



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.

### **3. Evidence and Analysis**

Provider's treatment consisted of one-on-one supervision, meaning Claimant was always in the presence of a physical therapist when he exercised or performed strength and range-of-motion tests at Provider's facility. Provider argued that one-on-one supervision was necessary based on the seriousness of Claimant's injury; however it did not offer much evidence to support this position. In fact, evidence to the contrary was presented by Carrier, which will be discussed later. Provider also pointed out that the surgeon, Stephen Weinberg, M.D., who performed Claimant's surgery recommended Claimant undergo physical therapy following surgery. However, Carrier asserted the recommendation did not stipulate one-on-one treatment, and argued that a less intensive treatment program was more reasonable in this case. For instance, the record indicated Claimant had participated in a home exercise program before he began treatment with Provider, but the efficacy of the home exercise program was not established because the records of said program were not submitted. Provider's strongest argument in favor of the one-on-one treatment was that Claimant improved his strength and range-of-motion in his left arm as the treatment progressed. However, the results of the program alone did not establish medical necessity under § 408.021.

Carrier argued the treatment rendered to Claimant was not medically necessary because it was not performed in the least-intensive or cost-effective manner. In support of this position, Carrier pointed out Provider's testimony that Claimant was a "very motivated" individual. Carrier also pointed out that Provider admitted there were no safety issues regarding Claimant's treatment. Carrier argued that because Claimant was a very motivated individual and presented no safety issues regarding his treatment, it was not necessary to have treated Claimant in a one-on-one setting.

Additionally, Carrier argued that Claimant did not need the one-on-one physical therapy program because Claimant was no longer "immobilized" from the surgery. Following the surgery, Claimant was fitted with a cast that covered most of his left arm. However, the cast was removed in April 2002, and Claimant was not immobilized for at least three months before he started the physical therapy program.

Carrier called Gary Pamplin, M.D., an orthopedic surgeon, who testified the treatment rendered to Claimant was not medically necessary. In support of his position, Dr. Pamplin noted Claimant had returned to work in April 2002. More importantly, Dr. Pamplin noted that Claimant was employed as a foreman on a ranch, and returned to this position in a "light duty" capacity. Dr. Pamplin, a licensed physician, testified he was raised on a ranch and worked there for many years, and that there is not much "light duty" to be performed on a ranch, meaning the "light duty" tasks performed by a ranch foreman are very different than the "light duty" tasks performed by an office worker or a worker of other sedentary professions. For example, Claimant's job duties included moving bales of hay and feed, in addition to supervising other ranch hands. During one session on August 14, 2002, Claimant informed Provider that he had loaded 60 bales of hay by himself. Dr. Pamplin testified it was nearly impossible to not use both arms when loading bales of hay, and that it was apparent that Claimant was functioning well at this time.

Furthermore, Dr. Pamplin asserted Claimant's normal duties as a ranch foreman were most likely a better course of rehabilitation than the treatment rendered by Provider in this case.

Therefore, Dr. Pamplin testified that if Claimant had been performing the duties of a ranch foreman for three months prior to beginning Provider's treatment, it was not medically necessary that the treatment be administered in a one-on-one setting because Claimant's ability to return to work and his motivational level to rehabilitate himself eliminated the necessity of a one-on-one setting.

Dr. Pamplin suggested a better treatment plan would have been a home exercise program based on Claimant's current job duties and his motivational level. Dr. Pamplin further stated that it would not be medically necessary for Claimant to participate in a group therapy setting, much less one-on-one therapy, based on Claimant's motivational level and his ability to perform the duties as a ranch foreman.

The ALJ was persuaded by Dr. Pamplin's testimony that it was not medically necessary to treat Claimant in a one-on-one setting, especially because Claimant had already returned to work as a ranch foreman, and the evidence that Claimant was performing his duties as a ranch foreman as early as August 14, 2002. For the foregoing reasons, the ALJ finds that the physical therapy program rendered to Claimant between July 18, 2002, and September 28, 2002, was not medically necessary, and Carrier should not be ordered to reimburse Provider.

### **III. FINDINGS OF FACT**

1. Claimant, \_\_\_\_, suffered a compensable elbow injury on \_\_\_\_.
2. On \_\_\_\_, Claimant underwent surgery to treat his injury.
3. Stephen A. Weinberg, M.D., the surgeon who performed the surgery referred Claimant to Denton Sports & Physical Therapy Clinic (Provider) for physical therapy. The referral did not stipulate the type of therapy to be administered to Claimant.
4. Provider administered a one-on-one physical therapy program on Claimant from July 18, 2002, through September 20, 2002. The therapy program consisted of 12 sessions where Claimant performed exercises and completed strength and range-of-motion tests.
5. Provider billed Texas Mutual Insurance Company (Carrier) \$1050.00 for the physical therapy program, which Carrier denied as not medically necessary.
6. Provider filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the treatment rendered to Claimant.
7. The dispute was referred to an Independent Review Organization (IRO), which found Provider was entitled to full reimbursement for the physical therapy program administered to Claimant.
8. Carrier timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH) seeking denial of reimbursement to Provider.
9. Notice of the hearing was sent November 15, 2003.

10. 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.
11. The hearing convened and closed on January 15, 2004, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Carrier appeared and was represented by Katie Kidd, attorney. Provider appeared and was represented by Daniel J. Proctor, physical therapist and owner.
12. Claimant was employed as a ranch foreman and returned to work in April 2002, in a light duty capacity.
13. Claimant performed his duties as a ranch foreman including moving bales of hay and feed, and supervising other ranch hands as early as August 2002.
14. Claimant was “very motivated” during his rehabilitation and did not present any safety issues regarding his treatment.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers’ Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
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 request for hearing as specified by 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. The Carrier, as Petitioner, has the burden of proof in this matter under 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: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.
7. Carrier showed, by a preponderance of the evidence, that the physical therapy program administered to Claimant was not medically necessary, because Provider’s one-on-one setting was not necessary based on Claimant’s ability to return to work and his motivational level.
8. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to any reimbursement for the physical therapy program it rendered to Claimant.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Provider, Denton Sports & Physical Therapy Clinic, is not entitled to receive any reimbursement from the Carrier, Texas Mutual Insurance Company, for the physical therapy program it rendered to Claimant from July 18, 2002, through September 20, 2002.

**Signed on March 16, 2004.**

---

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