

**CENTRAL DALLAS
REHABILITATION,
Petitioner**

V.

**POLY AMERICA, INC.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Central Dallas Rehabilitation (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Medical Review of Texas, an Independent Review Organization (IRO), denying Petitioner reimbursement for therapeutic procedures and exercises, office visits, range of motion testing, and muscle testing for the period October 16, 2002, through December 18, 2002 (Disputed Services).¹

This decision in grants part the relief sought by Petitioner and orders payment by Poly America, Inc. (Respondent), of \$1532.00 for all therapeutic exercises, kinetic exercises, two office visits, and the range of motion testing.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY.

The hearing convened on March 21, 2005, before Administrative Law Judge (ALJ) Stephen J. Pacey. Scott Hilliard, represented Petitioner. Charles Finch represented Respondent. There were no contested issues of notice. Christopher Plate, D.C., testified for Petitioner, and Roger Canard, D.C., testified for Respondent. The record closed the same day following adjournment of the hearing.

¹ Petitioner's original challenge to the IRO decision contested the IRO's denial of reimbursement for dates of service from October 16 2002, through February 17, 2003. At the hearing, Petitioner withdrew its claim for dates of service from December 18, 2002, through February 17, 2003.

Respondent raised a jurisdictional issue. Respondent asserted that the order of the Texas Worker's Compensation Commission (TWCC) incorporating the IRO decision was mailed to Petitioner by a TWCC employee on May 24, 2004. The order was deemed received five days later on May 29, 2004. Respondent asserted that a party must request a hearing within twenty days or by June 18, 2004. TWCC did not receive Petitioner's request for hearing until July 27, 2004. Petitioner responded that even though the certificate of service indicated it was sent on May 24, 2004, Petitioner's copy of the order had a TWCC stamp indicating the order was sent on July 21, 2004. Petitioner argued that the order was received July 26, 2004, and that a challenge to the decision was filed on July 27, 2004. Carol Kelly, a collections specialist in Petitioner's office, testified that the bates stamp that said "received July 26 2004" was the stamp from Petitioner's office. The ALJ concludes that the request for a hearing was sent less than 20 days from the time TWCC actually mailed the order. Neither party further objected to jurisdiction and notice.

II. DISCUSSION

___ (Claimant) sustained a work related injury on or about ___, when she bent back her wrist while trying to catch a box that had slipped from her grasp. A doctor placed her wrist in a splint and sent her back to work. The pain was so intense that the doctor took her off work, but sent her back to work after a month. At this time, Ted Krejci, D.C., began treating Claimant. Dr. Krejci took her off work again and reported that Claimant's work had exacerbated her injury. He diagnosed Claimant with carpal tunnel. Dr. Krejci referred Claimant to hand specialist David J. Sehr, M.D., who also diagnosed Claimant with carpal tunnel. A nerve conduction velocity study revealed that she had median nerve damage. At this time, Respondent diagnosed Claimant with only a sprain/strain of the wrist.

Petitioner began treating Claimant's condition with one-on-one therapeutic and kinetic exercises. On October 16, 2002, Respondent denied payment and continued to deny payment for the remainder of the services.

Dr. Plate said that his record review indicated that when Claimant returned to work her condition worsened, and therapeutic exercises were appropriate and medically necessary treatment for Claimant's condition. He pointed out that Dr. Krejci, Dr. Sehr, and nerve conduction tests all

indicated that Claimant's condition was much worse than Respondent's diagnosis indicated. Dr. Plate said that the one-on-one therapeutic² and kinetic³ exercises are active modalities that were designed to improve Claimant's overall functioning.

Dr. Canard testified that after four months one-on-one physical therapy was not medically necessary. He said that his record review indicated that Claimant did not have carpal tunnel. Dr. Canard noted that the report of Michael McHenry, M.D., dated March 3, 2003, indicated that Claimant did not suffer from carpal tunnel, and Dr. McHenry reported that Claimant's impairment was zero. Dr. Canard also testified that five office visits in fourteen days were not medically necessary.

III. ANALYSIS

Dr. Sehr's report was persuasive. He specializes in hand injuries and concluded that Claimant had a serious wrist injury, probably carpal tunnel. He also concluded that the original injury was increased by Claimant returning to work and performing repetitive tasks. For this reason, active modalities such as one-on-one therapeutic and kinetic exercises were appropriate and medically necessary. The range of motion testing performed on October 16, 2002, was medically necessary because it was Claimant's first visit with Dr. Krejci, and it is reasonable for Dr. Krejci would do this testing to determine the extent of Claimant's injury. The muscle testing conducted December 16, 2002, and December 18, 2002, were not medically necessary because these are the last two dates subject to this dispute, and the purpose of these tests would be to determine proper treatments in the future.

² CPT Code 97110.

³ CPT Code 97530.

Dr. Canard's testimony regarding the frequency of office visits is persuasive. There is no medical reason to conduct an office visit each time Claimant performed therapeutic exercises. Dr. Canard's determination of one office per week during the exercise phase is an accurate assessment. This is especially true when the modalities are one-on-one. If there is a problem, the person supervising the exercises could inform the doctor; otherwise, there is no medical necessity to conduct an office visit every time the person comes to the office for therapeutic exercises.

The ALJ concludes that the range of motion test, all therapeutic and kinetic exercises, and two office visits were medically necessary. Petitioner should reimburse Respondent \$1532.00 for these services. Three office visits and the muscle tests were not medically necessary and no reimbursement should be made for these services.

IV. FINDINGS OF FACT

1. ____ (Claimant) sustained a work related injury on or about ____, when Claimant back bent her wrist while trying to catch a box that had slipped from her grasp.
2. A doctor placed her wrist in a splint and sent her back to work.
3. The pain was so intense that the doctor took her off work, but sent her back to work after a month.
4. Ted Krejci, D.C., began treating Claimant, and diagnosed her with carpal tunnel.
5. Claimant's work had exacerbated her injury.
6. Central Dallas Rehabilitation (Petitioner) began treating Claimant's condition with one-on-one therapeutic and kinetic exercises.
7. The therapeutic and kinetic exercises were needed to improve Claimant's overall functioning.
8. The range of motion testing performed on October 16, 2002, was needed to determine the extent of Claimant's injury.
9. Two office visits were needed to evaluate Claimant's progress and develop a plan of treatment.
10. Muscle testing was not needed because there were no further services for the tests to relate to.
11. Poly America, Inc (Respondent) denied reimbursement for all services as not medically necessary.

12. By letter dated December 12, 2003, Medical Review of Texas, an Independent Review Organization (IRO), concluded that the Disputed Services were not medically necessary for treatment of Claimant's condition.
13. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
14. The Commission issued a Finding and Decision on February 23, 2004, but the Finding and Decision was not sent to Petitioner until July 21, 2004.
15. On July 27, 2004, Petitioner timely requested a hearing to contest the Commission's decision.
16. The Commission issued a notice of hearing on September 7, 2004.
17. A hearing was convened by Administrative Law Judge Stephen J. Pacey on March 21, 2005, in the hearing rooms of the State Office of Administrative Hearings and 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 range of motion test, all therapeutic and kinetic exercises, and two office visits were medically necessary for treatment of Claimant's condition.
8. The aggregate of these services total \$1532.00.

ORDER

THEREFORE IT IS ORDERED that Respondent Poly America, Inc. pay Petitioner Central Dallas Rehabilitation \$1,532.00, plus any and all applicable interest, for the Disputed Services provided to Claimant.

SIGNED May 20, 2005.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**