

**SOAH DOCKET NO. 453-05-1455.M5
TWCC MR NO. M5-04-0745-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

**LAURENCE N. SMITH, D.C.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

American Home Assurance Company (Carrier) challenges a decision of the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD),¹ regarding medical services that Laurence N. Smith, D.C. (Dr. Smith or Provider), provided ___ (Claimant) from November 15, 2002, through February 27, 2003. An independent review organization (IRO) found that those services were not medically necessary to treat Claimant's compensable injury. Contending that Carrier had not submitted explanations of benefits (EOBs) for some of the disputed services, MRD reviewed those services and determined that Dr. Smith was entitled to reimbursement from Carrier in the amount of \$2,761.

The disputed issues are whether Carrier submitted EOBs for the office visits, electrical stimulation, physical medicine procedure, joint mobilization, and myofascial release that Dr. Smith provided Claimant from November 15, 2002, through February 27, 2003, and whether those services were medically necessary. As set out below, the Administrative Law Judge (ALJ) finds that Carrier

¹ Effective September 1, 2005, the functions of the Commission were transferred to the Texas Department of Insurance's Division of Workers' Compensation.

submitted EOBs for the services in dispute and reimbursement for those medical services should be denied as medically unnecessary.

II. Findings of Fact

1. On ____, ____ (Claimant) sustained a work-related injury to his cervical, thoracic, and lumbar spine as a result of his work activities (compensable injury).
2. On the date of injury, Claimant’s employer was ____, and its workers’ compensation insurance carrier was American Home Assurance Company (Carrier).
3. As a result of the compensable injury, Claimant suffered pain in his neck, right shoulder, and lower back.
4. Claimant’s treating doctor, Laurence N. Smith, D.C. (Dr. Smith or Provider), furnished the following medical services to Claimant on the dates and with the Current Procedural Terminology (CPT) codes shown below and requested reimbursement from Carrier:

CPT CODES	SERVICE DESCRIPTIONS	DATES	TOTAL DISPUTED REIMBURSEMENT AMOUNTS
99213-MP	Established E/M office visit, with manipulation	Nov. 15, 18, 20, & 22, 2002; Dec. 27 & 30, 2002; Jan. 7, 9, 27, 28, & 30, 2003; Feb. 19, 20, 24, & 27, 2003	\$ 720.00 (\$48 x 15 units)
97032	Electrical stimulation	Nov. 15, 18, 20, & 22, 2002; Dec. 27, 2002; Jan. 7, 9, 27, 28, & 30, 2003; Feb. 19, 20, 24, & 27, 2003	\$ 308.00 (\$22 x 14 units)
97139-SS	Physical medicine procedure	Nov. 15, 18, 20, & 22, 2002; Dec. 23 & 27, 2002; Jan. 7, 9, 13, 27, 28, & 30, 2003; Feb. 19, 20, 24, &	\$ 400.00 (\$25 x 16 units)

CPT CODES	SERVICE DESCRIPTIONS	DATES	TOTAL DISPUTED REIMBURSEMENT AMOUNTS
		27, 2003	
97265	Joint mobilization	Nov. 15, 18, 20, & 22, 2002; Dec. 4, 6, 11, & 27, 2002; Jan. 7, 9, 27, 28, & 30, 2003; Feb. 19, 20, 24, & 27, 2003	\$ 731.00 (\$43 x 17 units)
97250	Myofascial release	Nov. 15, 18, 20, & 22, 2002; Dec. 27, 2002; Jan. 7, 9, 27, 28, & 30, 2003; Feb. 19, 20, 24, & 27, 2003	\$ 602.00 (\$43 x 14 units)

5. Dr. Smith sought reimbursement from Carrier for the provided medical services.
6. Carrier sent explanations of benefits (EOBs) to Dr. Smith denying the requested reimbursement for the following reason: "Based on the diagnosis, treatment patterns, and/or number of visits, the treatment exceeds our physician parameters. Refer to Dr. report."
7. On November 7, 2003, Dr. Smith filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD).
8. An independent review organization (IRO) reviewed the medical dispute and found that the office visits, electrical stimulation, physical medicine procedure, myofascial release, joint mobilization, and mechanical traction that Dr. Smith provided Claimant from September 23, 2002, through February 27, 2003, were not medically necessary to treat Claimant's compensable injury.
9. On March 15, 2004, Carrier submitted copies of the EOBs to MRD for the disputed medical services.
10. On September 10, 2004, MRD issued its decision. Contending that Carrier had failed to submit EOBs for some of the disputed services, MRD reviewed those services and determined that Dr. Smith was entitled to reimbursement from Carrier in the amount of

\$2,761 for the office visits, electrical stimulation, physical medicine procedure, joint mobilization, and myofascial release that Dr. Smith provided Claimant from November 15, 2002, through February 27, 2003.

11. After the MRD order was issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
12. Notice of a contested-case hearing concerning the dispute was mailed on November 8, 2004, to Carrier and Provider. The notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters to be considered.
13. On May 23 and September 27, 2005, Carol Wood, a SOAH ALJ, held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded on September 27, 2005, and the record closed that same day.
14. Carrier appeared at the hearing through its attorney, Dan C. Kelley.
15. Although Dr. Smith did not appear at the hearing on May 23, 2005, he appeared by telephone at the hearing on September 27, 2005.
16. Prior to the dates in dispute, Claimant received extensive conservative treatment from Dr. Smith, with little documented support that treatment was effective in relieving Claimant's symptoms or improving function.
17. Dr. Smith's treatment plan never changed, even though Claimant showed minimal, if any, response to treatment.
18. Although complaining of neck and low back pain, Claimant was being treated for a diagnosed hip and thoracic strain; there were no objective findings to support treatment of those areas.
19. During the first nine months of treatment, Claimant received approximately 70 treatment sessions, treatment that was excessive and inappropriate.

III. Conclusions of Law

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (Vernon Supp. 2004-2005) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (Vernon 2000).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC § 148.14(a) (2005), Carrier has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021 (a) (Vernon 1996).
5. Based on the above Findings of Fact and Conclusions of Law, the office visits, electrical stimulation, physical medicine procedure, joint mobilization, and myofascial release that Dr. Smith provided Claimant from November 15, 2002, through February 27, 2003, were not medically necessary.
6. Based on the above Findings of Fact and Conclusions of Law, Dr. Smith is not entitled to reimbursement from Carrier in the amount of \$2,761 for the office visits, electrical stimulation, physical medicine procedure, joint mobilization, and myofascial release that Dr. Smith provided Claimant from November 15, 2002, through February 27, 2003.

ORDER

THEREFORE, IT IS ORDERED that Laurence N. Smith, D.C., shall not be reimbursed in the amount of \$2,761 by American Home Assurance Company for the services disputed in this proceeding.

SIGNED November 28, 2005.

**CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**