

**SOAH DOCKET NO. 453-04-4486.M5
TWCC MDR NO. M5-03-0044-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	'	BEFORE THE STATE OFFICE
	'	
	'	
V.	'	OF
	'	
REAL HEALTH CARE, Respondent	'	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over services rendered to workers' compensation (Claimant) from September 3, 2002, through March 14, 2003. The Administrative Law Judge (ALJ) concludes Petitioner Texas Mutual Insurance Company (TMIC) should reimburse Real Health Care for the disputed services rendered through September 6, 2002. TMIC proved the disputed services rendered after that date were not medically necessary. However, TMIC should also reimburse Real Health Care for office visits and ultrasound treatments rendered on October 7, 8, 9, and 14, 2002, for which TMIC did not file Explanations of Benefits disputing medical necessity. The ALJ orders TMIC to reimburse Respondent Real Health Care \$1,152.00.

I. HISTORY

The Claimant, who was a truck driver, injured his left knee on _____. He underwent arthroscopic surgery on that knee May 22, 2002, and began physical therapy at Bayport Occupational Medical Center on May 29, 2002. On July 30, 2002, his surgeon, Ronald Heisey, M.D., released him to work without restrictions, effective August 5, 2002, finding no objective evidence of remaining injury to the knee.

The Claimant continued to feel pain in the knee, however, and changed his treating doctor to John Randolph, D.C., of Real Health Care, on August 1, 2002. Dr. Randolph examined the Claimant August 9 and began physical therapy August 12, 2002. His therapy included passive modalities, manipulation, and therapeutic exercises.

TMIC paid for the first three weeks of treatment at Real Health Care, but refused to pay for services beginning September 3, 2002. Real Health Care continued treating the Claimant through March 14, 2003. The total amount in dispute for that period is \$6,095.00.

After requesting reconsideration from TMIC and being denied, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The issue of medical necessity was referred to an Independent Review Organization (IRO), which found the services to have been necessary. The Commission's Medical Review Division (MRD) considered whether Real Health Care should be reimbursed for services provided on October 7, 8, 9, and 14, 2002, for which no EOBs had been provided. The MRD found the documentation supported the office visits (CPT Code 99213) and ultrasound therapy (CPT Code 97035) for those dates, but not one-on-one therapy (CPT Code 97110).

TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). Real Health Care did not file a request for hearing. After notice to the parties, the hearing was convened September 9, 2004, with ALJ Henry D. Card presiding.¹ The hearing was adjourned, and the record closed, the same day.

¹ The hearing was a joint hearing in this docket and Docket Nos. 453-04-2025.M5 and 453-04-3417.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 TEX. ADMIN. CODE (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 IRO and written reports from Dr. Randolph supported the need for the treatment provided the Claimant through March 14, 2003. In addition, written reports from Son K Nguyen, M.D., and Wade McAlister, M.D., recommended continued physical therapy through the disputed dates of service. However, the SOAP notes and examination records do not show improvement in the Claimant's condition during that period. Scott Herbowy, P.T., provided a written review of the medical records in which he stated that the treatment provided after September 3, 2002, was "incredibly excessive." Mr. Herbowy believed TMIC was generous to pay for any physical therapy after Dr. Heisey had released the Claimant to return to work. David Alvarado, D.C., who testified at the hearing, also found the treatment to be excessive. He agreed that three or four weeks of treatment by Real Health Care might have been reasonable, but at the very least it should have been discontinued when the Claimant's condition did not improve.

The ALJ finds Dr. Alvarado's testimony convincing. It was not unreasonable for Real Health Care to have attempted to relieve the Claimant's symptoms, but that course of treatment should have been discontinued when it did not yield positive results, regardless of the other doctors'

recommendations. TMIC has paid for three weeks of treatment at Real Health Care. It should be required to pay for the fourth week, through September 6, 2002. The amount to be reimbursed for that week is \$872.00. The ALJ finds that the services provided after that date were not medically necessary.

As was mentioned above, TMIC did not provide EOBs for office visits and ultrasound therapy provided October 7, 8, 9, and 14, 2002. The documentation establishes that those services were provided. TMIC should reimburse Real Health Care \$280.00 for those services.

The ALJ orders TMIC to reimburse Real Health Care \$1,152.00 for the services in dispute in this case.

III. FINDINGS OF FACT

1. _____, the Claimant, who was a truck driver, injured his left knee on _____.
2. The Claimant underwent arthroscopic surgery on that knee May 22, 2002, and began physical therapy at Bayport Occupational Medical Center on May 29, 2002.
3. On July 30, 2002, the Claimant's surgeon, Ronald Heisey, M.D., released him to work without restrictions, effective August 5, 2002, finding no objective evidence of remaining injury to the knee.
4. The Claimant continued to feel pain in the knee and changed his treating doctor to John Randolph, D.C., of Real Health Care, on August 1, 2002.
5. Dr. Randolph examined the Claimant August 9 and began physical therapy August 12, 2002. His therapy included passive modalities, manipulation, and therapeutic exercises.
6. Texas Mutual Insurance Company (TMIC) paid for the first three weeks of treatment at Real Health Care, but refused to pay for services beginning September 3, 2002.
7. Real Health Care continued treating the Claimant through March 14, 2003.

8. The total amount in dispute for September 3, 2002, through March 14, 2003, is \$6,095.00.
9. After requesting reconsideration from TMIC and being denied, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
10. The Commission referred the issue of medical necessity to an Independent Review Organization (IRO), which found the services to have been necessary.
11. The Commission's Medical Review Division (MRD) considered whether Real Health Care should be reimbursed for services provided on October 7, 8, 9, and 14, 2002, for which no EOBs had been provided. The MRD found the documentation supported the office visits (CPT Code 99213) and ultrasound therapy (CPT Code 97035) for those dates, but not one-on-one therapy (CPT Code 97110).
12. TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
12. Real Health Care did not file a request for hearing.
13. Notice of the hearing was sent to the parties April 6, 2004.
14. 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.
15. The hearing was convened September 9, 2004, with Administrative Law Judge (ALJ) Henry D. Card presiding. The hearing was adjourned, and the record closed, the same day.
16. The SOAP notes and examination records do not show improvement in the Claimant ' s condition during the period in dispute.
17. It was reasonable for Real Health Care to attempt treatment of the Claimant ' s symptoms for a four-week period, through September 6, 2002.
18. The amount in dispute for the week ending September 6, 2002, is \$872.00.
19. Services provided after September 6, 2002, were not medically necessary.

20. TMIC did not provide EOBs for office visits and ultrasound therapy provided October 7, 8, 9, and 14, 2002.
21. The documentation establishes that office visits and ultrasound therapy were provided on October 7, 8, 9, and 14, 2002.
22. The amount in dispute for the services described in the above finding of fact is \$280.00.

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. Pursuant to TEX. LAB. CODE ANN. § 408.021(a), TMIC should be required to reimburse Real Health Care \$872.00 for the services provided during the week ending September 6, 2002.
5. Pursuant to TEX. LAB. CODE ANN. § 408.021(a), TMIC should be required to reimburse Real Health Care \$280.00 for the office visits and ultrasound therapy provided the Claimant on October 7, 8, 9, and 14, 2002.
6. Pursuant to TEX. LAB. CODE ANN. §408.021(a), TMIC should not be required to reimburse Real Health Care for other services provided after September 6, 2002.

ORDER

Texas Mutual Insurance Company shall reimburse Real Health Care \$1,152.00 for the services in dispute in this proceeding.

SIGNED November 2, 2004.

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