

Petitioner had the burden of proof in this proceeding, and Petitioner failed to sustain its burden of proof that the Disputed Services are medically necessary.

II. FINDINGS OF FACT

1. ____ (Patient) sustained a work related injury on or about ____, when she slipped while in a school cafeteria.
2. Patient injured her thoracic spine and right knee.
3. On October 18, 2000, Patient presented to Brad Burdin, D.C. After a series of treatment for her knees and back, Patient had right knee surgery on May 28, 2002.
4. Neuromuscular Institute of Texas (Petitioner) seeks reimbursement for therapeutic exercises, hot and cold pack therapy and office visits for the period March 14, 2002, through April 11, 2002 (Disputed Services).
5. The Disputed Services were provided by Petitioner.
6. Patient has exhibited symptom magnification and pain behavior.
7. San Antonio Independent School District (Respondent) denied reimbursement for the Disputed Services as not medically necessary.
8. By letter dated June 10, 2003, ____, an Independent Review Organization (IRO), concluded that the Disputed Services were not medically necessary for treatment of Patient's condition.
9. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
10. Petitioner timely requested a hearing to contest the Commission's decision.
11. By letter dated June 12, 2003, the Commission issued a notice of hearing.
12. A hearing was convened by Administrative Law Judge Howard S. Seitzman on September 24, 2003, in the hearing rooms of the State Office of Administrative Hearings.
13. David T. Duncan, Jr., represented Petitioner. Dean G. Pappas represented Respondent.

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(k) 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); 1 TAC § 155.41(b).
7. Based upon the Findings of Fact, Petitioner failed to prove by a preponderance of the evidence that the therapeutic exercises, hot and cold pack therapy and office visits for the period March 14, 2002, through April 11, 2002, were medically necessary for treatment of Patient's condition.

ORDER

THEREFORE IT IS ORDERED that Petitioner Neuromuscular Institute of Texas= request for relief is **DENIED**.

SIGNED October 16, 2003.

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