

<b>MEDPRO CLINICS</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>vs.</b>	§	<b>OF</b>
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<b>METROPOLITAN TRANSIT AUTHORITY, HARRIS COUNTY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue involved is whether Metropolitan Transit Authority, Harris County<sup>1</sup> (Carrier) correctly denied payment of \$ 517 billed by Medpro Clinics (Provider) for physical therapy provided to an injured worker (Claimant) between November 21 and December 1, 2003. Carrier challenged the medical necessity of the treatment, but Provider contended the physical therapy was necessary for Claimant's recovery. The Administrative Law Judge (ALJ) finds Provider failed to establish the medical necessity for the physical therapy and is therefore not entitled to reimbursement.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On May 16, 2005, ALJ Georgie B. Cunningham conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney Rebecca M. Strandwitz represented Carrier, and David B. Rabbani, D.C., represented Provider. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the hearing on May 17, 2005, to allow time for the parties to file additional documents.

**I. DISCUSSION**

**A. Background Information**

At the hearing, Dr. Rabbani testified, and both parties presented documentary evidence. According to the documentary evidence, Claimant, a mechanic, fractured his left index finger while he was performing mechanical work on a bus on \_\_\_\_\_. Claimant was treated at an emergency room with pain medication and a splint.

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<sup>1</sup> Metropolitan Transit Authority, Harris County is a self-insured entity.

Gail Blakely, M.D., provided follow-up treatment to Claimant, removed his nail to release the pressure of a subungual hematoma, and suggested a few days off work. At a follow-up appointment on October 31, 2003, Dr. Blakely noted the finger was not healing and discussed the possibility of infection, but Claimant did not have much pain. On November 4, Claimant still had pain, the finger was not healing, and the nail bed was raw, but the swelling had decreased and the finger was not infected. Dr. Blakely advised Claimant to exercise it more and leave it open at home. She noted that Claimant was not expected to return to work until November 18 in order to keep his finger clean and dry and to avoid taking risk while on pain medication.

Dr. Blakely agreed to release Claimant to a doctor of his choice closer to his home to monitor the nail for infection. After Claimant selected a chiropractor as his new treating doctor, Dr. Blakely issued a written opinion to Carrier that chiropractic care was not indicated as the fracture was very small, not displaced, and needed only time to heal and be monitored for infection and to ensure the new nail did not become ingrown. The Commission approved the change in treating doctors on November 10, but apparently Claimant had already seen Provider as early as October 30.

On November 18, Provider referred Claimant to an orthopedic surgeon, Alain E. Elbaz, M.D., who recommended conservative treatment to include range of motion and strengthening exercises. Carrier challenged these activities as being ones not requiring the supervision of a physician or physical therapist. Furthermore, the Carrier noted that the massage and ultrasound treatment provided were not part of the orthopedic surgeon's recommended therapy. Although Provider noted in a written record that he planned to continue treating Claimant for four more weeks and then re-evaluate him, Claimant announced on December 1 that he had regained full, normal use

of his left hand and finger, had only mild pain, and wanted to stop treatment and return to full duty.

After Carrier refused payment of the claims at issue and an Independent Review Organization (IRO) chiropractor performed an independent review as part of the resolution process, the reviewer determined that treatment from a chiropractor was not appropriate for the very minor injury. The only follow-up treatment necessary would have been an examination by a medical doctor to ensure the finger was healing and that no infection was present. The finger would have healed without further conservative treatment with a home-based stretching and strengthening

exercise program. Furthermore, the supervised massage, ultrasound, and manipulation had not been recommended by either the original treating doctor or the consulting orthopedic surgeon.

At the hearing, Provider argued that Dr. Blakely should not have removed the nail and had a history of resisting referrals of claimants for chiropractic care. The physical therapy he provided was necessary to ensure the nail did not grow back in incorrectly and that Claimant recovered the use of his finger.

**B. Analysis**

Provider had the burden of establishing it was entitled to reimbursement for the denied claims between November 21 and December 1. To that end, Provider furnished insufficient credible evidence that the treatments were medically necessary, as challenged by Carrier. Provider's documentation of assessment and treatments did not establish how the treatments were addressing Claimant's injury or why such an intense level of treatment was needed. Treatment notes were insufficient to offset Dr. Blakely's opinion and the opinion of the IRO chiropractor's determination that the injury was relatively minor and Provider's treatment was not medically necessary. Furthermore, the consulting orthopedic surgeon recommended only conservative range of motion and strengthening exercises without any suggestion of massage or ultrasound.

The record indicated Carrier paid Provider for some treatment for which Claimant could have been instructed to perform home exercises, but that point was not addressed at the hearing. Claimant's sudden announcement of his recovery and desire to return to work suggests he was coping with his injury. No evidence was presented to indicate he sought any further treatment.

The ALJ agrees with the IRO reviewer and the Carrier's physician that Provider's treatment was medically unnecessary for Claimant's condition.

**III. FINDINGS OF FACT**

1. On \_\_\_\_, David B. Rabbani, D.C., of Medpro Clinic (Provider) began treating Claimant for a fractured left index finger from an injury that occurred at Claimant's work for Metropolitan Transit Authority, Harris County.
2. Metropolitan Transit Authority, Harris County (Carrier) was self-insured.

3. Carrier denied payment of \$517 for treatment Provider furnished Claimant between November 21 and December 1, 2003.
4. Provider requested medical dispute resolution based on Carrier's denial.
5. On May 2, 2004, an Independent Review Organization determined that the treatment was not medically necessary.
6. On September 27, 2004, the Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its decision that Provider had not prevailed on the claims referenced in Finding of Fact No. 3, but ordered payment of another claim not at issue here.
7. On September 30, 2004, Provider requested a hearing on the unpaid claims before the State Office of Administrative Hearings.
8. On November 4, 2004, the Commission sent a hearing notice advising the parties of the matters to be determined; the right to appear and be represented by counsel; the date, time, and place of the hearing; and the statutes and rules involved.
9. Claimant was diagnosed with a minor, non-displaced fracture of the distal phalanx of the left index finger with subungual hematoma.
10. Claimant was treated with a temporary splint and pain medication at the emergency room.
11. Gail Blakely, M.D., provided follow-up treatment between October 24 and November 4, 2003.
12. Dr. Blakely surgically removed Claimant's nail to release the pressure of a subungual hematoma, prescribed pain medication and a topical ointment to combat infection, provided a finger guard, recommended home exercises, and suggested Claimant not return to work for several days.
13. On October 31, 2003, Claimant's finger was not healing, but he did not have infection, swelling, discoloration, or much pain.
14. On November 4, 2003, Claimant's finger was still not healing, the nail bed was raw, and he continued to have pain; however, the swelling had decreased and the finger was not infected. Claimant was advised to exercise more and leave the finger open at home.
15. Claimant was not expected to return to work until November 18, 2003, in order to keep his finger clean and dry and to avoid adverse situations due to his pain medication.
16. On November 10, 2003, Claimant's selection of Provider as his treating doctor was approved.

17. On November 18, Provider referred Claimant to an orthopedic surgeon, Alain E. Elbaz, M.D., for an evaluation.
18. On November 21, 2003, Dr. Elbaz directed that Claimant be treated conservatively with range of motion and strengthening exercises.
19. As of November 24, 2003, Provider planned to continue treating Claimant for four weeks and then re-evaluate him.
20. As of December 1, 2003, Claimant had regained full, normal use of his left hand and finger, had only mild pain, and wanted to stop treatment and be released to full duty.
21. During the visits between November 21 and December 1, 2003, Provider treated Claimant with massage, ultrasound, and therapeutic exercises.
22. Claimant needed only follow-up examinations by a medical doctor to ensure that the finger was healing and that no infection was present.
23. Claimant's finger would have healed with a home-based stretching and strengthening exercise program.
24. Neither the original treating doctor nor the consulting orthopedic surgeon recommended ultrasound or supervised massage.
25. Provider's records did not include an objective assessment of Claimant's need for ultrasound, supervised massage, or on-going physical therapy.

#### **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. SOAH 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. §§ 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider had the burden of proving it was entitled to reimbursement for the claim, pursuant to 28 TEX. ADMIN. CODE § 148.21(h) and (i).

6. Based on the findings of fact and conclusions of law, Provider did not show the disputed services were medically necessary, as specified in TEX. LAB. CODE ANN. § 408.021.

**ORDER**

IT IS, THEREFORE, ORDERED that Medpro Clinic is not entitled to reimbursement from Metropolitan Transit Authority, Harris County for the disputed services provided between November 21 and December 1, 2003.

**SIGNED this 18th day of July , 2005.**

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**EORGIE B. CUNNINGHAM**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**