

**DOCKET NO. 453-03-3605.M5
TWCC MRD NO. M5-03-0495-01**

FIRST RIO VALLEY MEDICAL, P. A.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
COMMERCE & INDUSTRY	§	
INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

First Rio Valley Medical, P.A., (Provider) appealed the decision of the Independent Review Organization (IRO) denying reimbursement for services provided to an injured worker (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Provider failed to show by a preponderance of the evidence that the services in issue were medically necessary. Therefore, Provider is not entitled to reimbursement for the amounts in controversy.

I. BACKGROUND

Claimant suffered compensable, work-related injuries to his upper extremities and lower back on ____, when he was involved in an automobile accident. Thereafter, Claimant underwent numerous treatments or services, including those presently in dispute: an MRI, physical performance tests, somatosensory test, sense conduction test, nerve conduction velocity, H-reflex, and special reports. All of these were provided between January 16, 2002, and May 1, 2002.

Commerce & Industry Insurance Company (Carrier), as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse these treatments and services, contending they were not medically necessary. Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the services in issue were not medically necessary treatment for Claimant's compensable injury. Provider then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on February 7, 2005, with ALJ Tommy Broyles presiding. Provider appeared on his own behalf. The hearing concluded and the record closed on that same day. No party objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

Provider maintains that the disputed treatments were medically necessary. Robert S. Howell, D.C., testified that the January 16, 2002 MRI of Claimant's right elbow was medically necessary to determine the cause of continuing pain. The MRI revealed increased signal around the ulnar nerve at the elbow joint level, perhaps representing neuritis of this nerve. After aquatic and therapeutic therapy, a second functional capacity evaluation (FCE) was performed on February 14, 2002. The

FCE indicated progress was being made. However, Claimant continued to have pain in his elbow, so Dr. Howell performed electro diagnostic testing on February 28, 2002, to determine the source of the pain. Dr. Howell notes that throughout all of the treatment, Claimant was getting better, and he believes this proves appropriate treatment was provided.

After reviewing the records, Brian Glenn, D.C., testified on behalf of Carrier. Dr. Glenn emphatically stated that no medical care after January 16, 2002, was medically necessary. Relying on an FCE Performed on January 15, 2002, Dr. Glenn noted that Claimant was functioning at the very heavy to heavy load levels and had very minimal complaints of pain. He further noted that Claimant's shoulder injury was not significant enough to warrant care beyond eight weeks from the date of injury. While acknowledging that Claimant suffered an elbow contusion, Dr. Glenn pointed out that Claimant's elbow range of motion was normal from day one with no evidence of lateral epicondylitis or fracture. Dr. Glenn opined that by January 16, 2002, Claimant's treating physician should have known the minor shoulder pain would most likely resolve on its own and certainly should not have required further diagnostic testing.

After considering the arguments and evidence presented, the ALJ concludes that the disputed services provided to Claimant were not medically necessary for treatment of Claimant's compensable injury. Therefore, the ALJ finds that Provider is not entitled to reimbursement. In reaching this decision, the ALJ finds Dr. Glenn's testimony to be credible and persuasive. Claimant was recovering well and to do an MRI based on tenderness and minor palpatory pain was unwarranted. This conclusion is supported by previous examinations which indicated Claimant's grip strength was fine and he had normal resisted wrist flexion and extension. For similar reasons, the electro diagnostic testing performed on February 28, 2002, was not medically necessary. Dr. Howell offered no clinical support for his statement that the testing was necessary to obtain the cause of numbness and weakness to Claimant's arm. In his previous exam, Claimant did not demonstrate any weakness in his arm and numbness was not indicated. Rather, Dr. Glenn's opinions are supported by those of Ronald Kirkwood, D.O., who examined Claimant on March 14, 2002, and determined that there were no problems or objective evidence of injury. Dr. Kirkwood assigned Claimant a 0% impairment rating.

In considering the totality of the record, the ALJ concludes that the preponderance of the evidence shows that the treatments in issue were not medically necessary. Therefore, Provider has not met its burden of showing that the treatments were medically necessary. As such, Provider is not entitled to reimbursement for the treatments. 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, work-related injury on _____.
2. Commerce & Industry Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. Claimant underwent numerous treatments and services, including those presently in dispute: an MRI, physical performance tests, somatosensory test, sense conduction test, nerve conduction velocity, H-reflex, and special reports (Disputed Services).
4. The Disputed Services occurred between January 16, 2002 and May 1, 2002.

5. Carrier denied reimbursement for the services, contending they were not medically necessary.
6. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
7. MRD declined to order reimbursement on April 30, 2003, based on the IRO physician reviewer's determination that the services in issue were not medically necessary.
8. On May 22, 2003, Provider requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent by the Commission to all parties on June 25, 2003.
10. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. On February 7, 2005, Administrative Law Judge Tommy Broyles convened a hearing in this case. Provider appeared through its attorney, Doug Pruett. Carrier appeared through its attorney, Kevin Franta. The hearing concluded and the record closed that same day.
12. On January 15, 2002, Claimant performed a functional capacity evaluation which indicated he was functioning at the heavy to very heavy load levels and had very minimal complaints of pain.
13. Claimant's shoulder injury was not significant enough to warrant care beyond eight weeks from the date of injury.
14. Claimant suffered an elbow contusion, but his elbow range of motion was normal from day one with no evidence of lateral epicondylitis or fracture.
15. Claimant's grip strength was fine and he demonstrated normal resisted wrist flexion and extension.
16. Claimant was recovering well and to perform an MRI based on tenderness and on a little bit of palpatory pain was not medically necessary.
17. There was no clinical support for Dr. Howells statement that additional testing was necessary to ascertain the cause of numbness and weakness to Claimant's arm.
18. In his previous exam, Claimant did not demonstrate any weakness in his arm and numbness was not indicated.
19. No medical care after January 16, 2002, was medically necessary.

IV. 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. Provider has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Provider has not shown, by a preponderance of the evidence, that the services in issue provided to Claimant between January 16, 2002, and May 1, 2002, were medically necessary for treatment of Claimant's compensable injury.
7. Carrier is not liable to reimburse Provider for the treatments and services provided to Claimant between January 16, 2002, and May 1, 2002.

ORDER

IT IS, THEREFORE, ORDERED that First Rio Valley Medical, P.A. take nothing from Commerce & Industry Insurance Company for the treatments provided to Claimant between January 16, 2002, and May 1, 2002.

SIGNED March 29, 2005.

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