

**SOAH DOCKET NO. 453-05-1695.M5  
MR NO. M5-04-4041-01**

<b>REAL HEALTH CARE,</b>	‘	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	‘	
	‘	
<b>V.</b>	‘	<b>OF</b>
	‘	
<b>METROPOLITAN TRANSIT</b>	‘	<b>ADMINISTRATIVE HEARINGS</b>
<b>AUTHORITY OF HARRIS COUNTY,</b>	‘	
<b>Respondent</b>	‘	

**DECISION AND ORDER**

This case is an appeal by Real Health Care (Provider) from a decision of an independent review organization (IRO) on behalf of the Texas Workers’ Compensation Commission<sup>1</sup> in a dispute regarding medical necessity for office visits and chiropractic treatment. The IRO found that the Metropolitan Transit Authority of Harris County (Carrier) properly denied reimbursement for examinations, chiropractic treatment, and physical therapy from July 11, 2002, through April 7, 2004. Provider appealed on the basis that these services were medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.* The Administrative Law Judge (ALJ) finds that Provider should be not be reimbursed for the disputed services.

**I. STATEMENT OF THE CASE**

The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to §413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2005. No party challenged jurisdiction or venue. ALJ Lilo D. Pomerleau initially convened the hearing in this docket on June 23, 2005. However, Provider’s request to appear by telephone had not been received by the ALJ, and Provider did not appear. The ALJ reconvened the hearing on July 22, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas. Provider was represented by Susan Cummings, *pro se*, and Carrier was represented by Steven Tipton, attorney. The record

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers= Compensation at the Texas Department of Insurance.

closed July 22, 2005.

On \_\_\_\_, Claimant was injured while driving a bus, which was struck from behind. Her right knee struck the toll box, and she complained of pain in her neck, chest, left shoulder, right knee, and cervical and low back. She received X-rays of her cervical and lumbar spine, a CT scan of her cervical spine, and an MRI of her right knee and lumbar spine. Claimant began treatment with Provider on July 8, 2002. Kenneth Berliner, M.D. performed knee surgery on Claimant on January 10, 2003, to repair a lateral meniscal tear. At issue are post-surgical office visits and chiropractic therapy, provided from July 11, 2003, through April 7, 2004, for both her knee and back. The amount in dispute is \$2,293.

## **II. THE EVIDENCE AND ARGUMENTS**

### **A. Provider**

Provider submitted into evidence medical records and argument previously submitted to the IRO. Provider argues that Claimant was released to light duty work on July 21, 2003. However, upon her return to work, Claimant's pain level had increased and she needed lumbar epidural steroid injections to treat the pain and allow her to perform her job duties. Provider also argues that Claimant needed to receive periodic consultations in conjunction with active therapy to decrease swelling and prevent exacerbation. In a progress report dated October 17, 2003, Claimant presented with complaints of lower back pain and right knee weakness. On March 31, 2004, Claimant continued to complain of pain, and Provider contends that pain relapse occurred and would continue to occur because of her heavy physical work demands. In Provider's request for hearing, it argued that the services were necessary to treat Claimant's lumbar problems and her exacerbation of pain after her return to work.

### **B. Carrier**

Carrier also submitted into evidence medical records and argument previously submitted to the IRO. Carrier argues that Claimant received 64 sessions (six months) of treatment from Provider before her first surgery. After the surgery, Claimant received 47 more sessions (again, six months) of treatment from Provider. The treatment was applied to multiple body areas. Those sessions were not disputed. Carrier argues the subsequent treatments, from July 11, 2003, through April 7, 2004,

exceed chiropractic, physical, and occupational therapy practice standards.

### III. ANALYSIS

At issue is whether Provider showed by a preponderance of evidence that the disputed services were reasonable and necessary. Provider failed to meet that burden.

The evidence indicates that Claimant received a large number of treatments after her accident, both before and after her knee surgery. After her January 10, 2003 operation, Wade P. McAllister, M.D., prescribed physical therapy for four weeks, three times per week.<sup>2</sup> There is no indication in the record that this prescription was extended. On April 15, 2003, three months before the disputed services were provided, Kenneth G. Berliner, M.D., examined Claimant and noted that her knee was doing well post-operatively and appeared to be in excellent condition. He further noted that Claimant might have some pathology in her lumbar spine, but Dr. Berliner stated that he was not successful in obtaining her lumbar MRI for evaluation.<sup>3</sup> Thus, there was no objective means of evaluating her complaint.

On July 21, 2003, John T. Randolph, Jr., D.C., a chiropractor with Provider and Claimant's treating doctor, issued a progress report. Dr. Randolph stated that Claimant's back and neck pain had decreased but her knee pain continued. He found it "imperative that although her symptoms have decreased she will experience and (sic) occasional exacerbation of symptoms."<sup>4</sup> Treatment was indicated to reduce pain, inflammation, myospasms, and increase range of motion.<sup>5</sup> Later progress reports also indicated treatment was needed to decrease swelling and prevent a serious exacerbation.

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<sup>2</sup> Carrier's Ex. 1 at 9.

<sup>3</sup> Carrier's Ex. 1 at 14.

<sup>4</sup> Carrier's Ex. 1 at 75.

<sup>5</sup> Carrier=s Ex. 1 at 76.

On November 21, 2003, Gabriel R. Gutierrez, D.C., performed a medical evaluation on Claimant, finding that, although Claimant continued to complain about low back and right knee pain, her examination was unremarkable. He found that enough time had elapsed for the opportunity to heal from the injury and that Claimant had no clinical complications to impede recovery. He further found that Claimant had reached maximum medical improvement with a 9% impairment rating. This report was sent to Provider. There is no showing that Provider changed its treatment plan after the report was issued.

Under § 408.021 of the Act, an injured worker is entitled to “health care reasonably required” to relieve the effects of the injury or to enhance the ability to continue working. However, care that provides only superficial or illusory improvement or relief at inordinate cost is not “reasonably” required. The ALJ agrees with Carrier that the facility-based therapy given chiefly to reduce knee swelling and prevent exacerbation-provided from July 2003 to April 2004-was both unreasonable and unnecessary. Current Commission guidelines suggest 18 sessions of physical medicine, with sessions lasting no longer than 45 minutes. Yet Claimant received 47 sessions after her surgery, before the sessions in dispute. There is no objective evidence supporting the need for additional therapy-more than one year post-injury-to treat Claimant’s back. As to Claimant’s exacerbation of pain, Claimant’s doctor found her knee was fine. Additionally, there was little improvement in Claimant’s symptoms during the time period at issue. The ALJ concludes that Provider failed to meet its burden of proving that the services at issue were reasonable and necessary.

#### **IV. FINDINGS OF FACT**

1. On \_\_\_\_, Claimant was injured on the job while she was driving a bus, which was struck from behind. Her right knee struck the toll box and she complained of pain in her neck, chest, left shoulder, right knee, and cervical and low back. The injury was a compensable injury under the Texas Worker’s Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. Claimant first presented to John T. Randolph, Jr., D.C., at Real Health Care (Provider), on July 8, 2002.
3. Kenneth Berliner, M.D., performed knee surgery on Claimant on January 10, 2003, to repair a lateral meniscal tear.
4. From July 11, 2003, through April 7, 2004, Claimant received chiropractic treatment and therapeutic exercises for the injury noted in Finding of Fact No. 1.

5. Provider sought reimbursement for the chiropractic treatment and therapeutic exercises from the Metropolitan Transit Authority of Harris County (Carrier), the self insurer for Claimant's employer.
6. Carrier denied the requested reimbursement.
7. Provider made a timely request to the Texas Workers' Compensation Commission (Commission), now known as the Texas Department of Insurance, Division of Workers' Compensation, for medical dispute resolution with respect to the requested reimbursement.
8. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on September 17, 2004, and concluded that office visits, chiropractic treatments, and therapeutic exercises for dates of service July 11, 2003, through April 7, 2004, were not medically necessary.
9. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated September 22, 2004, in dispute resolution Docket No. M5-04-4041-01.
10. Provider requested in a timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
11. The Commission mailed notice of the hearing's setting to the parties at their addresses on November 19, 2004.
12. On June 23, 2005, Lilo D. Pomerleau, an Administrative Law Judge with SOAH, convened a hearing in this matter at the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas. Provider's request to appear by telephone was not received, thus, Provider did not appear. Carrier was represented by Steven Tipton, attorney. The hearing reconvened on July 22, 2005, and Susan Cummings appeared, representing Provider, *pro se*, and Mr. Tipton appeared on behalf of Carrier. The record closed July 22, 2005.
13. After Claimant's January 10, 2003 knee operation, Wade P. McAllister, M.D., prescribed physical therapy for four weeks, three times per week.
14. After her knee surgery, Claimant received 47 more sessions of treatment applied to multiple body areas from Provider for the injury noted in Finding of Fact No. 1. Those sessions were not disputed.
15. On April 15, 2003, three months before the disputed services were provided, Claimant's knee was doing well post-operatively and appeared to be in excellent condition.
16. Progress reports dated August 7, 2003, September 9, 2003, and March 31, 2004, plus two undated reports, showed little improvement in Claimant's symptoms, and no change of treatment plan was reflected in these reports.
17. On November 21, 2003, although Claimant continued to complain about low back and right

knee pain, her examination was unremarkable.

18. As of November 21, 2003, enough time had elapsed for Claimant to heal from the injury and Claimant had no clinical complications impeding such recovery.
19. There was no objective showing that the services in question were necessary.
20. Office visits, chiropractic treatment, and physical therapy provided on July 22, 2003, though April 7, 2004, were not shown to be necessary or reasonable.

## **V. CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.0
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act 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, 1TEX. 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. Provider bore the burden of proving the office visits, therapeutic exercises, and chiropractic treatment provided from July 22, 2003, though April 7, 2004, were medically necessary pursuant to 28 TAC § 148.14 and 1 TAC § 155.41(b).
6. Based upon the foregoing Findings of Fact, Provider failed to prove that the office visits, chiropractic treatment, and physical therapy provided on July 22, 2003, though April 7, 2004, were elements of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement for office visits, chiropractic treatment, and physical therapy for dates of service July 22, 2003, though April 7, 2004.

## **ORDER**

**IT IS THEREFORE, ORDERED** that the claim of Real Health Care, seeking

reimbursement for office visits, chiropractic treatment, and physical therapy for dates of service July 22, 2003, though April 7, 2004, is denied, and no reimbursement is ordered.

**SIGNED September 16, 2005.**

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**LILO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**