

**SOAH DOCKET NO. 453-05-1602.M5  
TWCC MR NO. M5-04-3993-01**

<b>SOUTHEAST HEALTH SERVICES,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>ARGONAUT SOUTHWEST</b>	§	
<b>INSURANCE COMPANY,</b>		<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**DECISION AND ORDER**

Petitioner Southeast Health Services (SHS), a health care provider, requested a hearing on decisions of the Texas Workers' Compensation Commission's Medical Review Division (MRD) and an Independent Review Organization (IRO) that denied reimbursement for certain services provided \_\_\_\_, a workers' compensation claimant (the Claimant). The Administrative Law Judge (ALJ) concludes that those services generally were not medically necessary, except for active care that was necessary two times a week for two weeks after each epidural steroid injection (ESI) performed on the Claimant.

The total amount in dispute is \$4,686.19. The ALJ orders reimbursement of \$1,921.46, plus applicable interest.

**I. FACTUAL AND PROCEDURAL HISTORY**

The Claimant was injured \_\_\_\_, when he was trapped between a forklift and some lumber at work. He was evaluated at SHS on June 3, 2003, and began treatments the following day. He received therapy at SHS approximately three times a week through November 19, 2003, with some additional sessions in December 2003 and January 2004, and a functional capacity evaluation in March 2004. The Claimant underwent an MRI, which showed mild disc protrusion and disc dessication at L4/5 and L5/S1, on June 10, 2003. He underwent lumbar epidural steroid injections (ESIs) on September 25, October 9, and October 30, 2003. The ESIs were ineffective.

Respondent Argonaut Southwest Insurance Company (Argonaut), the workers' compensation carrier, declined to pay for chiropractic manipulations, therapeutic exercises, a manual therapy technique, office visits, an unlisted therapeutic procedure, a vasopneumatic device, a physical performance test, and an unlisted cardiovascular procedure from September 19, 2003, through March 29, 2004. SHS filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred most of them to the IRO. The IRO found the services it reviewed were not medically necessary. The MRD consequently denied reimbursement for those and also for a few services for which there were documentation issues.

SHS filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). Notice of the hearing was sent to the parties on November 11, 2004. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted, as required by TEX. GOV'T CODE ANN. §2001.052.

The hearing was originally convened on June 7, 2005, then recessed and reconvened on June 21, 2005. ALJ Henry D. Card presided. Bryan Weddle, D. C., participated on behalf of SHS and John Fundis participated on behalf of Argonaut. After the presentation of documentary evidence and testimony, the hearing was adjourned June 21, 2005.

Pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.14(a), SHS, the party seeking relief, has the burden of proving it is entitled to reimbursement.

## **II. DISCUSSION**

The Claimant's back pain and functionality levels did not significantly improve from the treatments provided. Dr. Weddle characterized Argonaut's denial of reimbursement as hindsight, based on that outcome. He testified that the services in question were medically necessary

conservative care designed to relieve the Claimant's lower back pain. He stated that care was

especially necessary after the ESIs and that the procedures were in accordance with medical standards. He did not specifically discuss the type or length of care needed after ESIs.

The IRO reviewer stated a four-week trial of care should have been adequate if no progress was being made. On January 15, 2004, a peer reviewer, Mike O' Kelley, D. C., stated that the optimal duration of treatment should have been 14 treatments over 40 days and the maximal duration of treatment should have been 25 treatments over 70 days, with reevaluation every two weeks. More than 70 days elapsed and more than 40 therapy sessions took place between the first visit and the disputed dates of service. Although the Claimant's treatment was reevaluated periodically, the treatment plan was not significantly changed.

Dr. O'Kelley also stated a four-week course of treatment was warranted, with another four weeks if the patient showed improvement. Dr. O'Kelley acknowledged that active care two times per week for two weeks after each ESI would be justified.

A neurosurgeon, Francisco Batlle, M.D., recommended on August 26, 2003, that the Claimant continue conservative therapy and undergo lumbar ESIs. On November 12, 2003, Dr. Batlle determined that conservative care had failed. He recommended a lumbar discogram, which was denied by Argonaut.

The Claimant underwent a designated medical examination on November 14, 2003. Ajay J. Mohabeer, M.D., stated a surgical intervention would be unlikely to help the Claimant and could lead to more serious problems. He acknowledged that physical therapy and ESIs had been unsuccessful and found the Claimant to be at maximum medical improvement.

Neither Dr. Batlle, Dr. Mohabeer, nor the IRO doctor specifically discussed whether additional care is needed after ESIs, although the IRO doctor generally said the treatment provided by SHS was unnecessary.

The ALJ finds the disputed services generally were not medically necessary. The evidence showed the treatment plan was not effective and should have been discontinued earlier. The ESIs provided an exception to that rule, however. Dr. O'Kelley's peer review, combined with Dr. Weddle's testimony, proved the necessity for active care twice a week for two weeks after each ESI. The ESIs were performed September 25, October 9, and October 30, 2005. SHS therefore should be reimbursed for office visits (CPT Code 99212) and therapeutic exercises (CPT Code 97110) provided on twelve dates: September 29 and October 1, 3, and 6 (after the first ESI), October 14, 16, 21, and 23 (after the second ESI), and November 3, 4, 11, and 13 (after the third ESI). The maximum allowable reimbursement for those disputed services is \$1,921.46.

SHS provided no additional documentation for the services denied by the MRD. Those should not be reimbursed.

Argonaut should be ordered to reimburse SHS \$1,921.46, plus applicable interest.

### **III. FINDINGS OF FACT**

1. \_\_\_\_, the workers' compensation claimant (the Claimant) was injured \_\_\_\_, when he was trapped between a forklift and some lumber at work.
2. The Claimant was evaluated at Petitioner Southeast Health Services (SHS) on June 3, 2003, and began treatments the following day.
3. The Claimant received therapy at SHS approximately three times a week through November 19, 2003, with some additional sessions in December 2003 and January 2004, and a functional capacity evaluation in March 2004.

4. The Claimant underwent an MRI, which showed mild disc protrusion and disc dessication at L4/5 and L5/S1, on June 10, 2003.
5. The Claimant underwent lumbar epidural steroid injections (ESIs) on September 25, October 9, and October 30, 2003.
6. The ESIs were ineffective.
7. Respondent Argonaut Southwest Insurance Company (Argonaut), the workers' compensation carrier, declined to pay for chiropractic manipulations, therapeutic exercises, a manual therapy technique, office visits, an unlisted therapeutic procedure, a vasopneumatic device, a physical performance test, and an unlisted cardiovascular procedure from September 19, 2003, through March 29, 2004.
8. SHS filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred most of them to the IRO. The IRO found the services it reviewed were not medically necessary. The MRD consequently denied reimbursement for those and also for a few services for which there were documentation issues.
9. SHS filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to the parties on November 11, 2004.
11. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
12. The hearing was originally convened on June 7, 2005, then recessed and reconvened on June 21, 2005. ALJ Henry D. Card presided. Bryan Weddle, D. C., participated on behalf of SHS and John Fundis participated on behalf of Argonaut. After the presentation of documentary evidence and testimony, the hearing was adjourned June 21, 2005.
13. The Claimant's back pain and functionality levels did not significantly improve from the treatments provided.

14. Although the Claimant's treatment was reevaluated periodically, the treatment plan was not significantly changed.
15. The treatments should have been discontinued as ineffective after four or at most eight weeks.
16. The disputed services generally were not medically necessary.
17. Active care was necessary two times a week for two weeks after each ESI.
18. Office visits (CPT Code 99212) and therapeutic exercises (CPT Code 97110) were provided on the following twelve dates of service and constitute active care two times a week for two weeks after each ESI: September 29 and October 1, 3, and 6 (after the first ESI), October 14, 16, 21, and 23 (after the second ESI), and November 3, 4, 11, and 13 (after the third ESI).
19. The total amount in dispute is \$4,686.19.
20. The maximum allowable reimbursement for the disputed services in Finding of Fact No. 18 is \$1,921.46.
21. SHS did not adequately document the services denied by the MRD for reasons other than medical necessity.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, 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. §2001.052.
3. Pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.14(a), SHS, the party seeking relief, has the burden of proving it is entitled to reimbursement.
4. Argonaut should be ordered to reimburse SHS \$1,921.46, plus applicable interest, for the disputed services in this case.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Argonaut Southwest Insurance Company reimburse Southeast Health Services \$1,921.46, plus applicable interest, for the disputed services provided Claimant \_\_\_ from September 19, 2003, through March 29, 2004.

**SIGNED August 19, 2005.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**