

SOAH DOCKET NO. 453-05-0989.M5
[TWCC MR NO. M5-04-3174-01]

MEGA REHAB,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ROYAL INSURANCE COMPANY	§	ADMINISTRATIVE HEARINGS
OF AMERICA,	§	
Respondent		

DECISION AND ORDER

This case is an appeal by Mega Rehab from a decision by an Independent Review Organization (IRO) in a medical necessity dispute initiated before the Texas Workers Compensation Commission (Commission). Mega Rehab requested reimbursement for services provided to a Claimant from September 10, 2003, through October 23, 2003. The IRO determined that the services were not medically necessary. Based on the IRO decision, the Commission's Medical Review Division denied reimbursement for the disputed treatments. Mega Rehab appealed the decision to the State Office of Administrative Hearings (SOAH). At the hearing, Mega Rehab limited its appeal to three dates of service: September 10, 11, and 15, 2003. The Administrative Law Judge (ALJ) finds that the treatments Mega Rehab provided to Claimant were medically necessary. Therefore, the ALJ recommends reimbursement in the total amount of \$1,036.54.

I. JURISDICTION AND VENUE

No party challenged jurisdiction or venue. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion.

II. STATEMENT OF THE CASE

The hearing in this docket was convened on May 4, 2005, at SOAH facilities in Austin, Texas. The hearing concluded and the record closed the same day. Administrative Law Judge (ALJ) Wendy K. L. Harvel presided. Royal Insurance Company of America (Respondent) was represented by Brandi Prejean, Attorney. Mega Rehab was represented by Stephen Dudas, D.C.

The record developed at the hearing revealed that, on ____, Claimant suffered a compensable injury to his back. An MRI performed on April 14, 2003, indicated that he had a small right lateral disc extrusion at L4/L5.¹ A subsequent EMG examination performed on June 2, 2003, indicated moderately severe radiculopathy in the region of L5.² The Claimant was undergoing physical therapy, and was recommended for epidural steroid injections in an attempt to reduce his pain so that he would be more responsive to physical therapy.

III. THE PARTIES' EVIDENCE AND ARGUMENTS

A. Mega Rehab

Mega Rehab asserts that the Claimant was a good candidate for epidural steroid injections. After the Claimant received the first injection, Mega Rehab tried two sessions of aquatic therapy, one the day after the injection, and the second four days after the injection. During the aquatic therapy sessions it was apparent that the injection had not reduced the Claimant's pain. Thus, Mega Rehab concedes that any subsequent injections or therapy should not be reimbursed, but the first injection and the two therapy sessions following the first injection should be reimbursed because the Claimant was a good candidate for injections, and several doctors recommended him for the procedure. Mega Rehab argues that the aquatic therapy was necessary so that they could evaluate Claimant's improvements, if any.

B. Carrier

Carrier asserts that the injection and aquatic therapy sessions were not medically necessary because they did not improve the Claimant's condition or reduce his pain, or enhance his ability to return to work, as required by law.³

¹ Pet. Ex. 1 at 23.

² Pet. Ex. 1 at 25.

³ TEX. LAB. CODE § 408.021.

IV. ANALYSIS

A. Epidural Steroid Injection

The epidural steroid injection performed on September 10, 2003 was medically necessary. Because of Claimant's low back pain and radiculopathy, his physician recommended epidural steroid injections.⁴ Additionally, the company that performed a utilization review indicated that an epidural steroid injection for the Claimant would be a permissible course of treatment.⁵ Although the injection did not have the desired outcome for the Claimant, at the time it was recommended, it was believed that it would help decrease the Claimant's pain and allow him to achieve greater benefits from physical therapy. The ALJ rejects Carrier's argument that the initial injection was not medically necessary because the treatment failed. The law allows a claimant to receive "all health care reasonably required by the nature of the injury as and when needed."⁶ The nature of the Claimant's injury indicated that an epidural steroid injection was required. The fact that the injection was ultimately unsuccessful does not necessarily mean that it was medically unnecessary. A medically necessary procedure may prove in the end to be unsuccessful, such as an attempt to save a crushed limb that is unsuccessful and results finally in an amputation. In this case, the injection was medically necessary, although ultimately unsuccessful.

B. Aquatic Therapy Sessions

After the Claimant received the injection, he participated in two sessions of aquatic therapy. One of the main goals of the epidural steroid injection was to allow the Claimant to achieve greater benefits from physical therapy. In order to determine whether the injection had helped Claimant with that goal, it was necessary to have the Claimant participate in physical therapy. Two sessions of aquatic therapy is a reasonable amount of therapy for the Claimant to participate in following his

⁴ Pet. Ex. 1 at 140.

⁵ Pet. Ex. 1 at 142.

⁶ TEX. LAB. CODE § 408.021(a).

injection before a determination is made as to whether the injection improved his abilities. Therefore, the ALJ finds that the aquatic therapy sessions on September 11 and 15, 2003 were medically necessary.

V. CONCLUSION

The ALJ finds that, under the record provided in this case, the epidural steroid injection and two aquatic therapy sessions were medically necessary. Thus, Mega Rehab should be reimbursed for those dates of service.

VI. FINDINGS OF FACT

1. On ____, a workers' compensation claimant (Claimant) suffered an injury to his lower back.
2. Claimant was found to have a small right lateral disc extrusion at L4/L5 and moderately severe radiculopathy.
3. Claimant was undergoing physical therapy and his physician recommended him for epidural steroid injections to improve his response to the physical therapy.
4. Utilization review concurred with the recommendation for an epidural steroid injection to determine whether the injection would improve Claimant's response to physical therapy.
5. The epidural steroid injection was medically necessary.
6. Following the epidural steroid injection, Claimant participated in two sessions of aquatic therapy where it was determined that the injection did not improve his response.
7. The aquatic therapy was medically necessary to determine whether the Claimant's functioning had improved.
8. Carrier denied reimbursement for the injection and the aquatic therapy as not medically necessary.
9. Following the initial denial, Mega Rehab appealed Carrier's decision to the Texas Workers' Compensation Commission (Commission).
10. The Commission referred the dispute to an Independent Review Organization (IRO).

11. The IRO issued a decision on September 13, 2004, agreeing with the Carrier's determination that the injection and aquatic therapy were medically unnecessary.
12. Petitioner timely requested a hearing with the State Office of Administrative Hearings, seeking review and reversal of the IRO decision.
13. The Commission mailed notice of the hearing's setting to the parties on November 2, 2004.
14. A hearing in this matter was convened on May 4, 2005. The record closed the same day.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE § 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 § 413.031(k) and TEX. GOV'T CODE ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE §§2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
6. Based on the Findings of Fact, the epidural steroid injection and two sessions of aquatic therapy were medically necessary, as contemplated by TEX. LAB. CODE § 408.021(a).
7. Based on the Findings of Fact and Conclusions of Law, the Findings and Decision of the Medical Review Division with respect to the medical necessity of the epidural steroid injection performed on September 10, 2003, and the two aquatic therapy sessions on September 11 and 15, 2003, are overturned .

ORDER

IT IS THEREFORE ORDERED that Royal Insurance Company of America shall reimburse Mega Rehab in the amount of \$1,036.54, plus applicable interest.

SIGNED May 25, 2005.

WENDY K . L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS