

SOAH DOCKET NO. 453-04-3637.M5

TEXAS MUTUAL INSURANCE COMPANY	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
RYAN MAGUIRE, D.C.,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the decision of an Independent Review Organization (IRO) upholding the reimbursement for joint mobilizations, therapeutic exercises, and office visits administered to (Claimant) between March 26, 2003, and April 14, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of showing that the treatment rendered was not reasonable and medically necessary for Claimant’s compensable injury. Therefore, Carrier is not ordered to reimburse Ryan Maguire (Provider) for the treatment rendered.

The hearing convened and closed on May 24, 2004, before Steven M. Rivas, ALJ. Carrier appeared and was represented by Scott Placek, attorney. Provider appeared and represented himself.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on (Date of Injury). Shortly after the injury, Claimant was referred to Provider for treatment. Claimant underwent several sessions of physical therapy, including the disputed services in this matter. Provider initially billed Carrier for treatment rendered from March 26, 2003, through May 16, 2003, which Carrier denied 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 for the treatment dates of April 17, 2003, through May 16, 2003. The IRO held the dates of service March 26, 2003, through April 14, 2003, were medically necessary and ordered Carrier to reimburse Provider for those dates of service. Carrier filed a request for hearing before the State Office of Administrative Hearings. Provider did not file a cross appeal of the IRO decision that denied reimbursement for the treatment rendered from April 17, 2003, through May 16, 2003.

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. Analysis and Conclusion

Provider started treating Claimant two weeks following his compensable injury. According to Provider, Claimant made early progress but displayed “minimal response following the first few weeks of treatment. In 2002, Provider treated Claimant with conservative treatment and administered diagnostic tests on Claimant. Claimant was initially diagnosed with a lumbar sprain/strain, but diagnostic tests in 2002 revealed Claimant was a candidate for surgical intervention because he had disc impingement and radiculopathy. However, Provider continued to treat Claimant with chiropractic care and therapeutic exercises. Claimant eventually underwent back surgery in May 2003.

Carrier argued Claimant had plateaued in December 2002, based on the results of a functional capacity evaluation (FCE). In support of its position, Carrier pointed to Provider’s deposition testimony where Provider admitted Claimant’s condition had plateaued and that he was not likely to return to work without surgical intervention. Additionally, Carrier pointed out that the records indicated Claimant’s condition had not improved over the course of Provider’s treatment, which began in 2002.

By rendering treatment over the disputed dates of service, Provider asserted his main goal was to prevent Claimant from regressing or getting worse. Provider testified he repeatedly requested other treatments like epidural steroid injections, and traction procedures, but was denied preauthorization. Therefore, Provider rendered treatment in order to prevent Claimant’s condition from deteriorating.

Provider is not entitled to reimbursement because the treatment was not rendered in compliance with applicable Commission rules. Under §408.021, an employee is entitled to all 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. Provider admitted he rendered the treatment in question in order to keep Claimant from regressing.

If the treatment in question was truly required to prevent Claimant from regressing, it may be deemed necessary because it would have effectively relieved Claimant’s symptoms. However, Provider offered no evidence that indicated Claimant was in danger of regressing but for the treatment rendered. To the contrary, Claimant’s condition had plateaued in December 2002, and it was apparent at that time Claimant required surgery to relieve the effects of his compensable injury.

Furthermore, Claimant experienced no improvement following the first six months of Provider's treatment. The treatment in dispute was rendered more than nine months following Claimant's injury after Claimant's condition had already plateaued in the opinion of his treating doctor.

Claimant displayed no signs of improvement from the treatment rendered and no further benefit to Claimant was evident other than arguably preventing regression. Under these circumstances, the disputed services should not be deemed medically necessary.

II. FINDINGS OF FACTS

1. (Claimant) sustained a compensable injury on (Date of Injury).
2. Claimant was referred to Ryan Maguire, D.C. (Provider), for treatment of his injury.
3. Claimant underwent months of physical therapy including joint mobilizations, therapeutic exercises, and office visits with Provider following his injury.
4. Provider billed Texas Mutual Insurance Company (Carrier) for the services rendered to Claimant from March 26, 2003, through May 16, 2003, which Carrier denied as not medically necessary.
5. 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 for dates of service April 17, 2003, through May 16, 2003.
6. The IRO decision held the dates of service from March 26, 2003, through April 14, 2003, were medically necessary.
7. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH). Provider did not file a cross-appeal.
8. Notice of the hearing in this case was mailed to the parties on March 8, 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 May 24, 2004, with Administrative Law Judge (ALJ) Steven M. Rivas presiding. Carrier appeared and was represented by Scott Placek, attorney. Provider appeared and represented himself.
10. Provider rendered treatment to Claimant in order to prevent Claimant from regressing or getting worse.

11. Claimant's condition had plateaued in 2002, and it was apparent at that time that Claimant required surgery to relieve the effects of his compensable injury.
12. Claimant's condition did not improve as a result of Provider's treatment.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §413.031.
2. 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.
3. Carrier timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE §148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 28 TEX. ADMIN. CODE §148.4.
5. Carrier 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 joint mobilizations, therapeutic exercises, and office visits were not medically necessary for treatment of Claimant's compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Carrier's appeal should be granted.

ORDER

IT IS ORDERED THAT the denial of reimbursement requested by Carrier for the treatment rendered to Claimant from March 26, 2003, through April 14, 2003, is granted.

SIGNED June 23, 2004.

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