

**SOAH DOCKET NO. 453-04-7045.M4  
TWCC MR NO. M4-03-6578-01**

<b>TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, Petitioner</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>FIRST RIO VALLEY MEDICAL, P.A., Respondent</b>	§ §	<b>ADMINISTRATIVE HEARINGS</b>

**SOAH DOCKET NO. 453-03-3987.M5  
TWCC MR NO. M5-03-1508-01**

<b>FIRST RIO VALLEY MEDICAL, P.A., Petitioner</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>TRAVELERS INDEMNITY COMPANY OF CONNECTICUT, Respondent</b>	§ §	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. DISCUSSION**

SOAH Docket No. 453-04-7045.M4 is a fee dispute in which Travelers Indemnity Company of Connecticut (Travelers) requested a hearing to contest the February 18, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission) ordering reimbursement to First Rio Valley Medical, P.A. (First Rio), for an office visit<sup>1</sup> and a joint mobilization<sup>2</sup> on August 26, 2002 (August Disputed Services).<sup>3</sup> The medical necessity of the August Disputed Services are at issue in SOAH Docket No. 453-03-3987.M5.

In SOAH Docket No. 453-03-3987.M5, First Rio requested a hearing to contest the June 16, 2003 Findings and Decision of the Commission denying reimbursement to First Rio for chiropractic

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<sup>1</sup> CPT Code 99211.

<sup>2</sup> CPT Code 97265.

<sup>3</sup> First Rio also requested reimbursement for a spray and stretch (CPT Code 97139-SS). The Commission denied reimbursement for the service and First Rio did not request a hearing of that denial.

services including office visits,<sup>4</sup> joint mobilization,<sup>5</sup> massage,<sup>6</sup> aquatic therapy,<sup>7</sup> phonophoresis,<sup>8</sup> therapeutic exercises,<sup>9</sup> electrical stimulation,<sup>10</sup> spray and stretch,<sup>11</sup> and special supplies<sup>12</sup> from June 11, 2002, through September 25, 2002 (Chiropractic Disputed Services).<sup>13</sup>

This decision DENIES the relief sought by First Rio and denies First Rio reimbursement for the Chiropractic Disputed Services. This decision GRANTS the relief sought by Travelers and denies reimbursement for the August Disputed Services.

Because the dockets involved the same claimant, the dockets were joined for the hearing on the merits. The hearing convened on December 7, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Keith Gilbert represented First Rio. Dan Flanigan represented Travelers. There were no contested issues of notice or jurisdiction. The hearing adjourned and the record closed the same day.

## II. BACKGROUND

\_\_\_ (Claimant) sustained a work-related injury on \_\_\_, while waxing a floor. On August 31, 1999, Claimant, a 65-year-old male, was examined by First Rio's Robert S. Howell, D.C. Dr. Howell diagnosed Claimant with lumbar sprain, thoracic or lumbosacral neuritis or radiculitis, facet syndrome and acquired spondylolisthesis and recommended a six-week course of chiropractic treatment and physical therapy.

In October of 1999, Jorge E. Tijmes, M.D., recommended lumbar surgery with a local decompression and fusion. Claimant declined surgery. In November of 2001, facet blocks were recommended but Claimant elected to forego the procedure.

Claimant had an ongoing series of treatments at First Rio beginning in 1999 and extending through the dates of service in dispute. The treatments remained the same as did the general

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<sup>4</sup> CPT Codes 99211, 99212 and 99214.

<sup>5</sup> CPT Code 97265.

<sup>6</sup> CPT Code 97124.

<sup>7</sup> CPT Code 97113.

<sup>8</sup> CPT Code 97139-PH and 99070-PH (Phonophoresis supplies). Phonophoresis is the use of ultrasound to drive analgesics and anti-inflammatory agents to the treatment area.

<sup>9</sup> CPT Code 97110.

<sup>10</sup> CPT Code 97032.

<sup>11</sup> CPT Code 97139-SS.

<sup>12</sup> CPT Code 99070-D6.

<sup>13</sup> By Decision dated June 11, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), determined the Chiropractic Disputed Services were not medically necessary.

diagnoses. A survey of the periodic medical assessments tells the story. In January of 2000, Dr. Howell concluded Claimant required palliative treatment, at a frequency of three per week for four weeks, for Are-exacerbations.” In July of 2001, joint mobilization, physical medicine modalities and rehabilitative measures were prescribed for the lumbar spine three times per week for four weeks.<sup>14</sup> On June 11, 2002, the earliest date of service in dispute, Dr. Howell diagnosed displacement of the lumbar intervertebral disc without myelopathy, spinal stenosis of the lumbar region, thoracic or lumbosacral neuritis or radiculitis, and degeneration of lumbar or lumbosacral intervertebral disc. He prescribed joint mobilization, physical medicine and rehabilitative therapies to the lumbar spine once a week for four weeks. On August 20, 2002, Dr. Howell examined Claimant and his diagnoses remained unchanged.<sup>15</sup> Dr. Howell prescribed additional therapeutic and exercise programs three times a week for four weeks.

Claimant’s other health care treatments included a chronic pain program from First Rio Valley Medical extending from the latter part of 2001 through early 2002.

On September 25, 2002, the final date of service in issue, Dr. Howell concluded Claimant had shown “significant improvement with the previous treatment plan.” Dr. Howell cited a reduction in Claimant’s lower back pain, increased strength and an increase in range of motion. He prescribed four weeks of additional treatment on a twice per week basis.

### III. ANALYSIS

Claimant’s medical condition for the period in question was relatively stable and mild.<sup>16</sup> No significant changes in symptomology occurred during the period 2000 through 2002. The symptoms and treatment results for the period June 2002 through September 2002 are essentially the same as for the period preceding June of 2002. For example, the notes from the 2001-2002 chronic pain program reflect that Claimant’s pain was generally a 3 or a 4 on a 10-point scale.<sup>17</sup> Post-treatment, Claimant’s pain was a 2 on a 10-point scale. Similarly, First Rio’s notes for the period June through September 2002, described Claimant’s pain as slight, slight to moderate and as a 3 or a 4 on a 10-point scale. Post-treatment, Claimant’s pain was a 2 on a 10-point scale. During the latter part of September 2002, Claimant’s post-treatment pain increased to a 3 on a 10-point scale. Claimant described his pain as “dull” and “achy” lower back pain.

Because Claimant’s initial pain was minimal, one reasonably should not and could not expect significant improvement in Claimant’s condition. The post-treatment results confirmed the expectations. The decrease in subjective pain was insignificant and the pain reducing effects of the Chiropractic Disputed Services failed to last for more than one or two days.

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<sup>14</sup> Services included therapeutic massage, aquatic therapy, therapeutic phonophoresis and joint mobilization.

<sup>15</sup> He noted that Claimant’s activities of daily living had caused increased lower back pain and that Claimant complained of increased weakness in his lower extremities.

<sup>16</sup> Claimant’s declination of surgery is understandable given his age, hypertension, obesity, diabetes, and an episode of supraventricular tachycardia.

<sup>17</sup> On a 10-point scale, 0 is free of pain while 10 is extreme pain.

The treatment services in dispute from June through September 2002 were the same services previously rendered to Claimant by First Rio in 2000, 2001, and in early 2002. The treatment services rendered to Claimant by First Rio in 2000, 2001, and early 2002, yielded minimal, if any, improvement or relief.<sup>18</sup> The benefits of the treatment were short-lived.<sup>19</sup> There was no reasonable basis to assume the results of the treatment between June and September 2002 would be significantly different than the results from 2000, 2001 and early 2002. In fact, they were not different.

First Rio recognized in October of 2001 that the treatments were not successful.<sup>20</sup> On October 11, 2001, First Rio's Sam J. Allen, D.C.,<sup>21</sup> concluded that Claimant had attempted all current methods of treatment and that the "treatments were not completely successful in relieving, reducing, eliminating or assisting the patient in dealing with his pain symptoms."<sup>22</sup> The lack of success continued into 2002. Despite the treatments, the examination results from early 2002 showed no significant improvement in Claimant's condition or symptoms.

If insignificant improvement was the desired goal, it could have been achieved through less costly means. If the desired goal was significant improvement, the results of the preceding three years of treatment proved it could not be attained through the Chiropractic Disputed Services.

In SOAH Docket No. 453-03-3987.M5, First Rio bore the burden of proving the medical necessity of the Chiropractic Disputed Services. First Rio failed to prove by a preponderance of the evidence that the Chiropractic Disputed Services were reasonable and medically necessary. Although the August Disputed Services were properly documented, they were not medically necessary. Because the August Disputed Services were not medically necessary, First Rio is not entitled to reimbursement in SOAH Docket No. 453-04-7045.M4.

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<sup>18</sup> Comparing lumbar spine range of motion results from 2000 through 2002 yields no discernable pattern of prolonged improvement or stability. In fact, Claimant's range of motion is better in 2000 and 2002 than in 2001.

<sup>19</sup> On February 22, 2000, Claimant's range of motion results for the lumbar spine were normal in all four categories measured. By May 1, 2000, the results were below normal in three of the four categories measured. In February 2000, Dr. Howell proclaimed Claimant had "improved as anticipated" and released him for treatment on an as-needed basis. Although Claimant's range of motion results had deteriorated somewhat between February 2000 and May 2000, the May report ignored the February results and chose the January 2000 results as the comparison. Based upon the January comparison, Dr. Howell concluded Claimant had improved when, according to the evidence, there was, at best, a slight decline.

<sup>20</sup> Prior to June 2002, the treatment services provided to Claimant included therapeutic massage, aquatic therapy, phonophoresis and joint mobilization. The short term goals of the treatment were to decrease the acute pain level, decrease swelling and inflammation, and improve joint mobilization. Long term goals included increasing range of motion, decreasing chronic pain levels, increasing Claimant's ability to function in a more pain free status, decreasing the likelihood of further joint damage, and educating the patient to prevent re-injury.

<sup>21</sup> First Rio apparently incorrectly typed the name on the report as Allen J. Sam, D.C., although the signature reads Sam J. Allen, D.C.

<sup>22</sup> The lumbar spine range of motion results, despite the treatments, were the same or slightly worse in October 2001 than in July 2001.

#### IV. FINDINGS OF FACT

1. In SOAH Docket No. 453-03-3987.M5, First Rio Valley Medical, P.A. (First Rio), sought reimbursement for chiropractic services including office visits, joint mobilization, massage, aquatic therapy, phonophoresis, therapeutic exercises, electrical stimulation, spray and stretch, and special supplies from June 11, 2002, through September 25, 2002 (Chiropractic Disputed Services).
2. \_\_\_\_ (Claimant) sustained a work-related injury on \_\_\_\_, while waxing a floor.
3. On August 31, 1999, Claimant, a 65-year-old male, was examined at First Rio by Robert S. Howell, D.C.
4. Dr. Howell diagnosed Claimant with lumbar sprain, thoracic or lumbosacral neuritis or radiculitis, facet syndrome and acquired spondylolisthesis and recommended a six-week course of chiropractic treatment and physical therapy.
5. On October 28, 1999, Jorge E. Tijmes, M.D., recommended lumbar surgery with a local decompression and fusion.
6. Claimant declined surgery and has not had surgery for his back.
7. Facet blocks were recommended in November of 2001 but Claimant elected to forego the procedure.
8. Claimant was treated at First Rio on a periodic basis from August 1999 through September 2002.
9. Following the initial course of treatment, Dr. Howell treated Claimant with palliative treatment for "Are-exacerbations" at frequencies ranging from once per week to three times per week for three or four weeks.
10. The treatment services and diagnoses remained, in general, unchanged.
11. Prior to June 2002, the treatment services provided to Claimant included therapeutic massage, aquatic therapy, phonophoresis and joint mobilization.
12. The short term goals of the treatment were to decrease the acute pain level, decrease swelling and inflammation, and improve joint mobilization. Long term goals included increasing range of motion, decreasing chronic pain levels, increasing Claimant's ability to function in a more pain free status, decreasing the likelihood of further joint damage, and educating Claimant to prevent re-injury.
13. Claimant's medical condition for the period in question was relatively stable and mild. No significant changes in symptoms occurred during the period 2000 through 2002.
14. The symptoms and treatment results for the period June 2002 through September 2002 were essentially the same as for the period preceding June 2002.

15. The treatment services in dispute from June through September 2002 were the same services previously rendered to Claimant by First Rio in 2000, 2001, and early 2002.
16. Claimant's other health care treatments included a chronic pain program from First Rio Valley Medical extending from the latter part of 2001 through early 2002.
17. Claimant's decrease in subjective pain as a result of the Chiropractic Disputed Services was insignificant and the pain-reducing effects of the Chiropractic Disputed Services failed to last for more than one or two days.
18. The treatment services rendered to Claimant by First Rio in 2000, 2001, and early 2002, yielded minimal, if any, improvement or relief and any benefits of the treatment were short-lived.
19. First Rio recognized in October 2001 that the treatments were not successful.
20. There was no reasonable basis to assume the results of the treatment between June and September 2002 would be significantly different than the results from earlier treatment.
21. On June 11, 2002, Dr. Howell examined Claimant and diagnosed displacement of the lumbar intervertebral disc without myelopathy, spinal stenosis of the lumbar region, thoracic or lumbosacral neuritis or radiculitis, and degeneration of lumbar or lumbosacral intervertebral disc.
22. Dr. Howell prescribed joint mobilization, physical medicine and rehabilitative therapies to the lumbar spine once a week for four weeks.
23. As of August 20, 2002, Claimant's diagnoses remain unchanged.
24. To treat Claimant's increased lower back pain and his perception of increased weakness in the lower extremities, Dr. Howell prescribed additional therapeutic and exercise programs three times a week for four weeks.
25. Although Dr. Howell concluded on September 25, 2002, that Claimant had shown significant improvement based upon a reduction in Claimant's lower back pain and increased strength and range of motion, the decrease in subjective pain was insignificant.
26. The pain reducing effects of the Chiropractic Disputed Services failed to last for more than one or two days.
27. The beneficial effects, if any, of First Rio's treatments were very temporary.
28. There was no reasonable medical expectation that the Chiropractic Disputed Services would result in any significant improvement or relief of Claimant's condition.
29. Travelers Indemnity Company of Connecticut (Travelers) denied reimbursement for the Chiropractic Disputed Services based upon medical necessity.

30. By Decision dated June 11, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), determined the Chiropractic Disputed Services were not medically necessary.
31. By decision dated June 16, 2003, the Texas Workers' Compensation Commission (Commission) denied First Rio reimbursement for the Disputed Services.
32. First Rio timely requested a hearing to contest the Commission's decision.
33. The Commission issued a notice of hearing in SOAH Docket No. 453-03-3987.M5 on July 23, 2003.
34. In SOAH Docket No. 453-04-7045.M4, Travelers timely requested a hearing to contest the February 18, 2004 Findings and Decision of the Commission ordering reimbursement to First Rio for an office visit and a joint mobilization on August 26, 2002 (August Disputed Services).
35. The Commission issued a notice of hearing in SOAH Docket No. 453-04-7045.M4 on June 25, 2004.
36. While SOAH Docket No. 453-03-3987.M5 is a dispute involving the medical necessity of services provided to Claimant, SOAH Docket No. 453-04-7045.M4 is a fee dispute involving whether the provision of services was documented.
37. A hearing was convened by Administrative Law Judge Howard S. Seitzman on December 7, 2004, in the hearing rooms of the State Office of Administrative Hearings. The hearing adjourned and the record closed the same day.

## **V. 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. First Rio timely requested a hearing in SOAH Docket No. 453-03-3987.M5 pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Travelers timely requested a hearing in SOAH Docket No. 453-04-7045.M4 pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

6. First Rio had the burden of proof in SOAH Docket No. 453-03-3987.M5, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Travelers had the burden of proof in SOAH Docket No. 453-04-7045.M4, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
8. First Rio failed to demonstrate that the Chiropractic Disputed Services were reasonable and medically necessary for the treatment of Claimant's injury.
9. Based upon the Findings of Fact and Conclusions of Law, First Rio is not entitled to reimbursement for the Chiropractic Disputed Services.
10. Because Travelers also challenged the medical necessity of the August Disputed Services, the disposition of SOAH Docket No. 453-04-7045.M4 is controlled by SOAH Docket No. 453-03-3987.M5.
11. Based upon the Findings of Fact and Conclusions of Law, First Rio is not entitled to reimbursement for the August Disputed Services.

### **ORDER**

THEREFORE IT IS ORDERED that First Rio Valley Medical, P.A., is not entitled to reimbursement from Travelers Indemnity Company of Connecticut for either the Chiropractic Disputed Services or the August Disputed Services provided to Claimant.

**SIGNED February 2, 2005.**

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