

**SOAH DOCKET NO. 453-04-3417.M5  
TWCC MDR NO. M5-03-1869-01**

<b>TEXAS MUTUAL INSURANCE COMPANY, Petitioner</b>	‘	<b>BEFORE THE STATE OFFICE</b>
	‘	
	‘	
<b>V.</b>	‘	<b>OF</b>
	‘	
<b>REAL HEALTH CARE, Respondent</b>	‘	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This is a dispute over services rendered workers’ compensation (Claimant) from March 21, 2002 through July 12, 2002. The ALJ concludes TMIC should reimburse Real Health Care for the treatments provided from April 1 through May 1, 2002. In addition, TMIC should be required to provide reimbursement for one service provided March 27, 2002, and four units of service provided May 13, 2002, that were not considered by the Independent Review Organization (IRO), but were considered separately by the Medical Review Division. The ALJ orders TMIC to reimburse Respondent Real Health Care \$2,795.00.

**I. HISTORY**

The Claimant, who was a produce deliveryman, fractured his fibula and ankle and injured his back on \_\_\_\_\_. He began treatment with Real Health Care December 31, 2001. The ankle did not heal properly, and treatments continued. TMIC refused to pay for services rendered to the Claimant after March 1, 2002.

After requesting reconsideration, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission) on April 23, 2003. The amount in dispute from March 1, 2002, through July 12, 2002, according to Real Health Care's Table of Disputed Services, was \$10,672.00. The IRO considered the medical necessity of mechanical traction, electrical stimulation, therapeutic exercises, and office visits with manipulation during the periods April 1 through May 1, June 3 through June 28, and July 1 through July 12, 2002. The IRO found the treatments it considered to have been medically necessary.

The Commission's Medical Review Division (MRD) concluded it had no jurisdiction to review or order reimbursement for services rendered before April 21, 2002, under the Commission's one-year rule, 28 TEX. ADMIN. CODE (TAC) '133.307(d)(1). The MRD considered the adequacy of the records submitted to support reimbursement for other dates of service in March and May of 2002, for which no Explanation of Benefits (EOBs) had been submitted.<sup>1</sup> The MRD found adequate records for hot and cold packs applied on March 27 and four units of therapeutic exercises performed May 13, 2002. It ordered TMIC to reimburse Real Health Care for those two items and for the services found medically necessary by the IRO.

TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). After notice to the parties, that hearing was convened September 9, 2004, by ALJ Henry D. Card.<sup>2</sup> The hearing was adjourned, and the record closed, the same day.

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<sup>1</sup> Other services were performed in May, but are not in dispute in this case.

<sup>2</sup> The hearing was a joint hearing in this docket and Docket Nos. 453-04-2025.M5 and 453-04-4486.M5, which involve the same parties, but different Claimants.

## II. DISCUSSION

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 as and when needed. The employee is specifically entitled to health care 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.

Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.

The evidence shows that the Claimant received unusually extensive treatment, much of which is not at issue in this case, beginning December 31, 2001. The evidence also shows that the ankle fracture did not heal quickly. On February 13, 2002, John M. Borkowski, M.D., examined the Claimant and found that the fracture had not healed. He placed him in a walking cast. On March 27, 2002, Dr. Borkowski determined that the fracture had healed and allowed the Claimant to return to work. However, on April 1, 2002, the Claimant returned, complaining of ankle pain. Dr. Borkowski sent him for some physical rehabilitation of the ankle.

Dr. David Alvarado testified for TMIC. In Dr. Alvarado's opinion, the treatments provided the Claimant, from December 31, 2001, through July 12, 2002, clearly were excessive. Dr. Alvarado pointed out that the SOAP notes do not show progress in the patient's condition, which should have been evident after approximately four weeks. Dr. Alvarado agreed that a six to eight week trial of treatment might be reasonable, however.

Dr. Alvarado testified the Claimant might more efficiently have been transferred to a home exercise program. He recognized, however, that there are some situations in which a supervised program is preferable or necessary, particularly when a patient has other health conditions that might put him or her at risk. In this case, the Claimant has diabetes and is obese.

The ALJ agrees with Dr. Alvarado that generally the therapy provided the Claimant in this case was excessive. The SOAP notes do not demonstrate progress in the Claimant's condition that would justify continuation of the therapy regime. However, Dr. Borkowski's recommendation for physical therapy on April 1, 2002, along with Dr. Alvarado's testimony, establish the necessity of the eight weeks of therapy after April 1. The ALJ finds that period of service was medically necessary, based on that evidence. Because of the Claimant's health conditions, supervised exercises and therapy were appropriate. After that eight weeks was over, because no significant improvement had occurred, the therapy should have been discontinued as medically unnecessary.

Eight weeks from April 1, 2002, is May 20, 2002. The IRO did not review any services provided after May 1, 2002, however. TMIC should be order to reimburse Real Health Care for services provided the Claimant from April 1 through May 1, 2002. The amount in dispute for those dates is \$2,699.00.

As was mentioned above, the MRD found adequate records for hot and cold packs applied on March 27 and four units of therapeutic exercises performed May 13, 2002. TMIC had not submitted EOBs contesting medical necessity for those services. TMIC did not disprove the adequacy of those records in this case and should be required to reimburse Real Health Care for those services as well. The amount in dispute for those services is \$96.00.

Therefore, TMIC should reimburse Real Health Care the sum of those two amounts, \$2,795.00.

### III. FINDINGS OF FACT

1. \_\_\_\_ ( Claimant), who was a produce deliveryman, fractured his fibula and ankle and injured his back on \_\_\_\_.
2. The Claimant began treatment with Real Health Care December 31, 2002.
3. Petitioner Texas Mutual Insurance Company (TMIC) refused to pay for services rendered to the Claimant after March 1, 2002.
4. After requesting reconsideration, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission) on April 23, 2003.
5. The amount in dispute from March 1, 2002, through July 12, 2002, according to Real Health Care ' s Table of Disputed Services, was \$10,672.00.
6. The Independent Review Organization (IRO) considered the medical necessity of mechanical traction, electrical stimulation, therapeutic exercises, and office visits with manipulation during the periods April 1 through May 1, June 3 through June 28, and July 1 through July 12, 2002. The IRO found the treatments it considered to have been medically necessary.
7. The Commission ' s Medical Review Division (MRD) concluded it had no jurisdiction to review or order reimbursement for services rendered before April 21, 2002, under the Commission ' s one-year rule, 28 TEX. ADMIN. CODE (TAC) ' 133.307(d)(1).
8. The MRD considered the adequacy of the records submitted to support reimbursement for other dates of service in March and May of 2002, for which no Explanation of Benefits (EOBs) had been submitted. The MRD found adequate records for hot and cold packs applied on March 27 and four units of therapeutic exercises performed May 13, 2002. It ordered TMIC to reimburse Real Health Care for those two items and for the services found medically necessary by the IRO.
9. TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent February 18, 2004.

11. 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.
12. The hearing was convened September 9, 2004, by ALJ Henry D. Card. The hearing was adjourned, and the record closed, the same day.
13. On February 13, 2002, John M. Borkowski, M.D., examined the Claimant and found that the ankle fracture had not healed.
14. On March 27, 2002, Dr. Borkowski determined that the fracture had healed and allowed the Claimant to return to work.
15. On April 1, 2002, the Claimant returned, complaining of ankle pain. Dr. Borkowski sent him for some physical rehabilitation of the ankle.
16. There are some situations in which a supervised program is preferable or necessary, particularly when a patient has other health conditions that might put him or her at risk.
17. The Claimant has diabetes and is obese.
18. Generally the therapy provided the Claimant in this case was excessive.
19. The SOAP notes do not demonstrate progress in the Claimant's condition that would justify continuation of the therapy regime.
20. Dr. Borkowski's recommendation for physical therapy on April 1, 2002, along with Dr. Alvarado's testimony, established the medical necessity of the eight weeks of therapy after April 1.
21. After that eight weeks was over, because no significant improvement had occurred, the therapy should have been discontinued as medically unnecessary.
22. Because of the Claimant's health conditions, supervised exercises and therapy were appropriate.
23. Eight weeks from April 1, 2002, is May 20, 2002.
24. The IRO did not review any services provided after May 1, 2002.

25. The amount in dispute from April 1 through May 1, 2002, is \$2,699.00.
26. Real Health Care provided adequate documentation for hot and cold packs applied on March 27 and four units of therapeutic exercises performed May 13, 2002.
27. The amount in dispute for the services described in the previous finding of fact is \$96.00.

#### **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 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.
4. SOAH has no jurisdiction to review or order reimbursement for services rendered before April 21, 2002. 28 TAC '133.307(d)(1).
5. TMIC should reimburse Real Health Care \$2,795.00 for the medically necessary services in dispute, pursuant to TEX. LAB. CODE ANN. ' 408.021(a).

#### **ORDER**

Texas Mutual Insurance Company shall reimburse Real Health Care \$2,795.00 for the services in dispute in this proceeding.

**SIGNED November 2, 2004.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

