

<b>SHAUB FAMILY CHIROPRACTIC CENTER, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
	§	<b>OF</b>
<b>v.</b>	§	
	§	
<b>ATLANTIC MUTUAL INSURANCE COMPANY, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

## DECISION AND ORDER

### I. INTRODUCTION

Shaub Family Chiropractic Center (Provider) disputes a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) regarding medical services that the Provider furnished to \_\_\_ (Claimant). Atlantic Mutual Insurance Company (Carrier) contends that the services were not shown to be reasonably medically necessary due to the Claimant's compensable injury.<sup>1</sup> The maximum allowable reimbursement (MAR) amounts in dispute total \$5,304.00.

As set out below, the Administrative Law Judge (ALJ) cannot find that the disputed services were reasonably medically necessary due to the Claimant's compensable injury. Accordingly, the Provider's request to be reimbursed for them is denied.

### II. FINDINGS OF FACT

1. On \_\_\_, Claimant sustained a work-related injury (Compensable Injury) to her left knee as a result of her work activities.
2. On the date of injury, the Claimant's employer was \_\_\_, and the Carrier was its workers' compensation insurance carrier.
3. As a result of the injury, the Claimant had knee pain.
4. On August 9, 2000, Claimant had a medial meniscectomy followed by post-surgical therapy of active exercise and passive modalities.
5. On July 11, 2001, Claimant had anterior crucial ligament reconstructive repair, followed by post-surgical therapy of active exercise and passive modalities for five months.

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<sup>1</sup> During the prehearing, the parties presented arguments on whether compensability was at issue in this case. The ALJ ruled that it was not.

6. On January 25, 2002, Claimant completed three weeks of a work hardening program.
7. On April 15, 2002, Claimant moved to California and presented to Provider for chiropractic treatments of passive modalities.
8. When Claimant sought treatment from Provider, she complained of left knee pain and was walking with a limp and a cane.
9. In 56 visits from May 15, 2002, through October 11, 2002, the Provider furnished the following services to the Claimant, and sought total reimbursement of \$5,304.00 from the Carrier, :99213 - office visits, 97010 - hot/cold packs, 97014 - electrical stimulation, and 97124 - massage.
10. Claimant is 63 and does not plan on returning to work.
11. There is no documentation in the record to indicate that Claimant experienced any better range of motion or less pain during the course of the treatments.
12. Additional passive modalities beyond a six to eight-week period after surgery are not helpful for the Claimant's type of injury.
13. Chiropractic treatments of passive modalities two years beyond the date of injury are not medically necessary.
14. The Provider timely sought reimbursement from the Carrier for each of the disputed services.
15. The Carrier timely denied reimbursement for each of the disputed services by claiming that they were either non-compensable or not medically necessary.
16. The Provider filed a request for medical dispute resolution (MRD) with the Texas Workers' Compensation Commission (TWCC) concerning the disputed services.
17. The TWCC MRD denied reimbursement for the disputed services on the basis that Provider failed to submit copies of medical reports.
18. After the TWCC MRD issued its decision, Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
19. The required notice of a contested-case hearing concerning the dispute was mailed to the Carrier and the Provider.
20. On February 15, 2005, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
21. The Carrier appeared at the hearing through its attorney, Gregory D. Solcher.
22. The Provider appeared telephonically at the hearing through its owner, Dr. Michael Shaub.

23. Evidence on the disputed services was submitted by both the Carrier and the Provider and was admitted into the record.
24. The ALJ assigned the burden of proof to the Carrier.

### **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. LABOR CODE ANN. §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050(a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC § 148.21(h) (2004), the ALJ assigned the burden of proof to the Carrier.
4. 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 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. LABOR CODE ANN. § 408.021(a).
5. The evidence does not show that the disputed services were reasonably likely to cure or relieve the Claimant's pain or any other effect naturally resulting from her compensable injury, promote her recovery, or enhance her ability to return to or retain employment.
6. Based on the above Findings of Fact and Conclusions of Law, the Provider's request to be reimbursed for the disputed services should be denied.

### **ORDER**

**IT IS ORDERED THAT** the Provider's request to be reimbursed \$5,304.00 for the disputed services is denied.

**SIGNED April 7, 2005.**

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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**