

**SOAH DOCKET NO. 453-04-0674.M5
TWCC MRD NO. M5-03-2713-01**

MAIN REHAB & DIAGNOSTIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
PACIFIC EMPLOYERS INS. CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over reimbursement for chiropractic services performed for a repetitive stress injury to Claimant’s right wrist. The Administrative Law Judge (ALJ) concludes the services were not medically necessary and denies reimbursement.

I. FACTUAL AND PROCEDURAL HISTORY

Claimant reported a work-related injury to her right wrist on _____. She was diagnosed with tenosynovitis, median nerve neuritis, and wrist bursitis and treated conservatively with medication, physical therapy, and chiropractic treatment from May 1, 2002 to June 18, 2002. Pacific Employers Insurance Co., (Carrier) reimbursed Main Rehab & Diagnostic (Provider) for these treatments without objections. Beginning on June 20, 2002, Carrier objected to the continued conservative treatment based on peer review and a lack of medical necessity. In dispute are seven dates of service from June 20, 2002 to July 12, 2002, and \$2493.00.

Provider filed a timely Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Carrier that the treatments were not medically necessary. On August 28, 2003, the Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.

On September 12, 2003, Provider filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). The hearing was held February 24, 2004, before ALJ Barbara C. Marquardt. Provider and Carrier participated in the hearing, which was adjourned the same day. Due to Judge Marquardt’s retirement from SOAH, this case was transferred to ALJ Tommy Broyles who listened to the tape recording of the hearing, reviewed the documentary evidence, and issued this Decision and Order.

II. DISCUSSION

Osler Kamath, D.C., (Claimant’s treating doctor) testified that the disputed treatments were medically necessary given Claimant’s continued symptoms and significant improvement realized after the initial six weeks of similar treatment. He stated that objective findings, including tenderness and soreness of the wrist upon palpation, supported his diagnosis of tenosynovitis, median nerve neuritis, and wrist bursitis. Dr. Kamath pointed to Claimant’s increased range of motion (ROM) and muscle strength as evidence of significant improvement after the first six weeks of

treatment and again after the disputed services. Finally, Provider noted that Carrier approved work hardening for Claimant at the same time that it denied payment for the disputed treatments. Provider argues that if the more intense treatments for work hardening were medically necessary, then the lower level of care provided during the disputed services must also be medically necessary.

Timothy J. Fahey, D.C., testified on behalf of Carrier that the disputed services were not medically necessary. He noted that Dr. Kamath ignored the objective testing, nerve conduction velocity (NCV) and magnetic resonance imaging (MRI), which were unremarkable and suggested that the original diagnosis was incorrect.¹ Instead, Carrier submits that Provider relied solely on Claimant's subjective complaints of soreness and tenderness which never improved, despite the chiropractic treatments. For this reason, Dr. Fahey testified that the records fail to indicate any significant improvement, including increased ROM because of Claimant's failure to provide maximum effort on the ROM examinations. Finally, Carrier noted that after Provider completed his chiropractic care, Claimant's thumb was put in a splint by Charles T. Whittenburg, D.O., who diagnosed her with only tendinitis.² Dr. Fahey maintained that Claimant then got better and returned to work, adding that the splint was contrary to the treatment Provider performed.

The ALJ is persuaded by Dr. Fahey's testimony that it was not medically necessary to have Claimant continue chiropractic care, which after six weeks of treatment, was not providing significant improvement to Claimant. Dr. Kamath is mistaken when stating that Claimant's subjective indications of soreness and tenderness are objective findings. Moreover, he misses the point when suggesting that Claimant's increase in muscle strength and ROM is evidence of significant improvement after Claimant's initial six weeks of treatment. It would be very surprising for any patient to perform physical therapy several times a week for six weeks and not demonstrate some improvement in ROM and strength. But, these increases failed to alleviate Claimant's chief complaints of tingling, numbness, and stiffness to her right wrist.

Further, the ALJ disagrees with Provider's position that if work hardening were authorized, the disputed services must also be authorized. Work hardening is a multidisciplinary approach, which may be medically necessary in instances where mere physical therapy is not. For instance, the record in this case suggests Claimant had psychological issues that could be addressed in work hardening but not with physical therapy.

The ALJ concludes that given the extensive physical therapy that Claimant had already undergone without significant improvement, additional treatment of the same nature was not reasonable. The preponderance of the evidence shows the disputed services were not reasonable or necessary medical services, and accordingly, the ALJ denies reimbursement for them.

III. FINDINGS OF FACT

1. Claimant reported a work-related injury to her right wrist on_____.
2. Claimant initially complained of tingling, numbness, and stiffness to her right wrist.

¹ In particular, Dr. Fahey stated that the MRI would most definitely reveal median nerve neuritis, if present.

² Claimant received a thumb spica splint, which immobilizes the thumb and thereby alleviates some tension of the tendons in the first dorsal compartment of the wrist.

3. Provider diagnosed Claimant with tenosynovitis, median nerve neuritis, and wrist bursitis.
4. Provider treated Claimant from May 1, 2002 to June 18, 2002 (six weeks of treatment) with medication, physical therapy, and chiropractic treatment.
5. Carrier reimbursed Provider for the six weeks of treatment.
6. Claimant did not show significant improvement after the six weeks of treatment and continued to complain of tingling, numbness, and stiffness to her right wrist.
7. Objective testing, an NCV and MRI, failed to support Provider's diagnosis.
8. Provider continued the same diagnosis and treatment for Claimant from June 20, 2002 to July 12, 2002 (treatment in dispute).
9. Claimant did not show significant improvement after the treatment in dispute and continued to have major complaints of tingling, numbness, and stiffness to her right wrist.
10. On July 18, 2002, Claimant visited Dr. Whittenburg who diagnosed her with tendinitis only and put her right thumb in a splint.
11. Claimant recovered and returned to work.
12. Carrier declined to reimburse Provider for the treatment in dispute because it considered the sessions not to have been medically necessary pursuant to a peer review.
13. Provider filed a timely Request for Medical Dispute Resolution.
14. The IRO agreed with Carrier, finding that the treatments were not medically necessary.
15. On August 28, 2003, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.
16. On September 12, 2003, Provider filed a timely request for a hearing before SOAH.
17. Notice of the hearing was sent to all parties on October 20, 2003.
18. 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.
19. The hearing was held February 24, 2004. Provider and Carrier participated in the hearing, which was adjourned the same day.
20. The disputed services were neither medically reasonable nor necessary.

IV. CONCLUSIONS OF LAW

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE §148.21(h), Provider has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. The disputed services were not reasonable or necessary medical treatments under TEX. LAB. CODE ANN. §401.011(19).
5. Carrier should not be required to reimburse Provider for the physical therapy sessions in dispute.

ORDER

Pacific Employers Ins. Co., is not required to reimburse Main Rehab & Diagnostic for the disputed services provided Claimant from June 20, 2002 to July 12, 2002.

SIGNED April 19, 2004.

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