

**SOAH DOCKET NO. 453-04-5708.M4
TWCC MDR NO. M4-03-6542-01**

MEGA REHAB,	‘	BEFORE THE STATE OFFICE
Petitioner	‘	
	‘	
V.	‘	OF
	‘	
TWIN CITY FIRE INSURANCE	‘	
COMPANY,	‘	
Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Mega Rehab (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission (Commission) denying Petitioner reimbursement for CPT Code 97110, one-on-one therapy during the period June 11, 2002, through June 21, 2002 (Disputed Services).

This decision grants the relief sought by Petitioner and orders payment of \$420.00.

The hearing convened on October 5, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Stephen Dudas, D.C., represented Petitioner. Scott Bouten represented Twin City Fire Insurance Company (Respondent). There were no contested issues of notice or jurisdiction. Dr. Dudas testified for Petitioner. The record closed the same day following adjournment of the hearing.

___ (Claimant) sustained work related injuries on or about ___, including burns to his face and injuries to both knees.¹ Claimant had a right knee meniscectomy on April 8, 2002.² Luiz C.

¹ Claimant, employed by a construction company, was using a power cutter inside a hollow concrete pipe. Sparks from the power cutter ignited gas from an undetected leak and engulfed Claimant in flames.

Toledo, M.D., performed the surgery. On May 8, 2002, Dr. Toledo prescribed one-on-one physical therapy. Physical therapy began on May 14, 2002. On June 4, 2002, Dr. Toledo recommended additional physical therapy. Claimant's right knee was recovering from the surgery but Claimant continued to have patellar-tracking problems in his right knee. Michael C. Moreau, D.C., recommended one-on-one therapy with a licensed physical therapist, three times a week for four weeks.³ Claimant was also provided with a thera-band system and instructed in home exercise to help strengthen the knee. Claimant was discharged on July 5, 2002.

Five dates of service were denied by Respondent, June 11, 12, 14, 19 and 21, 2002. More specifically, as of the date of the hearing, Respondent denied payment as follows:

- (1) June 11-one unit of one-on one.
- (2) June 12-three units of one-on one.
- (3) June 14-two units of one-on one.
- (4) June 19-three units of one-on one.
- (5) June 21-three units of one-on one.

The amount in dispute totals \$420.00.⁴

Respondent contends the documentation does not support the delivery of one-on-one therapy.

II. ANALYSIS

The treatment calendars, the contemporary notes, including physical therapy notes, and the testimony of Dr. Dudas demonstrate the need for, and the actual provision of, one-on-one therapy to Claimant. The physical therapist worked with Claimant to wrap and brace his knee. Dr. Dudas

² Claimant had a medial meniscus tear.

³ Brittney Pardue, LPT, was the physical therapist who supervised Claimant's physical therapy. One-on-one therapy is scheduled for a one-hour period.

⁴ Each unit of 15 minutes is valued at \$35.00.

admitted at the hearing that the bike exercise could have been performed in a group setting rather than during a unit of one-on-one-therapy. However, given the various factors in the record, including the continuing problem with stability of the Claimant's knee, one-on-one supervision was appropriate for the limited duration of time in dispute.⁵

Petitioner had the burden of proof in this proceeding, and Petitioner sustained its burden.

III. FINDINGS OF FACT

1. ____ (Claimant) sustained a work related injuries on or about ____, including burns to his face and injuries to both knees.
2. Claimant had a medial meniscus tear.
3. Claimant had a right knee meniscectomy on April 8, 2002.
4. On May 8, 2002, Luiz C. Toledo, M.D., prescribed one-on-one physical therapy.
5. Physical therapy began on May 14, 2002.
6. On June 4, 2002, Dr. Toledo recommended additional physical therapy.
7. Claimant's right knee was recovering from the surgery but Claimant continued to have patellar-tracking problems in his right knee.
8. Michael C. Moreau, D.C., recommended one-on-one therapy with a licensed physical therapist, three times a week for four weeks.
9. Claimant was discharged on July 5, 2002.
10. Five dates of service were denied by Respondent, June 11, 12, 14, 19 and 21, 2002; for CPT Code 97110, one-on-one therapy (Disputed Services).
11. Twin City Fire Insurance Company (Respondent) denied one unit of service on June 11, two units on June 14, and three units on June 12, 19, and 21.

⁵ On each of the dates of service in dispute, one unit of one-on-one therapy was used for bike exercise.

12. On each of the dates of service in dispute, one unit of one-on-one therapy was used for bike exercise.
13. Each unit of 15 minutes is valued at \$35.00.
14. One-on-one therapy was provided to Claimant.
15. The physical therapist worked with Claimant to wrap and brace his knee.
16. One-on-one supervision during the bike exercise was appropriate for this Claimant for the limited duration of time in dispute given the various factors, including the continuing problem with stability of the Claimant's knee.
17. By decision dated April 13, 2004, the Texas Workers' Compensation Commission (Commission) concluded that the submitted documentation did not support or meet the criteria for one-on-one therapy and that Petitioner should not be reimbursed for the Disputed Services.
18. Petitioner timely requested a hearing to contest the Commission's decision.
19. The Commission issued a notice of hearing on May 20, 2004.
20. A hearing was convened by Administrative Law Judge Howard S. Seitzman on October 5, 2004, in the hearing rooms of the State Office of Administrative Hearings. The hearing adjourned and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) ' ' 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

5. 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).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC ' ' 148.21(h) and (i); 1 TAC ' 155.41(b).
7. Based upon the Findings of Fact, Petitioner proved by a preponderance of the evidence that the Disputed Services were provided to Claimant and were appropriate for treatment given Claimant's condition.

ORDER

THEREFORE IT IS ORDERED that Respondent Twin City Fire Insurance Company pay Petitioner Mega Rehab \$420.00, plus any and all applicable interest, for the Disputed Services provided to Claimant.

SIGNED November 23, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**