

**SOAH DOCKET NO. 453-05-1697.M5  
MDR NO. M5-04-4165-01**

<b>SOUTH COAST SPINE &amp; REHAB, P.A.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
	§	
<b>BROWNSVILLE INDEPENDENT SCHOOL DISTRICT, Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

South Coast Spine & Rehab, P.A. (Petitioner) requested a hearing to contest independent review organization (IRO) and Texas Workers' Compensation Commission (Commission)<sup>1</sup> Medical Review Division (MRD) determinations that certain services it provided to an injured worker (Claimant) from April 13, 2004, through May 13, 2004, were not medically necessary. This decision concludes that Petitioner proved the services were medically necessary and that Brownsville Independent School District (Carrier) should pay for the services.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing convened on October 10, 2005, at the State Office of Administrative Hearings (SOAH) offices in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas, before the undersigned ALJ. Petitioner appeared through its owner Robert S. Howell, D.C. The Carrier appeared through its counsel Dean G. Pappas. The hearing did not finish on October 10, 2005, and eventually was resumed and completed on May 4, 2006. The parties submitted closing arguments on May 12, 2006, and the hearing record closed on that date. Because there were no notice or other jurisdictional issues, those matters are stated in the findings of fact and conclusions of law without further discussion here.

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers' Compensation of the Texas Department of Insurance.

## II. DISCUSSION

### A. Background

The Claimant was a paraprofessional who caught the heel of her shoe on an uncovered pipe at work on \_\_\_\_. She grabbed a friend and the wall to keep from falling and twisted and injured her lower back. She felt immediate low-back pain. Petitioner began treating her on January 26, 2004. She underwent a functional capacity evaluation (FCE) on January 27, 2004, which indicated she could work without restrictions at a medium physical demand level and with restrictions at a heavy demand level. Petitioner never took the Claimant off work, but did place restrictions on her bending and stooping.

Petitioner treated the Claimant on the following dates: January 26 through February 17, 2004, followed by a break in treatment until early March; early March 2004, followed by another break until April 13, 2004; and from April 13, 2004, through May 13, 2004. The treatment on April 13, 2004, was after the Claimant traveled to San Antonio, Texas, to be with a newborn grandchild.<sup>2</sup> The Carrier denied payment for the April 13, 2004, through May 13, 2004, services on the basis of a March 4, 2004 peer review from Philip C. Lening, D.C., indicating further treatments were medically unnecessary. The disputed services are therapeutic exercises, office visits, and massage therapy.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, "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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

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<sup>2</sup> The Claimant's previous treatment break, from late February 2004 until early March 2004, was to be with another newborn grandchild.

As the party requesting the hearing, Petitioner has the burden of proof.<sup>3</sup>

**B. Analysis**

This decision concludes the services were medically necessary largely on the basis of evidence that they significantly helped the Claimant. Although a medical-necessity determination must be viewed prospectively on the basis of matters known at the time a decision is made to provide or not provide a service, the outcome of a treatment can nonetheless be probative evidence on the issue of whether or not the original decision to provide service was correct and there was a need for the service.

The preponderant evidence shows the services at issue were very helpful. The Claimant's pain level at the time the services began was a six on scale of one to ten with ten the highest.<sup>4</sup> On May 14, 2006, the day after the services at issue concluded, her pain level was two.<sup>5</sup> Her pain decreased gradually during the treatment at issue.<sup>6</sup> The Claimant had been released to a home exercise program on March 5, 2004, with a pain level of four,<sup>7</sup> but her pain had increased during the approximate six weeks she was not receiving treatment. Her out-of-town trip to see a new grandchild had exacerbated her condition. The Claimant also improved significantly from April 15, 2004, through May 13, 2004, in leg-extension, leg-curl, leg-press, sitting-calf-raise, and hip-abduction exercises.<sup>8</sup>

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3 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TAC § 148.14(a).

4 Ex. 2 at 106. Her pain level was eight when she began treatment in January. Ex. 2 at 101.

5 Ex. 2 at 109.

6 Ex. 6.

7 Ex. 2 at 104.

8 Ex. 1 at 101.

The Carrier's witness, Dr. Lening, testified that the services were not medically necessary and that no more than ten-to-twelve office visits over a four-to-six week period would be appropriate.

He stressed the fact the Claimant was never taken off work and the January 27 FCE showed she was able to perform heavy-duty work with restrictions and medium-duty work without restrictions. He assumed her paraprofessional duties did not require heavy work. He said there is no evidence of focal deficit or nerve root/compression tension, progressive motor loss, or other red flags. He opined that future pain episodes should not be ascribed to her at-work injury.<sup>9</sup>

Some of Dr. Lening's testimony supported Petitioner's contentions, however. He acknowledged that a patient's pain level is an important factor in determining the need for treatment; a 25 to 50 percent improvement in a patient's pain level is significant; and treatment guidelines require a showing of some significant benefit from treatment. The evidence on these factors supports a finding that the disputed services were needed.

The IRO concluded the services were not medically necessary because, even though the Claimant's pain decreased to four on a ten scale, it still occurred on a frequent basis; the exercises were simple ones that the Claimant could have done at home; the Claimant returned to work immediately after the injury; and Petitioner's notes do not contain objective, quantifiable findings to support the massage therapy.

The IRO decision was incorrect, however, in that the Claimant's pain reduced to two rather than four. Dr. Lening acknowledged that a reduction of that magnitude was significant. In addition, Petitioner's claim that the Claimant exacerbated her condition while visiting her new grandchild was shown by an increase in her pain level from four on March 5 to six on April 13. Her treatment after exacerbating her condition lasted from four to five weeks and resulted in significant improvement.

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<sup>9</sup> Ex. 3 at 6-7.

On an overall basis, considering the Claimant's continuing pain when she presented for treatment on April 13, 2004, and her subsequent positive response to the disputed services, the ALJ concludes that the preponderant evidence supports a finding of medical necessity.

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

1. The injured worker (Claimant) was a paraprofessional who caught the heel of her shoe on an uncovered pipe at work on\_\_\_\_.
2. The Claimant grabbed a friend and the wall to keep from falling and twisted and injured her lower back.
3. The Claimant felt immediate low-back pain.
4. South Coast Spine & Rehab, P.A. (Petitioner) began treating the Claimant on January 26, 2004.
5. The Claimant underwent a functional capacity evaluation on January 27, 2004, which indicated she could work without restrictions at a medium physical demand level and with restrictions at a heavy demand level.
6. Petitioner never took the Claimant off work, but did place restrictions on her bending and stopping.
7. Petitioner treated the Claimant on the following dates: January 26 through February 17, 2004, followed by a break in treatment until early March; early March 2004, followed by another break until April 13, 2004; and from April 13, 2004, through May 13, 2004.
8. The treatment on April 13, 2004, occurred after the Claimant traveled to San Antonio, Texas, to be with a newborn grandchild.
9. Brownsville Independent School District (Carrier) denied payment for the April 13, 2004, through May 13, 2004, services (disputed services) on the basis of a March 4, 2004 peer review, that indicated further treatments were medically unnecessary.
10. The disputed services include therapeutic exercises, office visits, and massage therapy.
11. Petitioner requested medical dispute resolution after the Carrier denied payment.
12. An independent review organization found the disputed services were not medically necessary.

13. The Texas Workers' Compensation Commission Medical Review Division (MRD) issued an order on October 8, 2004, concluding the services were not medically necessary.
14. Not more than 20 days after receiving notice of the MRD order, the Petitioner filed a request for hearing.
15. Notice of the hearing was issued on November 19, 2004.
16. 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.
17. The Claimant exacerbated her condition while visiting a newborn grandchild before the disputed services began.
18. The disputed services were very helpful to the Claimant.
  - a. The Claimant's pain level at the time the disputed services began was a six on scale of one to ten with ten the highest.
  - b. On May 14, 2006, the day after the services at issue concluded, the Claimant's pain level was two.
  - c. The Claimant's pain decreased gradually during the treatment at issue.
  - d. The Claimant had been released to a home exercise program on March 5, 2004, with a pain level of four, but her pain increased to six after she exacerbated her condition.
  - e. The Claimant improved significantly from April 15, 2004, through May 13, 2004, in leg-extension, leg-curl, leg-press, sitting-calf-raise, and hip-abduction exercises.
19. A patient's pain level is an important factor in determining the need for treatment.
20. A 25 to 50 percent improvement in a patient's pain level is significant.
21. Treatment guidelines require a showing of some significant benefit from treatment.
22. The Claimant received significant benefits from the disputed services.

## **V. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §402.073(b) and 413.055 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. Petitioner has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §413.055; 28 TEX. ADMIN. CODE (TAC) §148.14(a).
4. Petitioner proved the disputed services were medically necessary. TEX. LAB. CODE ANN. §408.021.
5. The Carrier should pay Petitioner for the disputed services.

### **ORDER**

**IT IS THEREFORE, ORDERED** that Brownsville Independent School District pay South Coast Spine and Rehab, P.A., for services provided to the Claimant from April 13, 2004, through May 13, 2004, plus applicable interest, including therapeutic exercise, office visits, and massage therapy.

**SIGNED June 27, 2006.**

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**JAMES W. NORMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**