

**SOAH DOCKET NO. 453-04-5895.M5
TWCC MDR NO. M5-04-0770-01**

TEXAS MUTUAL INSURANCE COMPANY	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
CROSS TIMBERS PHYSICAL THERAPY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (TMI or Petitioner) appealed the findings and decision of the Texas Workers' Compensation Commission's Medical Review Division, which adopted the decision of its designee, an independent review organization (IRO), granting reimbursement to Cross Timbers Physical Therapy (Respondent) for physical therapy provided to a workers' compensation (Claimant). This decision and order finds the physical therapy was not medically necessary for Claimant and TMI should reimburse Cross Timbers only for three session of neuromuscular reeducation.

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 October 28, 2004, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. Attorney Katie Kidd represented TMI. Respondent was represented by its administrator, Maxine Levels. The Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Factual Background

Claimant sustained a compensable injury to his back in _____. At the time of the injury, TMI was the workers' compensation insurer for Claimant's employer. The injury was diagnosed as a back sprain or strain.

From the date of injury to April 2003, Claimant received physical therapy through his treating physician, Dr. Beauford Basped, D.O. Upon referral by Dr. Basped, Claimant began receiving physical therapy at Respondent's clinic in April 2003. TMI subsequently denied payment for physical therapy services rendered by Respondent from April 18 through July 18, 2003, claiming those services were not medically necessary healthcare. The parties agreed that the amount in dispute is \$2,409.

In granting reimbursement for the services, the IRO reviewer wrote:

Provided for review were records from the office of Dr. Basped and also a sufficiently large volume of records from the Cross Timbers Therapy Clinic. These have all been reviewed in detail and appear to be appropriate for the patient problem presented. Those coded activities applied to this patient do not appear improper or excessive. All items in question appear appropriate and reasonable, usual, and customary as pertaining to currently accepted physical therapy treatment regimen.

TMI timely appealed the MRD decision and order.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) ' ' 148.21(h) and (i); 1 TAC ' 155.41. Pursuant to the Texas Worker's Compensation Act (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). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. ' 401.011(19)(A). The IRO was authorized to hear the medical dispute pursuant to 28 TAC §133.308.

When billing, a provider must use the proper procedural and diagnostic codes. 28 TAC § 42.145(a)(3). CPT 97110 is the billing code to be used for physical therapy session involving only one patient.

C. Evidence

Both TMI and Respondent proffered the records they submitted to the IRO. (Exs. 1 and 2). TMI presented two expert witnesses, orthopedic surgeon Nicolas Tsourmas, M.D., and physical therapist Scott Herbowy. Respondent did not present any witnesses.

The records established that Respondent billed, on multiple dates between April 18 and July 18, 2003, for the following types of services:

<u>CPT CODE</u>	<u>DESCRIPTION</u>
99078-22	Physician education services in a group setting
97530	Therapeutic activities, direct
97112	Neuromuscular reeducation
97010	Hot or cold packs
97139	Muscle energy technique
97122	Traction, manual
97110	Therapeutic exercises
97035	Ultrasound
97265	Joint mobilization
97250	Myofascial release
95851	ROM and report
97799	Unlisted physical medicine/rehab service

The parties agreed that the billing for CPT code 95851 is not in dispute in this case.

Maxine Levels. Petitioner first called Ms. Levels as a witness. According to Ms. Levels, Cross Timbers physical therapist Michael Muellner provided all the disputed physical therapy services. When Claimant was referred, Cross Timbers checked with TMI about reimbursement and was told that all medically necessary services would be paid. Cross Timbers felt that TMI should have been candid and stated that further treatment medically was unnecessary at that time.

With regard to billing for one-on-one, as opposed to group, therapy sessions, Ms. Levels stated that Cross Timbers bills for one-on-one services even though the therapist typically rotates between three or four patients working together in the same room. The one-on-one billing is justified because the therapist remains in the room with and provides “hands on” instruction to the patient during the session.

Nicolas Tsourmas, M.D. Dr. Tsourmas testified that Claimant’s treatment at Cross Timbers was redundant. Claimant was well past the acute phase of the injury so the passive modalities (hot/cold packs, ultrasound, traction) given were unnecessary and unhelpful. Active exercises might have been appropriate for Claimant but Cross Timbers’ documentation of the active modalities is so poor that Dr. Tsourmas had difficulty determining what exercises were done and whether Claimant benefitted from them. In particular, the documentation failed to record Claimant’s range of motion, pain response, and strength levels. Therefore, Claimant’s progress was not known.

Dr. Tsourmas found no reason to provide one-on-one therapy because Claimant should have been familiar with the exercises from prior therapy with Dr. Basped and had no documented mental or physical deficiency (e.g., a missing limb) impeding his ability to perform exercises unassisted. Claimant certainly did not need both individual and group education sessions. Based on Ms. Levels’ description of the physical therapy, Claimant’s sessions were group, not individual, sessions and should not have been billed under CPT codes 97110.

In summary, Dr. Tsourmas found the passive modalities inappropriate and redundant, the active modalities inadequately documented and improperly billed, and Claimant’s entire course of

therapy at Cross Timbers lacking in cost-effectiveness. He stated the services to Claimant were neither reasonable nor medically necessary.

Scott Herbowy. Mr. Herbowy has been a licensed physical therapist for 22 years. He agreed with Dr. Tsourmas that the physical therapy given Claimant at Cross Timbers was neither adequately documented nor medically necessary. From a review of Claimant's records, Mr. Herbowy could not tell why particular modalities were used or what the result was. For instance, Claimant was repeatedly administered an acute phase treatment-hot and cold packs despite being many weeks post-acute phase of the injury. He found the modalities administered almost randomly without documented rationale.

According to Mr. Herbowy, Claimant had not had time to develop the sort of fascia restrictions that may benefit from myofascial release therapy, which in any event was done too sporadically to be effective. Because Claimant had no documented range of motion deficits, joint mobilization therapy was not shown to be necessary and again, this therapy was administered too sporadically. Muscle energy technique therapy likewise lacked the documentation necessary to justify its application.

The records were vague as to the types of exercise done and lacked information justifying the use of the one-on-one billing codes. At most, only a couple of one-on-one sessions could have been justified to instruct Claimant. After that, the therapy sessions should have been billed under the group CPT code. He saw no justification in the records for billing under the physician education code as no physician was shown to be involved. Likewise, the records lacked any documentation for the billing of an assessment.

While Mr. Herbowy agreed Claimant needed neuromuscular reeducation, two or three sessions would have been sufficient because the records lack any documentation of an ongoing balance problem.

D. Analysis

Dr. Tsourmas and Mr. Herbowy's criticisms of Cross Timber's records were accurate. The records were so sketchy as to be virtually useless. The records did not adequately document what services were provided or why, whether the services were effective, and why certain billing codes were used. As Mr. Herbowy explained, the physical therapist's notes lacked information on: the patient's status, including his impression of his progress since the last treatment; the treatment goals; the therapist's assessment of progress; or a plan on how to proceed. Without this basic information, evaluating the necessity or efficacy of the treatments administered is almost impossible-as documented, the modalities seem to have been administered almost randomly. The records do not show what the therapeutic exercises were, much less whether Claimant benefitted from them.

As described by Ms. Levels, the therapy was given in a group, not individual, setting. Therefore, the use of one-on-one CPT codes was improper because CPT 97110 requires that the therapist work with only one patient for the entire session. Cross Timbers had a duty to use the proper procedural codes in its bills. 28 TAC ' 42.145(a)(3). Maintaining that it properly billed under CPT code 97110, Cross Timbers did not request that any adjustment be made if the services were found to be improperly billed. Therefore, the ALJ recommends no reimbursement for services improperly billed under CPT 97110.

During his therapy sessions at Cross Timbers, Claimant was past the point when passive modalities are typically administered and not to the point where myofascial release, joint mobilization, or muscle energy technique therapy might have been beneficial. In any event, the documentation does not show that any of those therapies were needed or beneficial. Documentation was lacking to justify billing for physician education, an assessment, or an unlisted service code.

Ms. Level's assertion that TMI should have told Cross Timbers upfront that it would challenge the billings is not persuasive. TMI had no way of knowing *a priori* what services were being provided and under what circumstances.

Of the services billed, at most, three sessions of neuromuscular reeducation was medically necessary, documented, and properly billed. For the services to Claimant billed between April 18 and July 18, 2003, TMI should pay Cross Timbers reimbursement only for three sessions of neuromuscular reeducation billed under CPT code 97112.

III. FINDINGS OF FACT

1. In ____, Claimant sustained an injury to his back compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with Texas Mutual Insurance Company (TMI or Carrier).
3. From the date of injury to April 2003, Claimant received physical therapy from his treating physician, Dr. Beauford Basped, D.O.
4. In April 2003, Dr. Basped referred Claimant to Respondent for physical therapy.
5. From April 18 through July 18, 2003, Claimant received physical therapy and related services at Respondent's clinic.
6. On multiple dates between April 18 and July 18, 2003, Cross Timbers provided Claimant services billed as:

<u>CPT CODE</u>	<u>DESCRIPTION</u>
99078-22	Physician education services in a group setting
97530	Therapeutic activities, direct
97112	Neuromuscular reeducation
97010	Hot or cold packs
97139	Muscle energy technique
97122	Traction, manual
97110	Therapeutic exercises
97035	Ultrasound
97265	Joint mobilization
97250	Myofascial release
97799	Unlisted physical medicine/rehab service

7. By April 2003, Claimant was past the acute phase of his injury.

8. Passive physical therapy modalities such as ultrasound, hot and cold packs, and traction were not appropriate for Claimant after the acute phase of his injury.
9. Cross Timbers records for Claimant's therapy lacked information about Claimant's progress, (as measure by him or the therapist), the nature of the exercises, the reason for using particular exercises or modalities, whether Claimant reported pain relief from the therapy, and what the goals of the therapy were.
10. Claimant's therapy records failed to document a loss of joint mobility that would justify the use of myofascial release, joint mobilization, or muscle energy technique therapies.
11. At Cross Timbers, Claimant received therapy in group, rather than individual, sessions.
12. Cross Timbers failed to document that Claimant received physician education, underwent a necessary assessment, or received a service properly billed under CPT 97799.
13. Claimant needed, at most, three sessions of neuromuscular reeducation.
14. Petitioner denied Cross Timbers' request for reimbursement for the services listed in Finding of Fact No. 6.
15. The Commission's Independent Review Organization (IRO) reviewer found the services in dispute in this case were medically necessary healthcare for Claimant, and the Commission's Medical Review Division (MRD) ordered Petitioner to reimburse Cross Timbers for those services.
16. Petitioner timely appealed the MRD decision.

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(d) 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. Petitioner 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. By billing for individual sessions when group sessions were provided to Claimant, Cross Timbers failed to fulfill its duty to use the proper procedural codes in its bills. 28 TAC ' 42.145(a)(3).
10. The physical therapy and related services Cross Timbers provided Claimant from April 18 through July 18, 2003, were not medically necessary healthcare except for three neuromuscular reeducation sessions billed under CPT code 97112.

ORDER

It is ORDERED that Petitioner reimburse Cross Timbers Physical Therapy for three sessions of neuromuscular reeducation provided Claimant between April 18 and July 18, 2003, and that no reimbursement is due for other services rendered during that time period.

SIGNED December 2, 2004.

**ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**