

**SOAH DOCKET NOS. 453-05-0061.M5
MDR NO. M5-04-2438-01**

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
KAYCE A. FRYE, D.C. Respondent		

DECISION AND ORDER

American Home Insurance Company (Carrier) requested a hearing on a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (Commission) in a dispute regarding medical necessity for treatment and therapy provided to an injured worker (Claimant) by Kayce A. Frye, D.C. (Provider). The IRO found that Carrier improperly denied reimbursement for the treatment given to Claimant by Provider on February 11, 2004. Carrier challenged the decision on the basis that the services at issue were not medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.*

A hearing on the merits was held on March 22, 2005, before Administrative Law Judge (ALJ) Ami L. Larson. Carrier appeared through counsel Dave Floyd. Provider did not appear. At the hearing, Carrier conceded that the only date of disputed services in this case is February 11, 2004.

The undersigned ALJ finds that Provider should be reimbursed for the disputed services she provided to Claimant on February 11, 2004. In support and further explanation of this determination, the ALJ makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On ____, Claimant was injured at work when she was sorting merchandise from pallets and standing on a ladder in order to reach over her head to stack the merchandise. The injury was found to be a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. An evaluation of Claimant revealed that she had no fractures, dislocations or other gross osseous pathology, but diagnostic testing revealed that Claimant suffered muscular back strain.
3. Claimant received chiropractic treatment and therapy from Kayce A. Frye, D.C. (Provider) and was additionally referred to Horacio A. Diaz, M.D. for pain medication.
4. Claimant began treatment and therapy with Provider on January 14, 2004, two days after she was injured.
5. In visits from January 14, 2004, through February 11, 2004, Provider furnished some or all of the following services to Claimant: ice packs, ultrasound therapy, deep tissue therapy, and sensory level electrical stimulation therapy, and various exercises including range of motion and strengthening.
6. Claimant had ongoing pain prior to and on the date of disputed services. She had no steady progression in terms of pain relief but consistently reported improvement and decreased pain after treatments from Provider.
7. Anywhere between 12 and 16 visits would be considered normal and appropriate for someone with Claimant's injury.
8. The office visit on February 11, 2004, was Claimant's thirteenth treatment from Provider since the time of her initial visit on January 14, 2004.
9. Provider sought reimbursement for the physical therapy provided on February 11, 2004, from American Home Assurance Company (Carrier), the insurer for Claimant's employer.
10. Carrier denied the requested reimbursement.
11. Provider made timely requests to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.

12. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on July 22, 2004, in which it concluded the services administered by Provider to Claimant on February 11, 2004 were medically necessary.
13. The Commission's Medical Review Division reviewed and concurred with the IRO's decision referenced in the above finding of fact in a decision dated August 6, 2004, in dispute resolution Docket No. M5-04-2438-01.
14. Carrier timely requested a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
15. The Commission mailed notice of the hearing date to the parties at their addresses of record on September 10, 2004.
16. On March 22, 2005, Administrative Law Judge (ALJ) Ami L. Larson convened a hearing on the merits concerning the dispute at the State Office of Administrative Hearings located in the William P. Clements Building, 300 W. 15th Street, Austin, Texas. Carrier appeared through counsel Dave Floyd. Provider did not appear. The record was held open until March 28, 2004, to allow Carrier to submit a table of the amount of disputed services.

II. 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) §§ 148.001-148.028.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Carrier, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
5. Carrier failed to show, by a preponderance of the evidence, that the disputed treatments were not reasonable and necessary for Claimant's compensable injury.
6. Based upon the foregoing findings of fact, Provider is entitled to reimbursement for physical therapy given Claimant on February 11, 2004.

ORDER

IT IS THEREFORE, ORDERED that American Home Assurance Company should reimburse Kayce A. Frye, D.C. for the services given by Provider to Claimant on February 11, 2004.

SIGNED May 24, 2005.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**