

**SOAH DOCKET NO. 453-04-6582.M5
TWCC MR No. M5-04-1706-01**

**FIRST RIO VALLEY MEDICAL,
PA, Petitioner**

V.

**AMERICAN HOME ASSURANCE
COMPANY, Respondent**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

First Rio Valley Medical, PA (First Rio) requested a hearing to contest an Independent Review Organization (IRO) decision that aquatic therapy, electrical stimulation, ultrasound, and an office visit provided to an injured worker (Claimant) were medically unnecessary. First Rio argued that the services were necessary because it needed to try to relieve the Claimant's pain while waiting for her medical records from previous providers. When First Rio reviewed the records, it recognized that physical medicine services would not help her condition. The Administrative Law Judge (ALJ) concludes that the office visit was medically necessary, but the other services were unnecessary.

A hearing convened on August 17, 2004, before ALJ James W. Norman at the State Office of Administrative Hearings, Austin, Texas. First Rio appeared and was represented by Robert S. Howell, D.C. The Claimant's employer's insurance carrier, American Home Assurance Company (American Home), was represented by its counsel, Dan C. Kelley. There were no issues of notice or jurisdiction.

1. Background

The Claimant sustained a work-related back injury on _____. She was diagnosed with lumbar sprain/strain. She underwent numerous treatments in El Paso, Texas, before moving to Brownsville, Texas, and presenting to First Rio and Dr. Howell on August 20, 2003, with complaints of back pain rated as a seven on a scale of one to ten (with ten the highest).

The disputed services were provided from August 20, 2003, through August 25, 2003, while Dr. Howell waited for medical records from the Claimant's El Paso health care providers. The Claimant's records showed she underwent a magnetic resonance imaging (MRI) of her lumbar spine on July 19, 2002, which revealed a large, right, far-lateral extruded fragment, encroaching the right neural foramina and measuring 1.2 x 0.8 cm at her L3-L4 spinal level. She had a prominent left-lateral annular tear with broad-based disc protrusion encroaching the left neural foramina compounded by left facet joint atrophy at her L4-L5 spinal level.

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. ' ' 408.021 and 401.011. Section 408.021(a) provides 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. Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

2. Evidence and Analysis

Dr. Howell does not dispute that the services he provided the Claimant were not helpful to her medical condition. He testified, however, that when she presented to him she did not have her records and she was in significant pain. He faxed a request for her records to her El Paso health care providers and provided his FedEx number. He explained that it usually takes a few days to obtain records. In the meantime, in an attempt to relieve the Claimant's pain, he provided a new treatment, aquatic therapy.¹ When he received the Claimant's records, he realized that his services were not

¹ Dr. Howell believes the electrical stimulation and ultrasound treatments he provided were probably not new.

helping her and immediately referred her to an orthopedic surgeon. He testified he does not see how he could have done anything else for her, consistent with his duties. He said his treatments were a trial until he obtained more information.

American Home argued simply that treating the Claimant in some fashion until medical records arrive does not satisfy the standard of medical necessity. It contended the evidence amply supported its position that the services were medically unnecessary.

The ALJ agrees with American Home that the treatments do not meet the statutory definition of medical necessity all health care reasonably required by the nature of the injury as and when needed, *i.e.*, health care that cures or relieves the effects naturally resulting from the compensable injury; promotes recovery; or enhances the ability of the Claimant to return to or retain employment. American Home was thus not liable to pay for the treatments. It is liable, however, for the August 20, 2003, office visit, which was required by the Claimant's injury, given the fact that she had moved to Brownsville from El Paso and needed to be seen by a new health care provider. American Home will be ordered to pay for the August 20, 2003, office visit.²

II. FINDINGS OF FACT

1. The Claimant sustained a work-related injury to her back on _____.
2. The Claimant's initial diagnosis was lumbar sprain/strain.

² It appears that the only office visit in dispute is the one on August 20, 2003, given that the disputed dates of service were from August 20, 2003, through August 25, 2003. (Dr. Howell saw the Claimant in an office visit on August 26, 2003, to explain to her that further treatment from First Rio would not help.)

3. The Claimant underwent numerous treatments in El Paso, Texas, before moving to Brownsville, Texas, and presenting to First Rio Valley Medical, PA (First Rio) on August 20, 2003, with complaints of back pain rated as a seven on a scale of one to ten (with ten the highest).
4. The disputed services, provided from August 20, 2003, through August 25, 2003, included an August 20, 2003, office visit and aquatic therapy, electrical stimulation, and ultrasound, while First Rio waited for medical records from the Claimant's El Paso health care providers.
5. The Claimant's medical records showed she underwent a magnetic resonance imaging of her lumbar spine on July 19, 2002, which revealed a large, right, far-lateral extruded fragment, encroaching the right neural foramina measuring 1.2 x 0.8 cm at her L3-L4 spinal level. She had a prominent left-lateral annular tear with broad-based disc protrusion encroaching the left neural foramina compounded by left-facet-joint atrophy at the L4-L5 level of her spine.
6. When First Rio obtained the Claimant's medical records, it realized the treatments it was providing were not efficacious and referred her to an orthopedic surgeon.
7. It is undisputed that the treatments provided by First Rio were not reasonably required by the nature of the Claimant's injury.
8. The August 20, 2003, office visit to First Rio was reasonably required by the nature of the Claimant's injury because the Claimant was presenting to First Rio as her new health care provider in Brownsville.
9. The workers' compensation insurance carrier for the Claimant's employer, American Home Assurance Company (American Home), denied payment of the services in dispute.
10. First Rio requested medical dispute resolution.
11. On May 4, 2004, an independent review organization concluded that the services were medically unnecessary.
12. It is undisputed that the First Rio requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
13. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the

matters asserted.

14. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

III. CONCLUSIONS OF LAW

1. 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.
2. First Rio has the burden of proof in this case. 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC §148(h).
3. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. ' ' 2001.051 and 2001.052.
4. Except for the August 20, 2003, office visit, First Rio failed to prove that the services in dispute were medically necessary. TEX. LAB. CODE ANN. ' 408.021(a).
5. First Rio proved that the August 20, 2003, office visit was medically necessary. TEX. LAB. CODE ANN. ' 408.021(a).
6. American Home should pay for the August 20, 2003, office visit, but not for the other disputed treatments.

ORDER

IT IS THEREFORE ORDERED that American Home Assurance Company pay First Rio Valley Medical, PA the reasonable cost of the office visit provided to the Claimant on August 20,

2003, plus applicable interest.

IT IS ORDERED FURTHER that, except as provided above, First Rio Valley, PA ' s claim against American Home Assurance Company for services provided to the Claimant from August 20, 2003, through August 25, 2003, be, and the same is hereby, denied.

SIGNED August 30, 2004.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**