

SOAH DOCKET NO. 453-03-3423.M5
TWCC NO. M5-03-0267-01

WACO ORTHO REHAB,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TASB RISK MANAGEMENT FUND,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Waco Ortho Rehab (Provider) appealed the decision of an Independent Review Organization (IRO) that partially reimbursed Provider for office visits and other procedures performed from September 28, 2001, through March 13, 2002. Prior to the hearing, the parties informed the Administrative Law Judge (ALJ) that Provider had withdrawn its reimbursement request for the services rendered on September 28, 2001. The ALJ finds that the IRO decision should be upheld in all other respects and Provider should be reimbursed for the services rendered from October 1, 2001, through January 24, 2002, as outlined in the IRO decision. Furthermore, Provider is not entitled to any additional reimbursement that was not awarded by the IRO decision.

The hearing convened on January 8, 2004, with ALJ Steven M. Rivas presiding. Provider appeared and was represented by H. Douglas Pruet, attorney. Carrier appeared and was represented by Jane L. Stone, attorney. The record remained open until January 16, 2004, to allow Provider an opportunity to submit written closing arguments and file citations of legal authority.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable injury on _____. As part of her treatment, Claimant was referred to Provider where she underwent several sessions of physical therapy, office visits, and other procedures from January 28, 2002, through March 13, 2002. Provider billed TASB Risk Management Fund (Carrier) for all of the physical therapy sessions, office visits, joint mobilization, and myofascial release procedures, which Carrier denied as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission. The dispute was sent to an IRO, which held the first 11 therapy sessions were medically necessary, and ordered reimbursement. The IRO held any sessions following the first 11 were not medically necessary. Provider filed a request for hearing before the State Office of Administrative Hearings and sought additional reimbursement for the remaining sessions following the first 11 deemed medically necessary by the IRO. .

2. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021(a) provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The statute further states an 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."

Under TEX. LAB. CODE ANN. §401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

3. Evidence and Arguments

Provider argued that the IRO determined the initiation of the physical therapy program in this case was medically necessary because any treatment that enhances the ability of a patient to return to work is medically necessary. However, Carrier argued any treatment rendered to a claimant must be necessary and not just possibly helpful, which was the situation in this case.

Claimant underwent a strength test and range-of-motion test prior to starting the program. After three months, Claimant was retested and demonstrated slightly increased strength and decreased range-of-motion. Based on this information, Provider continued to treat Claimant with physical therapy. Carrier asserted Claimant had not improved much because she did not comply with her home exercise program that was prescribed in conjunction with the physical therapy program. The record supports Carrier's assertion.

The record also indicated Claimant did not improve following the first 11 sessions. Provider argued Carrier should not be able to retroactively audit the treatment plan because it was unknown how well Claimant would respond to her treatment before it was ordered. Provider further argued it was not fair that Carrier reviewed the treatment notes and determined the physical therapy and office visits were not medically necessary based on Claimant's inability to improve her condition.

Carrier's argument that it was entitled to determine Claimant's treatment was not medically necessary was more persuasive because it was required by the Act to retroactively determine if the treatment was medically necessary. The Act requires all treatment be to cost-effective in the least intensive setting possible.

At the hearing, Carrier attempted to deny reimbursement to all treatment rendered by Provider, including the 11 sessions that were deemed medically necessary by the IRO. However, Carrier had not appealed the IRO decision that determined the 11 sessions were medically necessary. Therefore, it can not bring that issue before SOAH at this time.¹

Because Claimant displayed no signs of improvement in the treatment following the first 11

¹ An appeal from the IRO's findings and the request for an administrative hearing may be made in writing and must be received by the Commission within 20 days of the date the decision is received. 28 TAC §§ 133.308(t) and 143. Because Carrier failed to file a timely appeal, it is precluded from litigating any matters not challenged by the Provider. See SOAH docket 453-03-2810.M4, June 20, 2003, ALJ K. Smith.

sessions of physical therapy, Provider is not entitled to additional reimbursement not awarded by the IRO decision.

II. FINDINGS OF FACTS

1. ____, Claimant sustained a compensable injury.
2. On the date of injury, Claimant was covered by TASB Risk Management Fund (Carrier).
3. Claimant was treated at Waco Ortho Rehab (Provider) from September 28, 2001, through March 13, 2002. Claimant's treatment plan included office visits, joint mobilization and myofascial release procedures.
4. Provider sought reimbursement from Carrier for the treatment rendered, which Carrier denied as not medically necessary.
5. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which partially upheld the denial of reimbursement. The IRO determined the first 11 therapy sessions were medically necessary and ordered reimbursement. The remaining sessions were not deemed medically necessary by the IRO.
6. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH) and sought additional reimbursement for the therapy sessions following the first 11 sessions.
7. Carrier did not appeal the IRO's decision regarding the first 11 therapy sessions.
8. Notice of the hearing in this case was mailed to the parties on October 3, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
9. The hearing convened on January 6, 2004, with Administrative Law Judge Steven M. Rivas presiding. Provider appeared and was represented by H. Douglas Pruett, attorney. Carrier appeared and was represented by Jane L. Stone, attorney. The record remained open until January 16, 2004.
10. Claimant exhibited no improvement during the therapy sessions following the first 11 sessions.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely filed its notice of appeal, 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 ANN. §§ 2001.051 and 2001.052, and 28 TEX. ADMIN. CODE § 148.4.
5. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that cures or relieves the effects naturally resulting from the compensable injury
7. The therapy sessions following the first 11 sessions were not medically necessary to treat Claimant compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Provider should not be awarded additional reimbursement.

ORDER

IT IS ORDERED THAT Provider is not entitled to additional reimbursement for the therapy sessions that followed the first 11 sessions.

SIGNED March 15, 2004.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**