

**DOCKET NO. 453-05-1117.M5
MDR NO. M5-04-3965-01**

**TEXAS MUTUAL
INSURANCE COMPANY,
Petitioner**

VS.

**COTTON D. MERRITT, DC
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) challenges and Independent Review Organization (IRO) decision concluding chiropractic services provided by Cotton Merritt, D.C. (Provider) to an injured worker were medically necessary. The Administrative Law Judge (ALJ) concludes the disputed services were not medically necessary for the treatment of Claimant's injury. Consequently, Provider is not entitled to additional reimbursement from Carrier.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened and closed the hearing in this case on May 17, 2005. Attorney Timothy Riley appeared on behalf of Carrier. Provider appeared *pro se*.

Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background.

Claimant suffered a compensable injury to her lower back on ____, while lifting a case of apples. She was diagnosed with a left buttock and lumbar back strain and received treatment from Dmitry Golovko, M.D., prior to switching to Provider as her treating doctor. Provider began treating her on June 27, 2003, with various physical therapy modalities including one-to-one therapeutic activities and exercises, joint mobilization, neuro-muscular re-education, and manual therapy.

Provider billed Carrier for services provided through August 13, 2003. Carrier reimbursed Provider for services provided through July 18, 2003, but denied the remainder as not medically necessary. Ultimately, Provider requested medical dispute resolution. The reviewing IRO concluded the services were appropriate under the circumstances provided. In response, Carrier requested a hearing before the State Office of Administrative Hearings, which culminated in this Decision and Order.

B. Summary of Evidence and Argument

Consistent with Carrier's position that the disputed services were not medically necessary to treat Claimant's injury, its expert witness, David Alvarado, D.C., presented testimony reflecting the following positions:

- The multiple units of physical therapy Carrier had reimbursed Provider for prior to the disputed dates of service should have been sufficient to bring a maximum therapeutic benefit to Claimant.
- Although Claimant's range of motion had improved by the end of July 2003, the improvement, at 10-15 degrees, was not significant.

- After the modest improvement in range-of-motion and pain levels, Claimant's medical status plateaued by the end of July.
- Claimant probably would have improved the same amount without any treatment.
- The IRO's description of Provider's care as "appropriate" was not a meaningful conclusion under the workers' compensation system and did not equate to a conclusion of medical necessity.
- Claimant should have been started on McKenzie protocols, where the patient is taught how to treat herself.

Provider asserted the following in support of the position that his services were medically necessary:

- Claimant was still experiencing improvement as of July 31, 2003, when Carrier concluded she had plateaued.
- Although Medicare expects two months of treatment under Claimant's circumstances to be reasonable, Provider treated her for only six weeks.
- Although the various treatment guidelines provide direction regarding proper medical treatment, ultimately patient treatment is both a science and an art and the provider should be given latitude in determining the proper course of care.
- Dr. Alvarado admitted there was some improvement to Claimant's condition during Provider's treatment.
- Even slight improvement in a patient's range-of-motion and pain levels can make a big difference to the patient.

C. Analysis and Conclusion

Carrier successfully challenged the medical necessity of \$3,122.36 in physical therapy treatments that, at best, produced negligible results for Claimant. Provider is correct in his positions that health care professionals should be given some latitude in treatment decisions and that even slight improvement benefits a patient. He may also be correct that Medicare allows for two months of treatment for patients whose medical status is similar to that of Claimant. Where he failed, however, was in demonstrating that under the circumstances of this case the continued physical therapy treatments administered to Claimant were medically necessary and cost effective when

judged against the degree of benefits they generated. The diagnostic evidence and Provider's treatment notes, which were highly repetitive and at times seemed to contain "canned" narratives, support a conclusion that the treatments were neither medically necessary and cost effective. Consequently, reimbursement for the disputed services should be denied.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable back injury on ____, when she strained her left buttock and the lumbar region of her back while lifting a crate.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage with Texas Mutual Insurance Company.
3. Provider began treating Claimant on June 27, 2003, with various physical therapy modalities including one-to-one therapeutic activities and exercises, joint mobilization, neuro-muscular re-education, and manual therapy.
4. Provider billed Carrier for services provided through August 13, 2003. Carrier reimbursed Provider for services provided through July 18, 2003, but denied the remainder as not medically necessary.
5. The amount in dispute is \$3,122.36.
6. Provider requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission) based on Carrier denial of reimbursement for services provided from July 21, 2003, through August 13, 2003.
7. The reviewing IRO concluded the disputed services were appropriate.
8. In response to the IRO's determination, the Commission ordered Carrier to reimburse Provider.
9. In response to the IRO decision and Commission order, Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to the parties on November 4, 2004. The notice informed the parties of the date, time, and location of the hearing; a statement of the matters to be
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12. considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
13. The hearing convened and closed on May 17, 2005, before SOAH Administrative Law Judge Gary Elkins.
14. Throughout the entire period of disputed treatments Claimant exhibited a positive Valsalva maneuver, positive results at 60 degrees on the straight-leg raise evaluation, and a dermatome evaluation producing "L5 hypoesthetic" on Claimant's left side.
15. Throughout the entire period of disputed treatments Claimant improved from 4/5 to 5/5 on manual muscle testing of the tibialis anterior ad extensor hallicus longus.
16. Testing by Provider regularly performed during the period of disputed services revealed negligible improvements to Claimant's range-of-motion.
17. Throughout the period of disputed services Claimant exhibited increased pain with flexion, extension, and left lateral bending.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The disputed services were not reasonably required by the nature of Claimant's injury. TEX. LAB. CODE ANN. §408.021.
4. Based on the Findings of Fact, the disputed services were not medically necessary. TEX. LAB. CODE ANN. §408.021.
5. Provider is not entitled to reimbursement for any of the disputed services.

ORDER

IT IS ORDERED that the reimbursement claim of Cotton Merritt, D.C., for chiropractic services provided from July 21, 2003, to August 13, 2003, is denied.

Signed July 13, 2005.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**