

**SOAH DOCKET NO. 453-04-2302.M5
TWCC NO. M5-04-0258-01**

TOWN EAST REHABILITATION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TWIN CITY FIRE INSURANCE,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Town East Rehabilitation, (Provider) appealed the decision of an Independent Review Organization (IRO) upholding the denial of office visits, therapeutic activities, and exercises administered to ___ (Claimant) from February 3, 2003, through June 23, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of showing that the treatment rendered was reasonable and medically necessary for Claimant’s compensable injury. Therefore, Provider is not entitled to reimbursement.

The hearing convened and closed on March 16, 2004, before Steven M. Rivas, ALJ. Provider appeared and was represented by Trenton Weeks, D.C., Twin City Fire Insurance (Carrier) appeared and was represented by W. Jon Grove, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable knee injury on ____. Claimant underwent knee surgery on September 14, 2001, and October 8, 2002. At some point, Claimant was referred to Provider for post-operative therapy. Claimant underwent several sessions of physical therapy, including office visits, therapeutic activities, and exercises. Carrier denied reimbursement for the disputed services as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers’ Compensation Commission. The dispute was sent to an IRO, which upheld the denial of reimbursement, and Provider filed a request for hearing before the State Office of Administrative Hearings.

2. Applicable Law

The Texas Labor Code contains the Texas Workers’ Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers’ compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021(a) provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of

the injury as and when needed. The statute further states an 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.”

Under TEX. LAB. CODE ANN. §401.011(19) health care “includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.”

3. Evidence and Analysis

Provider had the burden of proof in this matter but did not submit any medical records or witness testimony that sufficiently outlined the physical therapy that was rendered over the disputed dates of service. Dr. Trenton Weeks, an employee of Provider, was one of Claimant’s treating doctors at Provider’s facility. Dr. Weeks testified the treatment rendered to Claimant was medically necessary. However, in support of this position Dr. Weeks provided only his own testimony on the matter. Absent from the record are the treatment notes and other supporting data like a peer review or an article from a medical journal. Apparently, Dr. Weeks began treating Claimant in December 2003, but the treatment rendered to Claimant from that time to February 2, 2003, was not in dispute. For purposes of the hearing, Dr. Weeks relied on the therapy notes and a report from a designated doctor. Neither the notes nor the report was offered by Provider. However, based on Dr. Weeks’ review of these documents, he concluded that Claimant exhibited an increase of strength and range of motion in her injured knee as a result of the treatment. Dr. Weeks also testified the report indicated Claimant was not at maximum medical improvement (MMI) in October 2002 and that she would not reach MMI for another three-to-six months from that time.

Carrier argued the treatment rendered to Claimant was excessive and not medically necessary to treat Claimant’s compensable injury. In support of its position, Carrier presented a report from Mike O’Kelley, D.C., dated May 10, 2003. In the report, Dr. O’Kelley asserted that based on review of Claimant’s records, four weeks of treatment was appropriate, but anything beyond that was not medically necessary.

Carrier also presented Michael A. Booth, D.C., as a witness. In support of his position that the disputed treatment was not medically necessary, Dr. Booth asserted that Claimant had already undergone a month of aquatic therapy following her last surgery. It is not clear whether Provider administered the aquatic therapy. However, Dr. Weeks did not dispute that this service was indeed rendered following Claimant’s surgery. Dr. Booth further stated that based on his review of the medical records, Claimant’s knee had already “stabilized” during her first eight weeks of treatment. Dr. Booth concluded that the first eight weeks of treatment that began in December 2002, were medically necessary, but anything after that time was not because there was no indication Claimant experienced any improvement beyond that point.

The ALJ was persuaded by Carrier’s position that the disputed treatment was not medically necessary because Claimant displayed no signs of improvement throughout the disputed dates of service. Additionally, Claimant’s knee had stabilized during the first several weeks of therapy. Therefore, any treatment beyond that time was not medically necessary.

Provider's case amounted to Dr. Weeks' summary assertions that Claimant benefitted from the treatment rendered. However, no supporting documentation was presented for the ALJ's review. As the Petitioner in this matter, Provider had the burden to prove the service was medically necessary, and he did not do so.

II. FINDINGS OF FACTS

1. Claimant ___ sustained a compensable knee injury on ___.
2. Claimant underwent knee surgery on September 14, 2001, and October 8, 2002.
3. Claimant was referred to Town East Rehabilitation (Provider), for post-operative therapy, which commenced in December 2002.
4. Provider treated Claimant with office visits, therapeutic activities and exercises from December 2002 through June 23, 2003.
5. Provider billed Twin City Fire Insurance (Carrier) for the services rendered to Claimant between February 3, 2003, and June 23, 2003, and Carrier denied reimbursement as not medically necessary.
6. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
7. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing in this case was mailed to the parties on January 29, 2004. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
9. The hearing convened and closed on March 16, 2004, with Administrative Law Judge Steven M. Rivas presiding. Provider appeared and was represented by Trenton Weeks, D.C. Carrier appeared and was represented by W. Jon Grove, attorney.
10. Claimant's injured knee stabilized as a result of Provider's post-operative therapy within the first eight weeks of treatment.
11. Claimant did not experience any improvement as a result of the treatment administered following the first eight weeks.

12. Provider failed to demonstrate that the treatment administered from February 3, 2003, through June 23, 2003, was medically necessary to treat Claimant's compensable injury.

III. 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. Provider timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
3. Proper and timely notice of the hearing was effected upon the parties in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
4. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a)(3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
7. The treatment rendered to Claimant between February 3, 2003, and June 23, 2003, was not medically necessary for treatment of Claimant's compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Provider's request for reimbursement should be denied.

ORDER

IT IS ORDERED THAT the reimbursement requested by Town East Rehabilitation for the treatment rendered to Claimant from February 3, 2003, through June 23, 2003, is denied.

SIGNED May 4, 2004.

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