

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

DOCKET NO. 453-03-2316.M5  
[MDR TRACKING NO. M5-02-2082-01]

PEDRO NOSNIK, M.D.,  
*Petitioner*

V.

FREMONT COMPENSATION CO.,  
*Respondent*

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

This case involves a dispute over the decision by Fremont Compensation Co.(Carrier) not to reimburse Pedro Nosnik, M.D. (Provider or Dr. Nosnik) for office consultation and diagnostic testing provided to workers' compensation claimant \_\_\_\_ (Claimant). The amount in dispute is \$944, and the Provider has appealed the decision of the Independent Review Organization (IRO) denying reimbursement of this amount. In this decision, the Administrative Law Judge (ALJ) concludes the disputed treatment was not medically necessary for Claimant's compensable injury, and therefore, Carrier is not liable to reimburse Provider for it.

**I. Background Facts**

Claimant injured her back on \_\_\_\_\_, during the course of her job with \_\_\_\_\_. She was examined and treated by several specialists who requested an MRI of the lumbar spine on February 8, 2000; EMG studies on February 28, 2000; and a cervical MRI on June 12, 2000. The radiographic and diagnostic studies revealed Claimant suffered a soft tissue injury to the spine with underlying degenerative spine disease. The orthopaedic surgeon and neurologist both noted Claimant's very poor effort and the orthopaedic surgeon also noted she had voluntary restriction and exaggerated pain response along with symptom magnification. An independent medical examination found that she reached maximum medical improvement (MMI) on April 17, 2000, and this was concurred with by the orthopaedic surgeon. At various times in 2000, Claimant also had limited therapy with a chiropractor, an epidural steroid injection, and pain management from a doctor of osteopathy.

In August 2001, Claimant visited Dr. Nosnik who determined that her continued symptoms supported further diagnostic testing. He performed the following on August 28, 2001: office consultation; muscle test, two limbs; motor nerve conduction; and two "H" or "F" reflex studies. Dr. Nosnik billed the Carrier \$2,178 for his services but recognized the maximum allowable reimbursement was \$944. The Carrier denied payment as unnecessary medical treatment.

## **II. Analysis**

The sole issue in this case is whether the services provided on August 28, 2001, were medically necessary to treat Claimant's work-related injury of \_\_\_\_\_. After considering the evidence, the ALJ concludes that they were not.

Carrier offered the opinions of several medical doctors to support its position that treatment related to the compensable injury should have ended in mid-2000. In his independent medical evaluation, Mark Parker, M.D., concluded that Claimant had reached MMI when he examined her on April 17, 2000. His impression was that she suffered from a soft tissue injury to the spine with underlying degenerative spine disease. He assigned a 0% impairment rating noting that there is no impairment for specific disorders of the spine and that she has no valid range of motion loss.

Arthur L. Sarris, M.D., F.A.C.S., examined Claimant on June 7, 2000, and concurred that she reached MMI on April 17, 2000, with a 0% impairment. Based on his clinical judgement, Dr. Sarris felt that Claimant demonstrated voluntary restriction, suboptimal effort, and exaggerated pain response along with symptom magnification. He did not believe that the compensable injury caused the reported findings on her MRI and instead found those findings were related to a pre-existing, degenerative condition.

Moreover, on July 30, 2001, Dr. Hood, M.D., noted in his peer report that because of the dearth of positive objective findings, the only diagnosis that could be made is a one-time contusion or sprain of the lumbar area from the slip and fall. He stated that any treatment after June 7, 2000, was unreasonable. Dr. Hood added that, "this lady has deep problems" and opined that she should see a psychiatrist to understand her physical manifestations to her psychosocial disorder.

After considering the entirety of the evidentiary record, and giving appropriate persuasive weight to the testimony of the medical experts, the ALJ finds that the preponderance of the evidence establishes that the treatments in issue were not medically necessary. The MRI and other diagnostic tests fail to show any injury related to the compensable injury. While Dr. Nosnik urges that his clinical evaluation of Claimant and her continued symptoms justified additional tests and treatment, the ALJ is persuaded by the various reports indicating that Claimant has psychological problems unrelated to the compensable injury that have led to exaggerated complaints. Moreover, even if Claimant continued to have rational complaints, the record indicates they were not related to the compensable injury but were more likely related to pre-existing conditions or perhaps to a fall and injury at home that occurred in early\_\_\_\_\_.

Therefore, because the ALJ concludes that the treatments provided by Dr. Nosnik were not medically necessary treatment of Claimant's compensable injury, Carrier is not required to reimburse him for them. In support of this determination, the ALJ makes the following findings of fact and

conclusions of law.

### **III. Findings of Fact**

1. \_\_\_\_\_ (Claimant) suffered a compensable injury to her back in \_\_\_\_\_ while performing work-related duties for her employer,\_\_\_\_\_.
2. At the time of Claimant's injury, Fremont Compensation Co. (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant suffered a soft tissue injury to her spine but had a pre-existing, underlying degenerative spine condition.
4. There were no positive objective findings related to the compensable injury from the MRI or other diagnostic tests performed in 2000.
5. During clinical observation, Claimant demonstrated voluntary restriction, suboptimal effort and exaggerated pain response along with symptom magnification.
6. Claimant reached maximum medical improvement in April 2000 with a 0% impairment .
7. Claimant's symptoms reported to Dr. Nosnik in August 2001 were not related to the compensable injury.
8. Claimant suffers from psychological problems unrelated to the compensable injury that have led to exaggerated complaints and symptom magnification.
9. Dr. Nosnik provided the following medical services to Claimant on August 28, 2001: office consultation; muscle test, two limbs; motor nerve conduction; and two "H" or "F" reflex studies.
10. Dr. Nosnik billed the Carrier \$2,178 for his August 28, 2001 services; the maximum allowable reimbursement was \$944.
11. Carrier denied reimbursement for the treatments provided by Dr. Nosnik, asserting the treatments were not medically necessary treatment for Claimant's compensable injury.

12. On February 19, 2002, Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission.
13. On September 26, 2002, Independent Review Incorporated, after conducting an independent medical review, agreed with Carrier's determination that the services provided on August 28, 2001, were not medically necessary.
14. MRD mailed a copy of the decision on October 3, 2002.
15. On October 30, 2002, Provider filed a request for hearing before the State Office of Administrative Hearings (SOAH).
16. Notice of the hearing was sent on March 5, 2003.
17. A hearing was conducted by SOAH, before Administrative Law Judge Tommy L. Broyles, on April 22, 2003. Ron Johnson, attorney, appeared on behalf of the Carrier. Provider appeared by telephone and represented himself. The Commission did not appear nor participate. The hearing adjourned and the record closed on that same day.
18. The treatments provided by Dr. Nosnik on August 28, 2001, were not medically necessary treatment of Claimant's compensable injury of January 2000.

#### **IV. Conclusions of Law**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issues presented pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. §413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to §413.031 of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely filed its request for a hearing, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Provider has the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
6. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
7. Carrier established by a preponderance of the evidence that the treatments provided by

Dr. Nosnik on August 28, 2001, were not medically necessary for the treatment of Claimant's compensable injury.

8. Provider's request for reimbursement should be denied.

**ORDER**

**IT IS ORDERED** that Pedro Nosnik, M.D. is not entitled to reimbursement from Fremont Compensation Company for the treatments provided to claimant\_\_\_\_ on August 28, 2001, and his request for reimbursement is denied.

**Signed this 19<sup>th</sup> day of June 2003.**

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**TOMMY L. BROYLES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**