

**SOAH DOCKET NO. 453-03-1537.M5
TWCC MDR DOCKET NO. M5-02-2586-01**

OXYMED, INC.	§	BEFORE THE STATE OFFICE
Petitioner	§	
VS.	§	OF
	§	
LIBERTY MUTUAL INSURANCE CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Oxymed, Inc. (Petitioner) appealed the findings and decision of the Texas Workers' Compensation Commission's designee, an independent review organization (IRO), which found that a cryotherapy unit that Petitioner had provided a workers' compensation claimant (Claimant), pursuant to a prescription by Claimant's treating doctor, was not medically necessary healthcare. This decision and order finds the cryotherapy unit was medically necessary healthcare for Claimant when prescribed.

I. Notice, Jurisdiction, and Procedural History

There were no contested issues of notice or jurisdiction. Therefore, those matters are set forth only in the Findings of Fact and Conclusions of Law without further discussion.

On March 25, 2003, the hearing in this matter convened at the State Office Of Administrative Hearings (SOAH), 300 W. 15th Street, 4th Floor, Austin, Texas, before SOAH Administrative Law Judge (ALJ) Wendy Harvel. Attorney Peter Rogers appeared for Petitioner. Respondent Liberty Mutual Insurance Company (Carrier) was represented by attorney Charlotte Salter. Respondent Commission chose not to participate in the hearing. After receipt of evidence and argument, the record closed that date.

II. Discussion

A. Background

Claimant sustained a compensable injury on _____. On June 28, 1999, he underwent a lumbar fusion for that injury. On July 18, 2001, Dr. Vaughan, Claimant's treating doctor, performed an exploratory surgery because a myelogram showed that the Claimant had moderate and severe radiculopathy. The Claimant also suffered from nonunion of some of the fusion, adhesive arachnoiditis, and the right L5 pedicle was intruding into the disk space.¹ At the time of the surgery, Dr. Vaughn prescribed the cryotherapy unit for post-surgical care.

Petitioner billed Carrier for the cryotherapy unit, the pad that is used with the unit, and the

¹ Petitioner Ex. 1 at 36.

compression wrap for the lower back. The bill for these items was \$804.75. After Carrier denied reimbursement for all items billed, Petitioner appealed the denial to the Commission, which referred the appeal to an IRO. The IRO found the cryotherapy unit and accessories medically unnecessary. Petitioner timely appealed the IRO decision.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i); 1 TEX. ADMIN. CODE § 155.41. Pursuant to the Act, 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). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE § 133.308.

C. Medical Necessity

1. Evidence

The issue in this case is whether the cryotherapy unit was medically necessary healthcare for Claimant when prescribed.

Petitioner presented documentary evidence, including the written statement from Claimant's orthopedic surgeon that the unit was medically necessary, and expert testimony at the hearing from Dr. Solter. Carrier presented documentary exhibits, including an opinion letter from Dr. Tsourmas, but Carrier presented no live testimony. Dr. Solter is a chiropractor who has prescribed cryotherapy units. Dr. Tsourmas is an orthopedic surgeon. Dr. Solter testified that he believed the unit to be medically necessary because unlike ice packs or cold packs, the cryotherapy unit provides a constant temperature over long periods of time, as well as compression at the site of the injury. Both of these features, he asserted, help reduce the inflammation in post-surgical patients, and in chronic cases of inflammation, both of which Claimant suffered. Dr. Tsourmas' written statement indicates that he believes the units to be medically unnecessary because they are not cost-effective since ice packs can be used instead. He further stated that the pads are cumbersome, and in his experience, his patients have difficulty using the pads appropriately.²

2. Analysis

Petitioner met its burden of proof to show by a preponderance of the evidence that the cryotherapy unit was medically necessary healthcare for Claimant. Dr. Vaughn prescribed the cryotherapy unit to treat the Claimant's pain immediately following surgery. Dr. Vaughn indicated

² Carrier Ex. 3.

that the unit was medically necessary. Dr. Solter indicated that unlike ice or cold packs, the unit enables a constant cold temperature to be held against the skin for long periods of time, something that cannot be done with ice packs. Furthermore, the unit allows for compression of the site of the injury, helping to reduce inflammation, which cannot be done with ice packs. The ALJ finds Dr. Tsourmas' written statement unconvincing. Dr. Tsourmas admitted that cold therapy was important for treatment of Claimant's injury. His reasons for determining that the cryotherapy unit was medically unnecessary were the cost and that some patients have trouble using it. There was no evidence that this particular Claimant could not use the unit effectively. Furthermore, the cost difference between ice packs and the cryotherapy unit was justified by the added benefits of constant temperature and compression provided by the unit, and not provided with ice packs. Therefore, the ALJ finds that Petitioner proved by a preponderance of the evidence that the cryotherapy unit was medically necessary.

Petitioner's claim for reimbursement for the cryotherapy provided Claimant should be granted because the cryotherapy unit provided Claimant was medically necessary healthcare.

III. Findings of Fact

1. On _____, Claimant sustained an injury compensable under the Texas Workers' Compensation Act (Act).
2. At the time of his compensable injury, Claimant's employer had workers' compensation insurance coverage with Liberty Mutual Insurance Company (Carrier).
3. On June 28, 1999, Claimant underwent a cervical fusion to treat his compensable injury.
4. On July 18, 2001, Claimant underwent exploratory surgery for nonunion of some of the fusion, adhesive arachnoiditis, and to keep the right L5 pedicle from intruding into the disk space .
5. Claimant's treating physician prescribed a cryotherapy unit to treat Claimant's inflammation following the surgery.
6. Oxymed, Inc. (Petitioner) provided Claimant with the cryotherapy unit.
7. A cryotherapy unit is used to deliver cold therapy to the affected area over extended periods of time, at a constant temperature, with compression.
8. Ice packs do not provide a constant temperature over extended periods of time with compression.
9. When his treating doctor prescribed the cryotherapy unit, Claimant was immediately post-surgical and had chronic inflammation.

IV. Conclusions of Law

10. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. §413.031.
11. 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.
12. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE §133.308 .
13. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE § 133.308(u).
14. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
15. Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i); 1 TEX. ADMIN. CODE 155.41.
16. 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) .
17. The cryotherapy unit, pad, and compression wrap Petitioner provided were medically necessary healthcare for Claimant.

ORDER

It is ORDERED that Liberty Mutual Insurance Company shall reimburse Oxymed, Inc. for the cryotherapy unit, pad, and compression wrap in the amount of \$ 804.75.

SIGNED this 28th day of March, 2003.

**WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**