

FIRST RIO VALLEY MEDICAL, P.A.	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
BROWNSVILLE ISD,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

First Rio Valley Medical, P.A., (First Rio) appeals a decision by the Texas Workers' Compensation Commission's (TWCC) Medical Review Division (MRD) regarding the medical necessity of services provided to a workers' compensation claimant (Claimant) during September and October 2003 for an injury that occurred on _____. Brownsville ISD (Respondent) denied reimbursement for the services as not medically necessary to treat Claimant's 1994 injury.

MRD referred the medical necessity issue to an independent review organization (IRO), which also found the services were not medically necessary to treat Claimant's compensable injury. This decision finds that First Rio failed to prove the disputed services were medically necessary to treat the Claimant's compensable injury; therefore, it denies First Rio's request for reimbursement.

I. JURISDICTION AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE §413.031(k) and TEX. GOV'T CODE Ch. 2003. No party challenged jurisdiction or notice.¹

¹ The ALJ requested briefing from Respondent on the issue of jurisdiction in light of its argument that the services provided were not related to the compensable injury. Because the ALJ was concerned that Respondent might be raising an extent of injury challenge, she requested briefing. After considering the matter, the ALJ finds that jurisdiction exists over this dispute. Respondent does not argue that Claimant did not injure his back in 2003, but contends that this injury was not an exacerbation of the previous injury and, therefore, the services provided were not medically necessary to treat the effects of the compensable injury.

Administrative Law Judge (ALJ) Suzanne Formby Marshall convened a hearing in this matter on June 7, 2005, at the SOAH hearing facilities in Austin, Texas. Robert S. Howell, D.C., appeared for First Rio and attorney LeeAnna Gainer Mask represented Brownsville ISD. The record was held open until June 18, 2005, to allow counsel the opportunity to file briefing related to jurisdiction.

II. DISCUSSION

A. Introduction

Claimant was employed by the Brownsville Independent School District as a ____ and _____. He injured his back on ____, while participating in a “shoe-kick” competition. When Claimant lifted his leg to kick his shoe off his foot, he fell backwards and landed on his back. At the time of the injury, Claimant was ____ years old. Claimant began treatment with Dr. Robert Howell on _____, 1994, and was diagnosed with a sprain/strain of the cervical spine and ossification of the posterior longitudinal ligament. Claimant was treated with conservative chiropractic care consisting of spinal manipulation, soft tissue muscle work, electrical stimulation, and moist heat. Petitioner Ex. 4, p. 7.

An MRI was performed on May 30, 1996, two years post-injury that showed straightening of the lumbar spine and disc desiccation at L-4/L-5 and L-5/S-1 with mild bulging. Petitioner Ex. 11, p. 229. Claimant continued to be treated by Dr. Howell throughout this period. Claimant, who also suffers from diabetes, returned to work immediately after the injury and was treated on an “as needed” basis thereafter. On June 28, 1996, Claimant reached statutory maximum medical improvement (MMI) and Dr. Howell assigned a 24% whole person impairment. On February 27, 1999, a second MRI was performed on Claimant by Dr. Marc Berger, who noted that Claimant had a disc herniation at L5-S1 and a bulging disc at L4-L5, but no nerve root compression. Petitioner Ex. 11, p. 225. Prior to the disputed services, Claimant’s last treatment by Dr. Howell (First Rio) occurred in January of 2002.

On November 5, 2003, Claimant returned to Dr. Howell complaining of back pain, which occurred after he carried boxes at work. Dr. Howell considered Claimant’s pain to be an exacerbation of his compensable injury, so he provided a course of six treatments and therapy. These services were provided on September 23, 24, 29, and October 1 and 2, 2003, and included office visits, whirlpool, ultrasound, aquatic exercises, massage therapy, manual therapy, therapeutic exercises, and electrical

stimulation. First Rio billed Respondent for all of these services in the total amount of \$1,028.36. Respondent denied reimbursement for all of the services based on lack of medical necessity for treatment of the 1994 compensable injury.

First Rio appealed the denial of payment to the MRD, which referred the medical necessity issues to the IRO. The IRO issued a decision on April 16, 2004, that upheld Respondent's denial of payment. The IRO reviewing chiropractor stated his rationale as follows: ``... [T]here is not one shred of evidence in the medical records submitted that would in any way connect or link the patient's symptoms to the compensable accident that occurred nine and one half years earlier on ____.' ' In a decision issued October 5, 2004, the MRD concurred with the IRO decision on lack of medical necessity. First Rio timely requested a contested case hearing at SOAH to challenge the MRD and IRO decisions.

B. Parties' Evidence and Arguments

Both First Rio and Respondent introduced various records into evidence.² Dr. Howell testified for First Rio; Respondent did not call a witness.

Records: The records show that Claimant is a ____ male who went to Dr. Howell on September 22, 2003, complaining of low back pain, which he believed was caused by carrying textbooks while wearing a safety belt. Dr. Howell noted that Claimant had injured his back on the job on ____, while playing "kick the shoe." His examination showed that Claimant's reflexes in his lower extremities were normal, but he had reduced range of motion. Dr. Howell diagnosed Claimant with lumbar HNP (herniated nucleous pulpous) and radiculitis and recommended six sessions of physical therapy. He also referred Claimant to Donald Kramer, M.D., for pain medication and recommended that Claimant use a home TENS unit for two weeks.

Dr. Howell saw Claimant again on September 22, 2003. He noted that the six sessions of physical therapy provided significant relief and his range of motion improved to normal. Dr. Howell discharged Claimant and recommended use of a home exercise kit.

² First Rio introduced into evidence seventeen exhibits consisting of 391 pages. Carrier introduced into evidence four exhibits consisting of twenty-five pages.

First Rio: First Rio argues that Claimant's back pain in September 2003 was related to his May 1994 compensable injury and that the treatment provided was appropriate. Dr. Howell testified that he only provided Claimant with six days of therapy, which was reasonable for his condition which was in the acute stage. In Dr. Howell's view, there should be no dispute that Claimant's pain in September was due to an exacerbation of the 1994 injury. In support, Dr. Howell relied on the two MRIs taken of Claimant in 1996 and 1999. The MRI taken on February 27, 1999, showed a disc herniation that pressed on the left nerve root and a bulging disc. Dr. Howell contends that this MRI reflects that Claimant's condition worsened from that shown in the 1996 MRI. Consequently, Dr. Howell believes that the 2003 back pain was an exacerbation of his 1994 injury. Dr. Howell testified that the services he provided were medically reasonable and necessary to relieve or cure the effects of Claimant's injury.

In response to Carrier's contention that the services were not necessary, Dr. Howell was critical of the peer review by Dr. Michael Booth, noting that his report did not mention the disc desiccation at all. Dr. Howell stated that Dr. Booth merely disagreed about the type of treatment provided to Claimant, but did not dispute the need for treatment.

Brownsville ISD: Respondent did not offer testimony, but relied on the records admitted into evidence. Respondent primarily relies on the peer reviews of Dr. Booth and Dr. Brian August. Respondent Exhibits A and B. Dr. Booth contends that further complaints of back pain are most likely related to spinal degenerative changes and effects of diabetes. Dr. Booth said that there may be occasional flare-ups that could be treated with cryotherapy, electrical stimulation and manipulation.

Dr. August stated that the original injury of sprain/strain should have resolved within six months to one year. He asserts that the MRI studies were essentially normal and was especially critical of the nerve conduction studies because there was no EMG/needle evaluation to evaluate whether radiculopathy was present.

Respondent noted that when Claimant reached MMI in 1996, he was diagnosed with only a sprain/strain, and not a herniated disc. Respondent argued that there was insufficient evidence to find that Claimant's pain in September 2003 was caused by his compensable injury in 1994.

C. ALJ's Analysis and Decision

The ALJ finds that First Rio did not prove by a preponderance of the evidence that Claimant's back pain in September 2003 was caused by his ___ 1994 compensable injury. Therefore, the ALJ upholds the IRO decision and finds that the treatment provided to Claimant by First Rio in 2003 was not medically reasonable or necessary to treat Claimant's 1994 compensable injury. The evidence established that in 1994, Claimant was diagnosed with a lumbar strain/sprain, not a herniated disc. In addition, Claimant's problems from his 1994 injury should have resolved within a year. Petitioner did not offer sufficient evidence that Claimant's degenerative spinal changes and the effects of diabetes were not contributing factors to his continuing pain. The 1996 MRI noted "very early posterior subligamentous disc herniation." Dr. Howell failed to offer evidence that would explain why the disc herniation appearing on the 1999 MRI was not due to spinal degenerative changes instead of the back injury he sustained some five years earlier.

When Claimant returned to Dr. Howell in September 2003, complaining of back pain, Dr. Howell assumed Claimant had experienced an exacerbation of his 1994 injury. However, the medical records simply do not support the connection between the two. Petitioner did not rebut the peer reviews by Drs. Booth and August, who both contended that the effects of the initial 1994 injury should have resolved before 2003. Based on the medical records submitted and the testimony of Dr. Howell, the ALJ finds that First Rio did not establish by a preponderance of the evidence that Claimant's back pain in September 2003 was caused by his ___ 1994 compensable injury. Rather, the evidence established that it was equally plausible that Claimant's 2003 back pain and disc herniation were caused by Claimant's degenerative spinal condition and diabetes. Consequently, the ALJ upholds the IRO decision and Brownsville ISD is not liable to reimburse First Rio for the services provided to Claimant in September and October 2003.

III. FINDINGS OF FACT

1. Claimant was a ____ male who injured his back on ____, when he participated in a "shoe-kick" competition as part of his job duties and fell on his back. He was diagnosed with a sprain/strain and facet syndrome.
2. Brownsville ISD is responsible for workers' compensation coverage for Claimant's injury.
3. Between May 1994 and January 2002, First Rio Valley Medical (First Rio) provided chiropractic treatments and therapy for Claimant. On January 2, 2002, Claimant reached

maximum medical improvement. Dr. Robert Howell of First Rio last saw Claimant for his _____ 1994 injury sometime in January 2002.

4. An MRI performed on May 30, 1996, showed Claimant had early disc desiccation of the lumbar spine and a mild disc bulge at L4-5.
5. An MRI performed on February 27, 1999, showed Claimant had disc herniation at L5-S1 and a disc bulge at L4-L5. There was no nerve root compression.
6. On September 22, 2003, Claimant returned to Dr. Howell at First Rio, complaining of back pain, which he related to recently carrying boxes while working.
7. Dr. Howell considered Claimant's back pain to be a flare-up of his compensable injury, so he provided a course of chiropractic treatments and therapy. These services were provided on September 23, 24, 29, and October 1 and 2, 2003, and included office visits, whirlpool, ultrasound, aquatic exercise, massage therapy, manual therapy, therapeutic exercises, and electrical stimulation.
8. Claimant is diabetic.
9. Two peer reviewers found that Claimant's complaints of ongoing pain were due to the effects of diabetes and/or spinal degenerative changes.
10. Petitioner did not offer evidence that would explain why he believed Claimant's complaints were not due to the effects of diabetes and/or spinal degenerative changes.
11. First Rio billed Respondent in the total amount of \$1,028.26. Respondent denied reimbursement for all of the services based on lack of medical necessity for treatment of the 1994 compensable injury.
12. Respondent denied reimbursement for the services Dr. Howell provided Claimant in September and October of 2003 based on lack of medical necessity for treatment of the 1994 compensable injury.
13. First Rio appealed the denial of payment to the Texas Worker's Compensation Commission's Medical Review Division (MRD), which referred the medical necessity issues to an independent review organization (IRO). The IRO issued a decision on April 16, 2004, that upheld Respondent's denial of payment, finding that there was no causal link between the 2003 pain and the 1994 compensable injury to warrant treatment.
14. In a decision issued October 5, 2004, the MRD concurred with the IRO decision on lack of medical necessity.
15. First Rio timely requested a contested case hearing at the State Office of Administrative Hearings (SOAH) to challenge the MRD decision.
16. A contested case hearing was held at SOAH on June 7, 2005, and the record closed on June 18, 2005.
17. First Rio and Brownsville ISD attended the hearing.

18. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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.
19. All parties were allowed to respond and present evidence and argument on each issue involved in the case.
20. The disputed services provided by First Rio to Claimant between September 23 and October 2, 2003, were not medically reasonable and necessary for the treatment of Claimant's 1994 compensable injury.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to 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. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) § 155.1 *et seq.*
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. First Rio, as the party seeking relief, bore the burden of proof in this case pursuant to 28 TAC §§ 148.14(a).
6. First Rio did not establish by a preponderance of the evidence that the services it provided to Claimant between September 23 and October 2, 2003, were medically reasonable and necessary to treat Claimant's 1994 compensable injury.
7. Based on the above Findings of Facts and Conclusions of Law, Brownsville ISD should not be required to reimburse First Rio for the services First Rio provided to Claimant between September 23 and October 2, 2003.

ORDER

IT IS THEREFORE, ORDERED that the claim made by First Rio Medical, P.A., is denied, and Brownsville ISD is not liable to reimburse First Rio Valley Medical, P.A., for the disputed services provided to Claimant between September 23 and October 2, 2003.

Signed August 17, 2005.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**