

COTTON D. MERRITT, D.C.,
Petitioner

V.

TEXAS MUTUAL INSURANCE
COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Cotton D. Merritt, D.C., (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Forte, an Independent Review Organization (IRO), denying Petitioner reimbursement for therapeutic procedures and exercises, kinetic exercises, joint mobilization, and myofascial release provided to Petitioner for the period March 24, 2003, through May 20, 2003 (Disputed Services).¹

This decision grants the relief sought by Petitioner and orders payment of the remainder of the Disputed Services.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on July 7, 2005, before Administrative Law Judge (ALJ) Stephen J. Pacey. Petitioner appeared *pro se* and Ryan T. Willett represented Texas Mutual Insurance Company (Respondent). There were no contested issues of notice or jurisdiction. Timothy Fahey, D.C., testified for Respondent. The record closed the same day following adjournment of the hearing.

¹ The IRO granted reimbursement for all office visits (99213), and two units of therapeutic exercises (97710) per visit. Texas Mutual did not appeal; therefore the services granted to Petitioner by the IRO will not be considered in this proceeding.

II. DISCUSSION

___ (Claimant) sustained a work related injury on ___, when the forklift he was driving struck a pole resulting in an injury to his cervical region. After an MRI was performed on Claimant on March 26, 2003, he was diagnosed with disk herniation (disk bulge) at his C5-6 and C6-7 spinal levels with resulting radiculitis or radiculopathy. Petitioner defined radiculitis as an inflammatory process that results in numbness and tingling in an extremity. He defined radiculopathy as a pathological process in which there is degeneration of the myelinated fibers of the nerve root.²

Petitioner began treatment on Claimant on March 4, 2003. Initially the therapy was passive, but on March 20, 2003, Petitioner began treating Claimant with one-to-one therapeutic and kinetic exercises. On March 24, 2003, less than one month post injury, Respondent declined to reimburse for any treatment, and on March 10, 2004, Petitioner requested medical dispute resolution on Respondent's denial. Following its review of the decision issued by the IRO, the MRD denied Petitioner's request for reimbursement of the disputed services. The IRO did not conclude that the services rendered from March 24, 2003, to May 20, 2003, were not medically necessary. Rather, the IRO denied reimbursement on the basis that Petitioner's notes did not list exercise and activity in sufficient quantity to justify the charges. As to the issue of medical necessity, the IRO reported: "The records show that the patient continued to progress throughout the treatment period in question. Also, an MRI established the severity of the injury. The guidelines recommend longer treatment for these types of injuries."

II. ANALYSIS

Dr. Fahey testified to four reasons that the treatments were not medically necessary. He argued that the passive modalities of joint mobilization and myofascial relief should have been discontinued one month post injury. According to Dr Fahey, the one-to-one therapeutic exercises were excessive, because once the exercises were mastered, the Claimant should have performed them in a group setting or at home. Dr. Fahey also said that the treatments were not medically necessary because Claimant did not return to work. Lastly, Dr. Fahey asserted that the treatments were essentially the same from April 2, 2003 to May 20, 2003.

Dr. Fahey's testimony is problematic in that he tries to group all cases together in a cookie

² Respondent's Exhibit 2 at page 11.

cutter fashion. The MRI reflected that the Claimant had a severe injury. Dr. Fahey and Respondent totally ignored the fact the MRI showed a disk bulge at C5-6 and C6-7. Petitioner testified that his treatments were aggressive because of the severity of Claimant's injury. He said the passive treatments were necessary to treat muscle spasms and to stretch the muscles in preparation for the therapeutic exercises. The number of one-to-one therapeutic exercises was justified by the severity of the injury. Claimant could not do the exercises on his own because of the risk of further damage to the already severely damaged spine. The purpose of treatment in this case was to improve Claimant's function and ability, not simply to return to him to work. When Claimant was first injured he could not move his neck. After treatment, he had almost normal function in his neck. Claimant's pain level had reduced from eight to two on a scale of ten. The therapeutic exercise, myofascial relief, and joint mobilization were necessary to improve Claimant's function, strength, and ability, consequently the disputed services were medically necessary.

Even though the IRO did not deny reimbursement on the basis of medical necessity and insinuated that the treatments were medically necessary, Petitioner had the burden of proof in this proceeding. In any case Petitioner sustained his burden of showing that the Disputed Services were medically necessary.

III. FINDINGS OF FACT

1. ____ (Claimant) sustained a work related injury on or about ____, when the forklift he was driving struck a pole resulting in an injury to the cervical region
2. After an MRI was performed on Claimant on March 26, 2003, he was diagnosed with disk herniation (disk bulge) at C5-6 and C6-7, with resulting radiculitis or radiculopathy.
3. Cotton D. Merritt, D.C., (Petitioner) seeks reimbursement for therapeutic procedures and exercises, myofascial release, and joint mobilization for the period March 24, 2003, through May 20, 2003 (Disputed Services).
4. The Disputed Services were provided by Petitioner to and for the benefit of Claimant.
5. The passive treatments were necessary to treat muscle spasms and to stretch the muscles in preparation for the therapeutic exercises.
6. The number of one-to-one therapeutic exercises was justified by the severity of the injury.
7. Claimant could not do the exercises on his own because of the risk of further damage to the already severely damaged spine.

8. The purpose of treatment in this case was to improve Claimant's function and ability, not simply to return to him to work.
9. When Claimant was first injured he could not move his neck. After treatment, he had almost normal function in his neck. Claimant's pain level had reduced from eight to two on a scale of ten.
10. The one -to-one therapeutic exercise, myofacial relief, and joint mobilization were necessary to improve Claimant's function, strength, and ability.
11. Texas Mutual Insurance Company (Respondent) denied reimbursement for the Disputed Services as not medically necessary.
12. By letter dated May 14, 2004, Forte, an Independent Review Organization (IRO), concluded that the Disputed Services were medically necessary for treatment of Claimant's condition, but also concluded that the services were not properly documented.
13. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
14. The Commission issued a Finding and Decision on October 9, 2004.
15. Petitioner timely requested a hearing to contest the Commission's decision.
16. The Commission issued a notice of hearing on November 24, 2004.
17. A hearing was convened by Administrative Law Judge Stephen J. Pacey on July 7, 2005, in the hearing rooms of the State Office of Administrative Hearings and the hearing adjourned and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings 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. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).

6. Petitioner had the burden of proof in this matter.
7. Based upon the Findings of Fact, Petitioner proved by a preponderance of the evidence that the Disputed Services were medically necessary for treatment of Claimant's condition.

ORDER

THEREFORE IT IS ORDERED that Respondent Texas Mutual Insurance Company pay Petitioner Cotton D. Merritt, D.C., for the Disputed Services provided to Claimant, plus applicable interest.

SIGNED August 25, 2005.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**