

**SOAH DOCKET NO. 453-04-2707.M5
TWCC MR NO. M5-04-0299-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	:	BEFORE THE STATE OFFICE
	:	
	:	
V.	:	OF
	:	
CENTRAL DALLAS REHAB Respondent	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company, (Petitioner) requested a hearing following a December 19, 2003, Decision of the Texas Workers' Compensation Commission (Commission). The Commission, relying upon a December 9, 2003, decision of Ziroc, an Independent Review Organization (IRO), ordered reimbursement for two units per day of therapeutic exercises¹ provided by Central Dallas Rehab (Respondent) to an injured worker ___(Claimant) and denied reimbursement for other chiropractic services provided by Respondent to Claimant. Respondent did not request a hearing on the partial denial of reimbursement for services. This Decision and Order will only address the therapeutic exercises, testing, kinetic exercises, and related office visits, collectively called therapeutic exercises.²

The amount in dispute is \$2,628.00.³ After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that the disputed services, which were provided by Respondent from November 7, 2002 through May 22, 2003, were reasonable and medically necessary and should be reimbursed.

1 The IRO granted reimbursement for all treatments other than joint mobilization, manual traction, and other passive modalities.

2 The treatments subject to this dispute are therapeutic exercises, kinetic exercises, testing, and office visits. Because the IRO held that Respondent was entitled to reimbursement for two units of therapeutic exercise per day, Respondent, who did not appeal, is limited at SOAH to a maximum of two units of therapeutic exercises per day.

3 The parties filed a stipulation on this amount on August 4, 2004.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The parties pre-filed all exhibits and testimony. The hearing convened on May 10, 2004, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. R. Scott Placek represented Petitioner and Scott Hilliard represented Respondent. Following conclusion of closing arguments, the parties agreed to file a stipulation of the disputed services and the amounts of those services. While preparing the Decision and Order on July 13, 2004, the ALJ discovered that there was no stipulation in the file. On July 14, 2004, the parties informed the ALJ they had forgotten the stipulation. As the disputed services and the amounts of those services were integral to this decision, the record was reopened on July 14, 2004. The parties filed the stipulation on August 4, 2004, and the record closed that day. Neither party objected to notice or jurisdiction.

II. DISCUSSION

Claimant suffered a work-related injury to his shoulder on ____, while lifting heavy trash containers. Claimant was initially treated with conservative care, including active and passive modalities. Claimant began treatment with Respondent on October 9, 2002, with Ted Krejci, D.C., as the treating doctor.⁴ Respondent diagnosed a partial tear of the rotator cuff. James E. Laughlin, D.O., who examined Claimant on December 5, 2002, recommended an epidural steroid injection (ESI). He also recommended continuing conservative care following the ESI in order to facilitate Claimant's progress and to assist in returning Claimant to a more active status. The injection was performed in mid-December. Because Claimant did not respond to the more conservative treatment, on February 13, 2003, an arthroscopic subacromial decompression was performed on Claimant's right shoulder by Scott Paschal, M.D.

⁴ Dr. Krejci is Respondent's employee.

In addition to billing for office visits, Respondent billed Petitioner for treatment consisting of therapeutic exercises, kinetic exercises and testing. Four doctors who examined or treated Claimant and Petitioner's witnesses, all agreed that therapeutic exercises were medically necessary before and after surgery.⁵ Dr. Krejci testified and James E. Laughlin, D.O. reported that therapeutic exercises became necessary in preparation for and in recovery from the ESI. Scott Paschal, M.D., reported and Dr. Krejci testified that two sessions per day of therapeutic exercises were necessary to facilitate surgery recovery.⁶

Although the disputed services are sometimes collectively referred to as therapeutic exercises, some explanation of the individual services is necessary. The testing refers to a physical performance evaluation conducted on November 7, 2002. Dr. Krejci indicated that it served as a benchmark measurement of Claimant's physical capabilities. This test was medically necessary to determine which exercises were compatible with Claimant's physical abilities. According to Dr. Krejci, seven office visits were medically necessary in order to monitor Claimant's therapeutic exercise progress. It appears that the IRO lumped together therapeutic exercises and kinetic exercises. Kinetic exercise is a type of therapeutic exercise, but it has a different CPT code. Kinetic exercises are medically necessary, and the two therapeutic exercise sessions per day are inclusive of kinetic exercises.

Petitioner denied reimbursement for therapeutic exercises from November 7, 2002, through May 22, 2003. Petitioner denied all services after April 23, 2003. Petitioner had the burden of proof. Petitioner failed to prove by a preponderance of the evidence that the office visits, testing, kinetic exercises, and two units of therapeutic exercises per day were not reasonable and medically necessary. Claimant's surgeon, Dr. Paschal, Michael C. Ciepiela, M.D., a fellowship trained shoulder and elbow specialist, who was also the designated doctor, and Crawford Sloan, M.D., Claimant's treating doctor, all reported that Claimant was severely injured and needed extensive

⁵ Both of Petitioner's witnesses, Mark Miller, a physical therapist, and David Alvarado, D.C., testified that Claimant required therapeutic exercises prior to and after surgery.

⁶ This brief discussion only applies only to therapeutic exercises, and not to the exercises and the ancillary treatments, which are referred to collectively as therapeutic exercises.

additional post-surgery treatment including physical therapy. The four doctors who examined Claimant concluded that therapeutic exercise would help Claimant's recovery.

The parties differences were partially caused by a disagreement over the extent of Claimant's injury. Mr. Miller and Dr. Alvarado argued that even though Claimant needed some therapeutic exercises, he was not badly injured and the number of therapeutic exercises should have been limited. ALJ believes Claimant was severally injured with his rotary cuff tendon torn, almost severed. Subsequent to the disputed dates, two more surgeries were performed on Claimant. Mr. Miller's and Dr. Alvarado's opinions were based on deficient documentation. Even though Petitioner denied reimbursement for disputed services on August 30, 2003, Mr. Miller's deposition indicated that he did not review any documents past May 29, 2003. Mr. Miller did not review the two opinions by the designated doctor, Dr. Ciepiela, or the opinion of the surgeon, Dr. Paschal. Both indicated that Claimant probably needed surgery and that further physical therapy was necessary. Mr. Miller's testimony was not persuasive because he did not review the entire medical record.

The ALJ concludes that Respondent is entitled to reimbursement for the chiropractic services noted above which were provided Claimant between November 7, 2002, and May 22, 2003, in the amount of \$2,628.00.

III. FINDINGS OF FACT

1. ____ (Claimant) suffered a work-related injury on ____, while lifting heavy trash containers.
2. Claimant was initially treated with conservative care, including active and passive modalities.
3. Claimant began treatment with Respondent on October 9, 2002, with Ted Krejci, D.C., as the treating doctor.
4. Dr. Krejci diagnosed a partial tear of the rotator cuff, and James E. Laughlin, D.O., who examined Claimant on December 5, 2002, recommended an epidural steroid injection (ESI).
5. The ESI was performed in mid-December.
6. Continuing conservative care following the ESI was necessary in order to facilitate the

Claimant's progress and to assist in returning Claimant to a more active status.

7. Therapeutic exercises were medically necessary to prepare for Claimant ESI and to recover from the ESI.
8. Because Claimant was not responding to the more conservative treatment, on February 13, 2003, an arthroscopic subacromial decompression was performed on Claimant's right shoulder by Scott Paschal, M.D.
9. Dr. Krejci conducted therapeutic exercises both prior to and after the surgery.
10. Two sessions per day of therapeutic exercises were medically necessary for the following reasons:
 - A. Claimant to had a torn rotator cuff.
 - B. Claimant required extensive further treatment including physical therapy.
 - C. Claimant was recovering from major surgery.
 - D. Two therapeutic sessions per day during the active phase of care was reasonable.
11. The performance testing was medically necessary to determine which exercises were compatible with Claimant's physical abilities.
12. Seven office visits were medically necessary in order to monitor Claimant's therapeutic exercise progress.
13. The treatment dates in issue are November 7, 2002, through May 22, 2003.
14. Petitioner denied Respondent reimbursement for the chiropractic services provided Claimant between November 7, 2002, and May 22, 2003, as not medically necessary.
15. The Texas Workers' Compensation Commission (Commission), acting through an Independent Review Organization (IRO), Ziroc, found that the chiropractic services provided by Respondent between November 7, 2002, and May 22, 2003, were medically necessary.
16. It is undisputed that Petitioner requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
17. Respondent did not request a hearing before SOAH regarding the medical necessity of the chiropractic services provided to Claimant.
18. The hearing convened on May 10, 2004, with SOAH Administrative Law Judge Stephen J. Pacey presiding. R. Scott Placek represented Petitioner and Scott Hilliard represented

19. Respondent. Following conclusion of closing arguments, the parties agreed to file a stipulation of the amount in dispute. The parties filed the stipulation on August 4, 2004, and the record closed that day.
20. The amount in dispute is \$2,628.00.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. ' 413.031(k), and TEX. GOV ' T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV ' T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV ' T CODE ANN. ' ' 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).
6. Two sessions per day of therapeutic exercise, office visits, kinetic exercises and testing provided by Respondent from November 7, 2002, through May 22, 2003, were reasonable and medically necessary.

ORDER

THEREFORE IT IS ORDERED that Texas Mutual Insurance Company shall reimburse Central Dallas Rehab for charges, plus any applicable interest, associated with two sessions per day of therapeutic exercise, office visits, kinetic exercises ,and testing provided to injured worker____ from November 7, 2002, through May 22, 2003.

SIGNED August 26, 2004.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**