

**SOAH DOCKET NO. 453-04-4184.M5**  
**[TWCC MDR NO. M5-03-3303-01]**

<b>TEXAS MUTUAL INSURANCE CO.,</b>	·	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	·	
	·	
<b>V.</b>	·	<b>OF</b>
	·	
<b>MEDICAL CENTER REHAB CLINICS,</b>	·	
<b>Respondent</b>	·	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Texas Mutual Insurance Company (Carrier) appealed the findings and decision of the Texas Workers' Compensation Commission's designee, an independent review organization (IRO), which found that physical therapy provided by Medical Center Rehab Clinics (Provider) to Claimant was medically necessary healthcare. This decision and order finds the physical therapy sessions in dispute, from July to September 2002, were not reasonable and medically necessary for Claimant.

**I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Those issues are set out only in the Findings of Fact and Conclusions of Law below.

The hearing in this matter convened and the record closed August 30, 2004, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Tommy Broyles. Attorney Scott Placek represented Carrier and attorney William Maxwell represented Provider.

**II. DISCUSSION**

**A. Factual Background**

Claimant sustained a compensable injury to her lumbar spine on\_\_\_\_. Claimant was diagnosed with a recurrent herniated nucleus pulposus L1-L2. For this injury, she underwent a lumbar laminectomy with fusion in June 2000 and a left thoracotomy with lumbar discectomy and decompression at L1-L2 on March 2, 2002. She was also treated with manual therapies, gait training, electrical muscle stimulation, physical therapy, and massage therapy.

The disputed services include aquatic therapy, joint mobilizations, myofascial releases, electromuscle stimulator modalities, whirlpool baths, and therapeutic exercises incurred following the March 2, 2002 surgery. The disputed services were provided from October 28, 2002, to March 28, 2003.

## **B. Legal Standards**

Petitioner has the burden of proof in this proceeding.<sup>1</sup> Pursuant to the Act, an employee who has sustained 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 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.<sup>2</sup> Health care includes all reasonable and necessary medical services.<sup>3</sup> The IRO was authorized to hear the medical dispute.<sup>4</sup>

## **C. Carrier's Evidence**

Carrier's witness, David Alvarado, D.O., stated that many of the services provided during the disputed time were not reasonable. Specifically, he found two weeks of aquatic therapy reasonable but whirlpool therapy unreasonable, given the amount of medications prescribed Claimant. Dr. Alvarado stated that eight units for joint mobilization were reasonable but that the three units billed on January 27, 2003, were not, given the lack of documentation in the therapist's notes. Two of the nine units billed for myofascial release and two of the six electromuscular stimulator units billed were found medically unreasonable. Similarly, Dr. Alvarado challenged numerous active modalities as unreasonable, particularly the aquatic therapy beyond the 15 units he found reasonable as a transition into land therapy. Dr. Alvarado explained that aquatic therapy should not have continued when land-based therapy was also provided and well tolerated. Although

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<sup>1</sup> 28 TEX. ADMIN. CODE ' ' 148.21(h) and (i); 1 TEX. ADMIN. CODE ' 155.41.

<sup>2</sup> TEX. LAB. CODE ANN. ' 408.021(a).

<sup>3</sup> TEX. LAB. CODE ANN. ' 401.011(19)(A).

<sup>4</sup> 28 TEX. ADMIN. CODE ' ' 133.308.

he found the group therapy generally

appropriate, Dr. Alvarado disagreed with the billing of three units on each date. Instead, he suggested that only one unit per date billed was medically necessary.

**D. Provider's Evidence**

Provider offered the deposition of Day Lee Snell, D.C. and argued that all services provided were reasonable and necessary. Dr. Snell testified that one-to-one settings are necessary for therapy when the patient is postsurgery or otherwise in a physically fragile state. He continued that the decision on whether a one-to-one setting was necessary is made on a patient by patient basis, depending upon the patient's pain level and potential for reinjury. In Dr. Snell's opinion, Claimant was in pain and appeared unsure, thus needing more direct care.

Dr. Snell opined that aquatic therapy is medically indicated when a patient demonstrates a high pain level, such as immediately after surgery. He continued that a patient should transition to land therapy as his or her pain level decreases. In Dr. Snell's opinion, a combination of aquatic and land therapy is appropriate during this transition period.

**E. Analysis**

Petitioner proved that the disputed services were not reasonable and medically necessary healthcare for Claimant, except for those found reasonable by Dr. Alvarado. According to the treatment notes, the land-based therapy was tolerated as well or better than aquatic therapy, suggesting the two were practiced together beyond a reasonable transition time. Thus, aquatic therapy beyond the two-week transition period suggested by Dr. Alvarado was not medically necessary.

The ALJ further finds that one-on-one therapy was not medically necessary for the dates in dispute. Dr. Snell did not evaluate Claimant and admitted that he did not know whether she needed one-to-one care for the services at issue. His opinions regarding Claimant were limited to his contact with her while passing through a room and saying hello. Dr. Snell further testified that the exercises in question did not necessarily require one-to-one supervision. Rather, such a determination is

dependent upon the patient's level of pain and deconditioning.

Dr. Alvarado testified the disputed services were not medically necessary, given the therapy notes provided. The ALJ finds the opinions of Dr. Alvarado to be credible and persuasive as to the medical necessity of the services in dispute. Thus, Carrier's appeal is granted.

Carrier agreed to file a brief noting the total amount in dispute, factoring out the services Dr. Alvarado found reasonable. No brief was received, and with the limited information provided by the parties, the ALJ is unable to calculate the exact monetary award. Services that should be reimbursed and that the ALJ understands are no longer disputed by Carrier are: two weeks (15 units) of aquatic therapy; eight units of joint mobilization; two units of myofascial release; two units of electromuscular stimulator; and one unit per billed date of group therapy. The remaining amounts in dispute should not be reimbursed.

### **III. FINDINGS OF FACT**

1. Claimant sustained a compensable injury to her lumbar spine on\_\_\_\_\_.
2. At the time of the compensable injury, Texas Mutual Insurance Company (Carrier) provided the applicable workers compensation insurance coverage.
3. Due to this compensable injury, Claimant was diagnosed with a recurrent herniated nucleus pulposus L1-L2.
4. Claimant underwent a lumbar laminectomy with fusion in June 2000 and a left thoracotomy with lumbar discectomy and decompression at L1-L2 on March 2, 2002. She has also been treated with manual therapies, gait training, electrical muscle stimulation, physical therapy, and massage therapy.
5. Following the surgery on March 2, 2002, Claimant was treated by Medical Center Rehab Clinics (Provider) with aquatic therapy, joint mobilizations, myofascial releases, electromuscle stimulator modalities, whirlpool baths, and therapeutic exercises.
6. Carrier denied Provider's request for reimbursement for the above services.
7. Provider's appeal of the denial was considered by the Commission's designated Independent Review Organization (IRO) who found that the disputed services should be reimbursed.
8. Carrier timely appealed the IRO decision.
9. The Commission's notice of hearing stated the date, time, and location of the hearing and

cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.

10. Provider and Carrier were represented at the hearing.
11. The disputed services were not medically necessary to treat the compensable injury:
  1. The land based therapy was tolerated as well or better than aquatic therapy;
  2. transitioning from aquatic to land-based therapy occurred beyond the necessary time needed;
  3. the therapist notes relating to the disputed services did not suggest one-to-one therapy was medically necessary.
12. The following services are not disputed and should be reimbursed: two weeks (15 units) of aquatic therapy; eight units of joint mobilization; two units of myofascial release; two units of electromuscular stimulator; and one unit per billed date of group therapy.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(k) of the Act and TEX. GOV' T CODE ANN. ch. 2003.
3. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE (TAC) §133.308.
4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TAC ' 133.308(u).
5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV' T CODE ANN. ' ' 2001.051 and 2001.052.
6. Carrier had the burden of proof in this proceeding. 28 TAC ' ' 148.21(h) and (i); 1 TAC ' 155.41.
7. Pursuant to the Act, an employee who has sustained 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 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. TEX. LAB. CODE ANN. ' 408.021(a).
8. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE

ANN. ' 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. ' 401.011(31).

9. The disputed services noted in the above findings of fact were not reasonable and medically necessary healthcare.
10. Provider is not entitled to reimbursement from Carrier for the disputed services.

### **ORDER**

It is ORDERED that Medical Center Rehab Clinics is not entitled to reimbursement by the Texas Mutual Insurance Company for the disputed services provided Claimant.

**SIGNED October 25, 2004.**

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