

**SOAH DOCKET NO. 453-04-4215.M5  
TWCC NO. M5-04-0034-01**

**ALLIANCE PAIN CENTERS, PC.  
Petitioner**

**V.**

**TEXAS MUTUAL INSURANCE  
COMPANY  
Respondent**

**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Alliance Pain Centers, P.C. (Provider), appealed the decision of an Independent Review Organization (IRO) upholding the denial of therapeutic activities administered to Claimant from August 27, 2002, through September 27, 2002. 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 July 19, 2004, before Steven M. Rivas, ALJ. Provider appeared and was represented by William Maxwell, attorney. Texas Mutual Insurance Company (Carrier) appeared and was represented by R. Scott Placek, attorney.

**I. DISCUSSION**

**1. Background Facts**

Claimant sustained a compensable back injury on \_\_\_\_, and sought Provider for treatment. Claimant underwent several sessions of physical therapy, including therapeutic exercises (CPT code 97110) and activities (CPT code 97530).<sup>1</sup> Carrier denied reimbursement for the disputed services as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical

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<sup>1</sup>The dispute originally included therapeutic exercises and activities, however, before the record closed, the ALJ was informed the dispute regarding the therapeutic exercises (CPT code 97110) had been settled and withdrawn.

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.<sup>@</sup>

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

The disputed treatment was not medically necessary because Provider failed to prove the services were required to be performed in a one-on-one setting. The disputed services were all billed under CPT code 97530 therapeutic activities. Under the Commission's Medical Fee Guideline (MFG), therapeutic activities under 97530 involve direct (one-on-one) patient contact by Provider to improve functional performance.

Claimant's treating doctor, Jade Malay, D.C., testified that she monitored Claimant as he performed the prescribed therapeutic activities, which included stretching, weight-lifting, and working with a theraband (a long elastic cord). Dr. Malay asserted she needed to monitor Claimant while he performed the exercises because if he did not properly perform the activities, Dr. Malay

testified she had to be present in order to make any modifications. On cross-examination, however, Dr. Malay admitted that no modifications were noted during Claimant's treatment.

Dr. Malay also testified that a one-on-one setting was justified because she would routinely change the exercises by increasing the weight and resistance that Claimant was required to lift. Furthermore, Dr. Malay asserted that adjusting the exercises normally keeps patients interested and motivated and promotes a faster recovery time.

The ALJ was persuaded by the testimony of Carrier's witness, David Alvarado, D.C. Dr. Alvarado first pointed out that code 97530 should be used only for services that address a functional deficit. Based on his review of the record, Dr. Alvarado concluded that Claimant did not suffer from any functional deficit. According to Dr. Alvarado, a functional deficit is defined as not being able to perform a job-required task like lifting, carrying, or standing due to pain or discomfort from a compensable injury. Additionally, Dr. Alvarado testified that a functional deficit does not exist where the mere mention of pain is present during the performance of therapeutic activities.

Dr. Alvarado testified that a one-on-one setting would be necessary if Claimant was uncooperative, was unknowledgeable about the prescribed activities, or presented a safety concern. However, based on his review of the record, Dr. Alvarado asserted the disputed services were not medically necessary because Claimant exhibited no safety concerns, uncooperativeness, or difficulty in understanding the activities. Additionally, Dr. Alvarado pointed out that he routinely treats patients such as the Claimant and usually places them on a home exercise program because there is no need to observe every exercise a patient performs, and a home exercise program promotes independence. Dr. Alvarado testified that a home exercise program would have been appropriate in this case because the activities described by Dr. Malay were nothing more than basic exercises. @

The ALJ is not convinced that Claimant needed one-on-one interaction in order to perform the exercises. Claimant ' s job duties involved repetitive lifting of gas cylinders weighing between 9 and 39 lbs.<sup>2</sup> Arguably, Claimant ' s functional deficit could have been his inability to lift. However,

the record does not indicate such was the case. Based on the record, Claimant was shown to be cooperative and knowledgeable of the exercises he was prescribed to perform. In addition, Provider explained in great detail each exercise she observed Claimant perform that was billed under CPT code 97530. Based on the described circumstances surrounding Claimant ' s injury and treatment, the stretching, weight lifting, and theraband exercises were not activities requiring one-on-one observation.

For the foregoing reasons, Provider is not entitled to reimbursement for the disputed services.

## **II. FINDINGS OF FACTS**

1. Claimant sustained a compensable back injury on \_\_\_\_, and sought treatment from Provider, Alliance Pain Centers, P.C.
2. Claimant underwent several sessions of physical therapy including therapeutic exercises (CPT code 97110) and therapeutic activities (CPT code 97530).
3. Provider billed Texas Mutual Insurance Company (Carrier) for the therapeutic activities (CPT code 97530) rendered to Claimant between August 27, 2002, and September 27, 2002, and Carrier denied reimbursement as not medically necessary.
4. 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.
5. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
6. Notice of the hearing in this case was mailed to the parties on March 23, 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.

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<sup>2</sup>Respondent ' s Exhibit No. 1, page 52. Report written by Dr. Malay dated August 13, 2002.

7. The hearing convened and closed on July 19, 2004, with Administrative Law Judge Steven M. Rivas presiding. Provider appeared and was represented by William Maxwell, attorney. Carrier appeared and was represented by R. Scott Placek, attorney.
8. Claimant's treating doctor, Jade Malay, D.C., prescribed a series of exercises including stretching, weight lifting, and working with a theraband.
9. On each date of service, Dr. Malay observed Claimant perform each exercise in a one-on-one setting.
10. CPT code 97530 is used when a therapeutic activity is administered to address a functional deficit. Dr. Malay did not note that Claimant had a functional deficit.
11. A one-on-one setting is appropriate when a patient is uncooperative, lacks knowledge on how to perform a prescribed activity, or presents a safety concern.
12. Claimant did not exhibit uncooperative behavior, difficulty understanding how to perform the prescribed activities, and did he not present a safety concern.
13. Provider failed to demonstrate that the treatment administered from August 27, 2002, through September 27, 2002, was medically necessary to treat Claimant's compensable injury.

### **III. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings 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. ' 2001.051 and ' 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 August 27, 2002, and September 27, 2002, 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 THEREFORE ORDERED** that the reimbursement requested by Alliance Pain Centers, P.C., for the treatment rendered to Claimant from August 27, 2002, through September 27, 2002, is denied.

**SIGNED September 16, 2004.**

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