

**SOAH DOCKET NO. 453-04-5357.M5
TWCC MDR NO. M5-03-2487-01**

TEXAS MUTUAL INSURANCE CO.,	‘	BEFORE THE STATE OFFICE
Petitioner	:	
	:	
V.	:	OF
	:	
JULIO FRAJARDO, D.C.,	:	
Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

After an Independent Review Organization (IRO) reviewer and the Commission ' s Medical Review Division (MRD) determined physical medicine treatment was medically necessary and adequately documented for a workers' compensation claimant, Texas Mutual Insurance Company (Carrier) appealed.¹ In this Decision and Order, the Administrative Law Judge (ALJ) finds the Carrier failed to meet its burden of proof.

Notice and jurisdiction were not contested and are discussed only in the Finding of Fact and Conclusions of Law. The hearing convened on September 28, 2004, at the State Office of Administrative Hearings, 300 West Fifteenth Street, Austin, Texas, before the undersigned Administrative Law Judge (ALJ). Attorney Ryan Willett represented the Carrier, and Kevin Strathdee, D.C., represented the Provider.² The hearing concluded and the record closed the same day.

¹ The Provider did not appeal MRD's decision regarding documentation, even though the MRD found against the Provider on certain issues. This Decision and Order considers only those services for which MRD ordered the Carrier to pay.

² Dr. Strathdee actually worked with the claimant and was not certain why Dr. Frajardo, another chiropractor in the same office, was listed as the Respondent.

II. DISCUSSION

The 28-year-old claimant sustained a work-related, inguinal-hernia injury on ____, while lifting a 60-pound, sheet-metal plate. At the hospital emergency room where the claimant was treated that day, he was advised that he had a hernia and should avoid any unnecessary straining, lifting, or heavy work until further directed by his doctor.³ The claimant returned to work on light duty but, three days later, his employer required him to work in a full-duty capacity. Dr. Strathdee then advised the claimant's employer that he could not return to work. To aid with pain, the claimant wrapped a four-inch Ace bandage around his lower abdominal region and used various prescriptions medications. On December 2, 2002, he rated his pain as a nine on a one-to-ten scale.

On December 20, 2002, the claimant underwent surgery to repair the hernia, and the surgeon advised the claimant to refrain from heavy lifting for at least a month. Later, the surgeon advised against heavy lifting until February 10, 2003, and suggested that the claimant follow up with Dr. Strathdee, the treating doctor who had referred the claimant to the surgeon.⁴ The surgeon also prescribed rehabilitation therapy.⁵

3 Ex. 1, p. 82.

4 Ex. 1, p. 86.

5 Ex. 1, p. 7.

Services in dispute based on medical necessity were billed under CPT code 97110 (therapeutic exercises) and were provided on January 22, 24, and 27, and February 5, 7, 10, 13, and 14, 2003. The charges in dispute on those eight days of service totaled \$1,395.00.⁶ The Carrier's appeal also included the MRD decision which found office visits, physical performance tests, reports, and related items were properly documented. The services were provided on December 2, 2002; and January 6, 17, and February 28, 2003.

A. N. F. Tsourmas, M.D.

Board-certified orthopedic surgeon N. F. Tsourmas, M.D., testified for the Carrier. He described the claimant's surgery as a ligament repair that required stitches and a piece of mesh. This type of surgery usually takes 30-45 minutes and is done on an outpatient basis. Dr. Tsourmas said the part of the body injured was the aponeuroses, a very thin ligament; the injury was like a bump on a car tire. The claimant needed only to have the "bump" removed - not to have the area strengthened, in Dr. Tsourmas's opinion.

Post-operative care for this type of surgery requires only wound checks and suture removal, not muscle strengthening, Dr. Tsourmas testified. Indeed, exercises that are too vigorous could have been detrimental to the claimant. Dr. Tsourmas said he had never seen physical therapy used for treatment after a hernia repair.

As for specific treatments, Dr. Tsourmas noted that on January 22, 2003, the claimant used an ergometer, which is like a bicycle pedal for the upper extremities. An inguinal hernia is in the groin by the hip joint. The upper body has nothing to do with this area, Dr. Tsourmas noted. The claimant

⁶ During the hearing, the Carrier represented that the amount in dispute was \$2,180.80. However, the Table of Disputed Services (Ex. 1, p. 8), shows the services provided under CPT code 97110 were billed at \$1,395. In addition, the MRD ordered of payment of \$306.85 for office visits, reports, and tests. The two amounts added together total \$1701.85. From the record, the ALJ was unable to determine the reason for the discrepancy between this number and the amount the Carrier said was in dispute.

also used therapeutic bands at the Provider's direction, but Dr. Tsourmas testified, the treatment notes do not specify the area of the body that was being treated with the bands.

Dr. Strathdee's physical medicine treatments were all billed under CPT code 97110. In Dr. Tsourmas's opinion, that level of supervision is appropriate only to educate a patient about muscle training. Also, there is no mention of home exercises, and the majority of these exercises should have been done at home, Dr. Tsourmas concluded.

B. Kevin Strathdee, D.C.

Dr. Strathdee testified that by the treatment dates, the claimant had been off work for three months and had become de-conditioned. After surgery, the claimant was unable to lift at the heavy-physical-demand level required for his work. His muscles and ligaments needed to be strengthened, and his back needed to be stabilized.

A month after surgery, the claimant had a light-to-medium physical demand capacity.⁷ Dr. Strathdee determined the claimant needed conditioning that used an upper-body ergometer, treadmill, and bicycle exercises. Upper body light conditioning was provided by resistive tubing and Theraband exercises to prevent further loss of strength. Dr. Strathdee also used hamstring stretches and wobble board exercises to stabilize the claimant's abdomen and lumbar complex.⁸

In Dr. Strathdee's opinion, one-on-one therapy was necessary because the claimant pushed himself to do more than he was capable of at times. Dr. Strathdee had to caution him not to pursue the exercises as aggressively as he did. Also, Dr. Strathdee said there were no group classes

⁷ Ex. 1, p. 113.

⁸ Ex. 1, p. 115-116.

available for the claimant at the Provider's offices because they do not treat many persons who have undergone hernia repair.

On a representative treatment day, the claimant had four units of therapeutic exercises (treadmill, upper body ergometer, straight-leg raising, Theraband exercises, and isotonic Cybex machines). He also performed "20 pounds of shoulder press, chest press, rowing, and lat. pulldown without any abdominal pain."⁹ At the conclusion of Provider's treatment, the claimant underwent a functional capacity evaluation, which showed that the claimant had reached a medium-to-heavy-physical demand level.¹⁰ On March 19, 2003, Dr. Strathdee assigned the claimant a zero-percent impairment rating.¹¹

C. Analysis

Pursuant to TEX. LABOR 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.

In this case, the claimant ' s surgeon determined the claimant needed physical rehabilitation to return to work that required heavy lifting because he had become de-conditioned as a natural result of his compensable injury. The ALJ agrees with the Carrier that generally, one-on-one physical therapy is not required when a claimant is able to learn exercises in a few sessions and do them at home. In this case, however, the claimant pushed himself harder than he should. The eight sessions

⁹ Ex. 1, p. 120

¹⁰ Ex. 1, p. 133.

¹¹ Ex. 1, pp. 135-136.

with Dr. Strathdee were not excessive, considering that the claimant had been cautioned to avoid lifting too much weight; exercises that were too vigorous could have been detrimental to him.

As for the documentation issues, there was no evidence that cast doubt on the MRD's findings, and consequently, the ALJ will not disturb those determinations. In summary, the ALJ finds the physical medicine treatments were medically necessary for the claimant and further finds MRD's decision regarding office visits and related services should be upheld.

III. FINDINGS OF FACT

1. On ____, the 28-year-old claimant sustained for a work-related, inguinal-hernia injury while lifting a 60-pound, sheet-metal plate.
2. On the date of injury, the claimant's employer had workers' compensation insurance with Texas Mutual Insurance Company, the Carrier.
3. After the claimant was injured, he was advised that he had a hernia and told to avoid any unnecessary straining, lifting, or heavy work until his doctor approved such activity.
4. During the two months when the claimant was waiting for hernia-repair surgery to be preauthorized, he was prescribed hydrocodone for pain and was limited to lifting no more than ten pounds.
5. On December 20, 2002, the claimant underwent surgery to repair the hernia.
6. After the claimant's surgery, his surgeon advised him to refrain from heavy lifting for at least a month.
7. A month after surgery, the claimant had a light-to-medium physical demand capacity.
8. On January 15, 2003, the surgeon again advised against heavy lifting until February 10, 2003, and suggested that the claimant receive physical rehabilitation therapy.
9. The claimant had become de-conditioned after having been off work for three months.
10. The claimant's job required that he have a heavy-lifting capacity.

11. The claimant was treated with an upper-body ergometer, treadmill, and bicycle exercises, resistive tubing, Theraband exercises, hamstring stretches, and wobble board exercises.
12. The exercises provided general conditioning and prevented further loss of strength.
13. At the conclusion of the treatment provided, the claimant had reached a medium-to-heavy-physical-demand level.
14. On March 19, 2003, the claimant was assigned a zero-percent impairment rating.
15. The physical medicine services in dispute were billed under CPT code 97110 (therapeutic exercises) and were provided on January 22, 24, and 27, and February 5, 7, 10, 13, and 14, 2003. The charges in dispute on those eight days of service totaled \$1,395.00.
16. By decision dated July 24, 2003, an Independent Review Organization reviewer determined the Provider's services followed the surgeon's guidelines, provided general conditioning, and enabled the claimant to return to work as quickly as possible.
17. By decision dated May 22, 2004, the MRD amended the IRO's decision to find some services were and others were not properly documented, but only the Carrier appealed from this decision.
18. There was no evidence that services for office visits, physical testing, and reports on December 2, 2002; and January 6, 17, and February 28, 2003, in the amount of \$306.85, were not properly documented.
19. The Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
20. Notice of the hearing was sent to both parties on May 5, 2004.
21. The notice of hearing 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.
22. The hearing convened on September 28, 2004, and both parties were represented.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. ' ' 402.073(b) and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing request was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.
4. The Carrier had the burden of proof in this matter. 28 TEX. ADMIN. CODE ' 148.21(h).
5. The Carrier failed to meet its burden of proving the services were not medically necessary or properly documented.
6. The Carrier should reimburse the Provider the amount of \$1,701.85, for physical medicine, office visits, physical testing, and related charges.

ORDER

THEREFORE IT IS ORDERED that the Carrier's appeal is denied, and the Carrier should reimburse the Provider the amount of \$1,701.85, plus applicable interest.

SIGNED, November 24, 2004

**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**