

**SOAH DOCKET NO. 453-03-4477.M5
TWCC MR NO. M5-03-1559-01**

**FIRST RIO VALLEY MEDICAL, P.A.,
Petitioner**

V.

**TRAVELERS INDEMNITY COMPANY
OF CONNECTICUT,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

First Rio Valley Medical, P.A. (Petitioner), requested a hearing to contest the July 15, 2003 Findings and Decision of the Texas Workers' Compensation Commission (Commission) denying reimbursement for (1) office visits,¹ aquatic therapy,² therapeutic exercises,³ spray and stretch,⁴ electrical stimulation,⁵ and massage therapy⁶ from September 18, 2002, through October 16, 2002 (Disputed Services).⁷

This decision DENIES the relief sought by Petitioner and denies reimbursement for the Disputed Services.

The hearing convened on December 7, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Keith Gilbert represented Petitioner. Dan Flanigan represented Travelers Indemnity Company of Connecticut (Respondent). There were no contested issues of notice or jurisdiction. The hearing adjourned and the record closed the same day.

¹ CPT Codes 99211 and 99214.

² CPT Code 97113.

³ CPT Code 97110.

⁴ CPT Code 97139 SS.

⁵ CPT Code 97032.

⁶ CPT Code 97124.

⁷ By Decision dated July 8, 2003, Texas Medical Foundation, an Independent Review Organization (IRO), determined the Disputed Services were not medically necessary.

II. BACKGROUND

____ (Claimant) sustained a work-related injury on ____, while opening a window on a school bus. On September 24, 1997, Claimant, a 68-year old male, was examined and Petitioner's Robert S. Howell, D.C., recommended chiropractic treatment and physical therapy for a right shoulder sprain/strain. As noted in Petitioner's November 14, 1997 notes, an October 17, 1997 MRI of the right shoulder showed a tear in the supraspinatus muscle, a rotator cuff tear. On October 21, 1997, Ruben D. Pechero, M.D., an orthopedic surgeon, recommended surgery. On January 6, 1998, Petitioner's Janak S. Desai, M.D., recommended against surgery based upon a "good range of mobility of the shoulder." No surgery has been performed on the right shoulder.

Petitioner advised Claimant in writing on January 12 and on April 7, 1999, that he had not received treatment in some time. On July 20, 1999, Claimant was examined and treated by Petitioner for "palliative treatment for occasional re-exacerbations. . . ." Petitioner planned an annual MRI to determine whether the "impingement has deteriorated to the point that he now needs surgery."

Another series of letters in October 1999, and April 2000, led to an examination on June 8, 2000, and subsequent treatment. A July 6, 2000 MRI still showed a rotator cuff tear in the right shoulder. Following a December 26, 2000 examination, Petitioner prescribed palliative treatment for exacerbation of the right shoulder injury.

A third series of letters from Petitioner was sent to Claimant on January 11, 12, 18, 19, 24, and February 2, 2001; advising Claimant he had missed appointments and treatments. On August 27, 2002, Claimant was seen for another examination that resulted in the same impressions and treatments with respect to the rotator cuff tear. An October 1, 2002 examination resulted in substantially the same conclusions and treatments.

III. ANALYSIS

The tune-up treatments provided to Claimant by Petitioner, whether generated by weather⁸ or by reminder letters, were neither reasonable nor medically necessary. The evaluations of Claimant are rote and the beneficial effects of the treatments are, at best, transitory. Claimant's condition was generally static and his weather dependent changes in condition were insignificant. Aquatic therapy may be justified in treating certain injuries to weight bearing anatomical structures. Petitioner's shoulder is not such an anatomical structure. Petitioner failed to demonstrate the need for aquatic therapy to treat Claimant's shoulder injury. Petitioner failed to demonstrate both the reasonableness and the medical necessity for the treatment provided to Claimant for a five-year old shoulder injury. Petitioner had the burden of proof. Petitioner failed to meet its burden with respect to the Disputed Services.

⁸ In both the impressions and current status portion of his December 26, 2000 examination notes, Dr. Howell remarked that the patient believed weather changes made his condition worse.

IV. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury to his right shoulder on ____, while opening a window on a school bus.
2. On September 24, 1997, Claimant, a 68-year old male, was examined at First Rio Valley Medical, P.A. (Petitioner).
3. Claimant received chiropractic treatment from Petitioner's Robert S. Howell, D.C.
4. An October 17, 1997 MRI of the right shoulder showed a tear in the supraspinatus muscle of the right shoulder, a rotator cuff tear.
5. On October 21, 1997, Ruben D. Pechero, M.D., an orthopedic surgeon, recommended surgery.
6. On January 6, 1998, Petitioner's Janak S. Desai, M.D., recommended against surgery based upon a good range of mobility of the shoulder.
7. Claimant has not had right shoulder surgery.
8. Petitioner prescribed palliative treatment premised upon exacerbation of the right shoulder injury.
9. Petitioner treated Claimant's right shoulder on a periodic basis in 1999, 2000, 2001, and 2002.
10. From time to time, Petitioner advised Claimant by letter that he had not received treatment in some time.
11. Changes in the condition of Claimant's right shoulder were insignificant.
12. Changes in the condition of Claimant's right shoulder were temporary and weather dependent.
13. Petitioner's evaluations of Claimant are rote and do not provide a rational medical basis for the provision of chiropractic and physical therapy treatments of Claimant's right shoulder.
14. The beneficial effects, if any, of Petitioner's treatments were very temporary.
15. Aquatic therapy was not required to treat Claimant's right shoulder injury.
16. Petitioner requested reimbursement for (1) office visits, aquatic therapy, therapeutic exercises, spray and stretch, electrical stimulation, and massage therapy from September 18, 2002, through October 16, 2002 (Disputed Services).

17. Travelers Indemnity Company of Connecticut (Respondent) denied reimbursement for the Disputed Services.
18. By Decision dated July 8, 2003, Texas Medical Foundation, an Independent Review Organization (IRO), determined the Disputed Services were not medically necessary.
19. By decision dated July 15, 2003, the Texas Workers' Compensation Commission (Commission) denied Petitioner reimbursement for the Disputed Services.
20. Petitioner timely requested a hearing to contest the Commission's decision.
21. 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. 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. 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).
6. Petitioner failed to demonstrate that the Disputed Services were reasonable and medically necessary for the treatment of Claimant's ___ shoulder injury.
7. Based upon the Findings of Fact and Conclusions of Law, Petitioner is not entitled to reimbursement for the Disputed Services.

ORDER

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

SIGNED January 21, 2005.

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