosis or medical status, the IRO found office visits medically necessary every six months rather than monthly.

Petitioner contends that monthly office visits are medically necessary because of the types and levels of narcotics Patient is taking for her injury. Patient's medical and psychological condition must be monitored monthly, claims Petitioner, to attempt to interdict any adverse reactions as early as possible.

Petitioner had the burden of proof in this proceeding. In this instance, because Petitioner failed to sustain its burden of proving that the medications are necessary for the treatment of Patient, Petitioner failed to prove that the monthly visits are medically necessary.

II. FINDINGS OF FACT

1. _____ (Patient), an approximately 66-year-old female, was a cashier when she sustained a work related injury on _____, while attempting to pull a full trash bag from a trash can.
2. Patient experienced pain in her low back with radiation into the lower extremities.
3. Patient was treated by A.J. Morris, M.D. of Industrial Medical Associates (Petitioner).
4. Patient has undergone various diagnostic procedures and therapies.
5. Patient's medications include Vanadom, Hydrocodone, APAP, Prozac and Vioxx.
6. Petitioner schedules monthly office visits to monitor Patient's medical and psychological condition in an attempt to interdict as early as possible any adverse reactions to the prescribed medications.
7. Petitioner requested payment for office visits with Patient on May 9, 2000, June 6, 2001, July 2, 2001, August 8, 2001, August 23, 2001, September 25, 2001, October 25, 2001, November 21, 2001, December 19, 2001, and January 16, 2002.
8. Respondent contended the office visits were not medically necessary.
9. By letter dated October 3, 2002, the Independent Review Organization (IRO) concluded the May 9, 2000 and November 21, 2001 office visits were medically necessary and that the balance of the office visits were not medically necessary for the diagnosis and treatment of the Patient's condition.
10. Based upon the IRO's determination, the Texas Workers' Compensation Commission (Commission) Medical Review Division's October 28, 2002 Decision and Order required Respondent to pay only for the two medically necessary office visits.

11. To prove the monthly visits are medically necessary, Petitioner needed to show the medications are necessary for the treatment of Patient.
12. Petitioner failed to prove the medications are necessary for the treatment of Patient.
13. Petitioner failed to prove the office visits with Patient on June 6, 2001, July 2, 2001, August 8, 2001, August 23, 2001, September 25, 2001, October 25, 2001, December 19, 2001, and January 16, 2002, were medically necessary.
14. Petitioner timely requested a hearing to contest the Commission's decision.
15. By letter dated December 9, 2002, the Commission issued a notice of hearing.
16. The Respondent's February 3, 2003 request for a continuance was granted on February 4, 2003.
17. A one-day hearing was convened by Administrative Law Judge Howard S. Seitzman on April 7, 2003, in the hearing rooms of the State Office of Administrative Hearings.
18. Petitioner was represented by A.J. Morris, M.D., who appeared by telephone. Steven M. Tipton represented Respondent.
19. There were no contested issues of notice or jurisdiction.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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(d) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).

6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (I).
7. Petitioner failed to prove the types and levels of medication prescribed are medically necessary for the treatment of Patient's injury.
8. Patient's office visits with Petitioner on June 6, 2001, July 2, 2001, August 8, 2001, August 23, 2001, September 25, 2001, October 25, 2001, December 19, 2001, and January 16, 2002, were not medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner Industrial Medical Associates' request for payment for office visits on June 6, 2001, July 2, 2001, August 8, 2001, August 23, 2001, September 25, 2001, October 25, 2001, December 19, 2001, and January 16, 2002, is **DENIED**.

SIGNED this 21st day of May 2003.

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