



In SOAH Docket No. 453-05-2679.M5, on November 1, 2004, Texas Mutual Insurance Company (TMIC) requested a hearing following an October 15, 2004 Findings and Decision of the Commission (October Decision). The Commission's October Decision for medical necessity dates of service ranging from August 6, 2003, through December 16, 2003, relied upon a September 30, 2004 decision of Specialty Independent Review Organization, Inc., an IRO, and ordered reimbursement for (1) four units per day of CPT Code 97110 therapeutic exercise for dates of service from August 6, 2003 through August 28, 2003, (2) one unit per day of CPT Code 97140 manual therapy for dates of service from August 6, 2003, through August 28, 2003, and (3) all CPT Code 99213 office visits. The October decision denied reimbursement for (1) CPT Code 95833 muscle testing, (2) CPT Code 97110 therapeutic procedures on October 7, 2003, (3) CPT Code 97032 electrical stimulation and CPT Codes 97545-WH and 97546-WH work hardening.

In its October Decision, the Commission addressed certain medical fee disputes through January 28, 2004, and ordered reimbursement for CPT Code 95831 on September 3, 2003, CPT Code 97750-FC on December 9, 2003, and CPT Code 99455-V5-WP on January 28, 2004 (Disputed Medical Fee Services).

By the commencement of the hearing on the merits, MR&D withdrew its request for hearing on all claims for work hardening and TMIC agreed to pay the Disputed Medical Fee Services.<sup>1</sup> Also, although Claimant complained of neck and lower back injuries, only the treatments for the lower back are in issue in the case. As such, the discussion and analysis of the evidence will consider only the lumbar treatments.

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that 12 additional office visits, 11 additional units of manual therapy, and eight additional units of CPT Code 97110 therapeutic exercise for dates of service from July 29, 2003 through October 28, 2003 provided by MR&D are reimbursable. All other services that remain in dispute are not reimbursable.

The hearing on the merits convened on August 10, 2005, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Scott Hilliard represented MR&D and Timothy Riley represented TMIC. David Alvarado, D.C., testified for TMIC and Osler Kamath, D.C., testified for MR&D. Following the conclusion of the evidentiary proceeding, the parties

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<sup>1</sup> Joint Exhibit No. 1.

agreed to file additional written materials. Those materials, Joint Exhibit No. 1, were filed in the late afternoon of October 4, 2005, and were admitted into evidence by Order dated October 5, 2005. The record closed on October 5, 2005. Neither party objected to notice or jurisdiction.

Claimant suffered a work-related injury to the low back on or about \_\_\_\_\_. Immediately following the injury, Claimant was transported to Harris Methodist Hospital where x-rays were obtained of her neck and lower back. Vicodin was prescribed and a treatment plan recommended. Following continued pain, Claimant went to MR&D. Claimant was initially examined at MR&D on July 28, 2003, by Robert Bedford, D.C., and treatment began on July 29, 2003. Dr. Bedford was Claimant's primary care giver. Claimant received both active and passive physical therapy.

Dr. Bedford initially prescribed five sessions per week for two weeks, followed by four sessions per week for six weeks. On September 29, 2003, he referred Claimant to Crawford Sloan, M.D., for a medical evaluation.

On October 1, 2003, Alan B. Hirschman, M.D., examined Claimant and recommended lumbar epidural steroid injections (ESIs) at L4-5 and facet joint injections at L4-5 and L5-S1. He also recommended continued aggressive physical therapy four times per week. Claimant declined the injections, as noted by Dr. Sloan during his October 28, 2003 re-evaluation, because of a fear of needles. Claimant began a work hardening program on or about October 28, 2003. On December 17, 2003, Claimant began a daily pain management program at AmeriCARE Pain Management supervised by Jacob Liebman, M.D.

The August 5, 2003 radiological report from Kenneth J. Ratajczak, M.D., suggests lumbar hypolordosis,<sup>2</sup> degenerative joint disease, and mild thoracolumbar curvature. The August 5, 2003 interpretation of the MRI by Dee L. Martinez, M.D., revealed (1) a mild, 2-3mm broad, right foraminal disc protrusion at L4-5 with the protruding disc causing mild right-sided foraminal stenosis (narrowing) at that segment, (2) a mild degenerative hypertrophy involving both facet joints at L4-5 and L5-S1, and (3) mild disc dehydration from L3-4 through L5-S1. Robert Lowry, M.D., concluded in his August 28, 2003 interpretation of the electrophysiological studies, that no evidence of lumbar radiculopathy, lumbosacral plexopathy or distal mononeuropathy was recorded in the electrodiagnostic studies of Claimant's lower extremities.

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<sup>2</sup> A lordosis, anterior convex angulation of the cervical or lumbar spine, less than the normal range.

Wright W. Singleton, M.D., conducted an Independent Medical Examination on October 2, 2003. He diagnosed the injury as low back strain. Anil T. Bangale, M.D., evaluated Claimant on November 18, 2003, and concluded she had not reached Maximum Medical Improvement (MMI).

By January 28, 2004, Dr. Bedford reported the Claimant's pain was infrequent and "mild aching." He returned her to work and placed her at MMI. She was given a home exercise program to address lumbar issues.

The daily treatment notes reflect fairly consistent repetition in the exercises and treatments Dr. Bedford provided Claimant including: the treadmill; the stationary bike; the small and large Wobble Boards; unilateral and bilateral knee to chest flexion; lumbar kneeling flexion; unilateral arm and leg extensions; prone on elbows; press-up; wall lean stretch; angry cat stretch; knee to chest stretch on all-fours; lower trunk rotation stretch; and quadriceps, hamstring and active hamstring stretches. All of these exercises and treatments were performed with CPT Code 97110 one-on-one supervision.

Claimant described her pain to Dr. Bedford as ranging from sharp pain to a dull and achy pain. Dr. Bedford's daily notes do not, however, indicate the relative magnitude of that pain on the 10-point scale.<sup>3</sup> On September 2, 2003, Dr. Bedford re-evaluated Claimant and determined that she was improving. The daily treatment notes for the next several days indicate improvement in low back pain and significant improvement in lower back muscle spasms. Dull and achy neck pain was her major complaint. A September 29, 2003 re-evaluation looks much like the September 2, 2003 evaluation. Despite daily treatments, Claimant evidenced, according to MR&D testing, mixed results in lumbar range of motion with regression in "true lumbar flexion" and the "left straight leg raise." By October 30, 2003, Claimant, who at Dr. Bedford's recommendation was enrolled in a work hardening program, seems to have regressed in Dr. Bedford's opinion. Just several weeks later, on November 19, 2003, Claimant reported to Dr. Sloan that her low back pain was 6 on a 10-point scale and Dr. Sloan reported that Claimant's lumbar range of motion was within normal limits.

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<sup>3</sup> On the 10-point scale, ten is maximum pain and zero is no pain.

There were no significant differences in medications during the MR&D treatment period and the AmeriCARE treatment period. AmeriCARE's Dr. Liebman continued Celebrex as an anti-inflammatory and Darvocet for pain. He also prescribed Flexeril for muscle spasms.

The ALJ concludes, for reasons described below, that the credible evidence in the record does not support the medical necessity of most of the disputed services provided by MR&D to Claimant. First, MR&D's reports and testing fail to demonstrate that the daily treatments provided to Claimant were helpful to her. The results obtained from the daily treatments are, as MR&D acknowledged, at best, mixed and the reports regarding Claimant's condition and status are inconsistent. The number of office visits is excessive and, with one exception, the use of one-on-one supervision was not justified. Because Claimant failed to expend maximum physical effort while being tested, her performance on various tests is questionable and reports of true improvement based on that testing are unreliable. Because Claimant's descriptions of her pain levels and ability to ambulate are unreliable, reports of improvement based upon her descriptions are also unreliable.

With respect to pain, Claimant showed no real improvement. Although Dr. Bedford's daily treatment notes report progress during the MR&D treatment program, they are not very enlightening in terms of how he arrived at that conclusion. His notes reflect that initially her pain was generally aching, but occasionally sharp, and that over time the pain diminished. He reported on September 24, 25, and 29, 2003, that Claimant's pain was diminished, mild and infrequent.

On October 1, 2003, Claimant reported to Dr. Hurschman that her pain was a 7 and that physical therapy "only helps a little bit" and makes her back "very sore."<sup>4</sup> On November 19, Claimant told Dr. Sloan her pain was a 6. Claimant began chronic pain treatment with Dr. Liebman and AmeriCARE on December 17, 2003. Dr. Liebman's December 18, 2003 notes report that Claimant rated her pain as a 6. By December 22, 2003, she rated her pain as a 4. The following day her pain rated a 5 and on December 26, 2003, her perceived pain level returned to a 6.

Based upon the totality of the evidence, it is not possible to accurately determine Claimant's true pain status or to measure any improvement in her pain status. Dr. Bedford's claims regarding Claimant's progress during his treatment stand in stark contrast to his action of referring her for chronic pain management and are inconsistent with the findings of other medical providers.

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<sup>4</sup> TMIC Exhibit 1, Vol. 1, p. 249.

As to the need for extended one-on-one treatment, Dr. Bedford's notes do not document any particular physical difficulty<sup>5</sup> Claimant experienced in attempting to perform her exercises. At AmeriCARE, during the physical therapy assessment, Dr. Liebman determined Claimant needed no supervision for correct exercise performance. With the very brief exception for treatment during the initial two weeks of care, the evidence does not support the need for one-on-one supervised activities. Given the Claimant's documented obesity and complaints of cervical and lumbar pain, one-on-one supervision during the initial stages of treatment were prudent until a reasonable determination could be made about her ability to participate in either group or unsupervised treatment and exercise programs. By August 8, 2003, MR&D should have concluded Claimant could perform the exercises without one-on-one supervision. Four units per session from July 29, 2003, through August 8, 2003, of CPT Code 97110 therapeutic exercises were medically necessary. As TMIC previously reimbursed MR&D for 28 units of CPT Code 97110 therapeutic exercises between July 29, 2003, and August 8, 2003, MR&D is entitled to reimbursement for an additional eight units of CPT Code 97110 therapeutic exercises.

Anil T. Bangale, M.D., evaluated Claimant on November 18, 2003, and concluded she had not reached Maximum Medical Improvement (MMI). Claimant's statements about her condition made to Dr. Bangale are inconsistent with other evidence and diminish the evidentiary value of Claimant's statements about her condition and the conclusions of the medical providers who relied upon those statements. Claimant reported to Dr. Bangale: (1) shooting pain in her lower extremities; (2) that she could not walk fast; (3) that she could not walk more than 100 yards; (4) that she had trouble getting up and down from a seated position; and (5) that she could not sit for long periods. Claimant's statements to Dr. Bangale on November 18, 2003, are contradicted by the fact that MR&D reported her walking during work hardening, that very day, as well as the preceding and following days, on a treadmill for 30 minutes at a speed of 2.0 miles per hour.<sup>6</sup> During her August, September and October treatments with Dr. Bedford, Claimant repeatedly used the treadmill (1) for 7.5 minutes, at a speed of 1.0 mile per hour, to walk side-to-side from left to right and (2) for another 7.5 minutes at the same speed to walk side-to-side from right to left. This results in 220 yards of walking per 7.5 minutes or 440 yard in 15 minutes.

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<sup>5</sup> As noted by Dr. Hurschman, the \_\_\_\_\_, 5-foot tall, 179-pound Claimant, is obese.

<sup>6</sup> Approximately 1,760 yards.

Approximately one month earlier, on October 15, 2003, Dr. Bedford's treatment notes state Claimant used the treadmill for 15 minutes at an angle of two degrees and at a speed of three miles per hour. That yields a distance of 1,320 yards in 15 minutes. She was also riding a stationary bike at MR&D for 15 minutes at a speed of 5 miles per hour.

By December, just two weeks after her statements to Dr. Bangale, AmeriCARE notes Claimant was using the treadmill twice per session, each time spending 30 minutes at a speed of 2.7 miles per hour. She also used a stationary bike while at AmeriCARE.

Wright W. Singleton, M.D., conducted an Independent Medical Examination on October 2, 2003. He diagnosed the injury as low back strain. He performed a Functional Capacity Evaluation (FCE) and determined Claimant provided poor effort and inconsistent pain behaviors. Based on the fact that her job required standing and cutting of bandages, but no lifting, he recommended she return to work at full duty. The ALJ finds Dr. Singleton's evaluation and conclusions more credible than either the Claimant's statements or Dr. Bedford's conclusions.

With respect to the office visits, Dr. Alvarado testified that a trial of care for four to six weeks was reasonable and that three visits per week for that time period, 12 to 18 office visits, would be reasonable. Given the Claimant's initial condition and the lack of demonstrated progress during the trial period of July 29, 2003 through August 29, 2003, 16 total office visits were reasonable and medically necessary.<sup>7</sup> Dr. Alvarado testified that one visit per week for the remainder of the time period through October 28, 2003, was reasonable to monitor a patient. After August 29, 2003, an additional nine office visits, one office visit per week for the period September 1, 2003, through October 31, 2003, were reasonable and medically necessary to monitor Claimant.<sup>8</sup>

Thus MR&D is entitled to reimbursement 12 additional CPT Code 99213 office visits.

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<sup>7</sup> The 16 office visits, which do not include the initial office visit on July 28, 2003, are computed as follows: (1) daily office visits for July 29, 30, 31 and August 1, 2003 (the four office visits during the remainder of the initial week of care); and (2) three office visits per week for the period August 4 through August 29, 2003 (12 office visits). TMIC reimbursed MR&D for 10 office visits between July 29 and August 29: (1) one each day for July 29 through August 1; (2) one per week for the weeks of August 4 and August 18; and (3) two per week for the weeks of August 11 and August 25. Thus, TMIC owes MR&D for six additional office visits.

<sup>8</sup> For the period beginning September 1, 2003, and ending October 31, 2003, TMIC reimbursed MR&D for five office visits as follows: (1) one during the week of September 1; (2) two during the week of September 8; and (3) two during the week of October 27. TMIC owes MR&D for an office visit during each of the six weeks for which no office visit was reimbursed.

MR&D bore the burden of proof as to the medical necessity of treatment services for which the Commission denied it reimbursement. TMIC bore the burden of proof as to those treatment services for which the Commission ordered reimbursement. The preponderance of the evidence demonstrated that some, but not all, of the disputed treatment services MR&D provided to Claimant were reasonable and medically necessary. MR&D is entitled to reimbursement for (1) eight additional units of disputed CPT Code 97110 therapeutic exercises for the period beginning July 29, 2003, and ending August 8, 2003; (2) 11 additional units of CPT Code 97140 manual therapy treatments for the period beginning July 29, 2003, and ending August 29, 2003;<sup>9</sup> and (3) 12 additional CPT Code 99213 office visits for the period beginning July 29, 2003, and ending October 28, 2003. For all other treatment services MR&D is not entitled to reimbursement either because it failed to meet its burden of proof or because TMIC met its burden of proof.

## II. FINDINGS OF FACT

1. \_\_\_\_ (Claimant) suffered a work-related injury to her lumbar spine on or about \_\_\_\_.
2. Claimant was transported to Harris Methodist Hospital where x-rays were obtained of her neck and lower back. Vicodin was prescribed and a treatment plan recommended.
3. Following continued pain, Claimant went to Main Rehab & Diagnostic (MR&D).
4. Claimant was initially examined at MR&D on July 28, 2003, by Robert Bedford, D.C., and treatment began on July 29, 2003. Dr. Bedford was Claimant's primary care giver.
5. Claimant received both active and passive physical therapy.
6. On September 29, 2003, Dr. Bedford referred Claimant to Crawford Sloan, M.D., for a medical evaluation.
7. On October 1, 2003, Alan B. Hirschman, M.D., examined Claimant and recommended lumbar epidural steroid injections (ESIs) at L4-5 and facet joint injections at L4-5 and L5-S1.
8. Claimant began a work hardening program on or about October 28, 2003.

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<sup>9</sup> Manual therapy was initially invoiced on August 1, 2003, and was invoiced for the following dates of service: August 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 18, 19, 20, 22, 25, 26, 27, and 28. TMIC reimbursed MR&D for one unit of manual therapy on dates of service August 7 and 20. One unit of manual therapy is reimbursable per reimbursable office visit from August 1 through August 29. A total of 13 office visits from August 1 through August 29 were reimbursable. As TMIC has already reimbursed MR&D for two CPT Code 97140 manual therapy treatments during that time period, TMIC is liable to MR&D for an additional 11 units of CPT Code 97140 manual therapy treatments during that time period.

9. On December 17, 2003, Claimant began a daily pain management program at AmeriCARE Pain Management supervised by Jacob Liebman, M.D.
10. An August 5, 2003 radiological report suggested lumbar hypolordosis, degenerative joint disease, and mild thoracolumbar curvature.
11. An August 5, 2003 interpretation of the MRI reported (1) a mild, 2-3mm broad, right foraminal disc protrusion at L4-5 with the protruding disc causing mild right-sided foraminal stenosis (narrowing) at that segment, (2) a mild degenerative hypertrophy involving both facet joints at L4-5 and L5-S1, and (3) mild disc dehydration from L3-4 through L5-S1.
12. Robert Lowry, M.D., concluded in his August 28, 2003 interpretation of the electrophysiological studies, that no evidence of lumbar radiculopathy, lumbosacral plexopathy or distal mononeuropathy was recorded in the electrodiagnostic studies of Claimant's lower extremities.
13. Wright W. Singleton, M.D., conducted an Independent Medical Examination on October 2, 2003. He diagnosed the injury as low back strain.
14. Anil T. Bangale, M.D., evaluated Claimant on November 18, 2003, and concluded she had not reached Maximum Medical Improvement (MMI).
15. By January 28, 2004, Dr. Bedford reported the Claimant's pain was infrequent and mild. He returned her to work and placed her at MMI. She was given a home exercise program to address lumbar issues.
16. During her initial treatments at MR&D, Claimant was prescribed Celebrex as an anti-inflammatory and Darvocet for pain. At AmeriCARE, Dr. Liebman prescribed Flexeril for muscle spasms.
17. Claimant's pharmaceutical program remains essentially unchanged during her treatments.
18. Dr. Bedford prescribed various therapeutic exercises for Claimant including: the treadmill; the stationary bike; the small and large Wobble Boards; unilateral and bilateral knee to chest flexion; lumbar kneeling flexion; unilateral arm and leg extensions; prone on elbows; press-up; wall lean stretch; angry cat stretch; knee to chest stretch on all-fours; lower trunk rotation stretch; and quadriceps, hamstring and active hamstring stretches.
19. Claimant performed the therapeutic exercises at MR&D with CPT Code 97110 one-on-one supervision.
20. Dr. Bedford did not document any particular physical difficulty Claimant experienced in attempting to perform her therapeutic exercises.
21. At AmeriCARE, during the physical therapy assessment, Dr. Liebman determined Claimant needed no supervision for correct exercise performance.
22. Claimant's obesity and complaints of cervical and lumbar pain, justified one-on-one supervision during the initial stages of treatment until a reasonable determination could be made about her ability to participate in either group or unsupervised treatment and exercise programs.

23. One-on-one supervised activities were appropriate only during the initial two weeks of care.
24. By August 8, 2003, MR&D should have concluded Claimant could perform the exercises without one-on-one supervision.
25. Four units per session from July 29, 2003, through August 8, 2003, of CPT Code 97110 therapeutic exercises were medically necessary.
26. Texas Mutual Insurance Company (TMIC) previously reimbursed MR&D for 28 units of CPT Code 97110 therapeutic exercises between July 29, 2003, and August 8, 2003.
27. MR&D is entitled to reimbursement for an additional eight units of CPT Code 97110 therapeutic exercises.
28. It is not possible to accurately determine Claimant's true pain status or to measure any improvement in her pain status.
29. Dr. Bedford's claims about Claimant's progress during his treatment are inconsistent with the referral for chronic pain management and with the findings of other medical providers.
30. Dr. Bedford's daily notes are generalized and do not indicate the relative magnitude of Claimant's pain on the 10-point scale, where ten is maximum pain and zero is no pain.
31. Initially, Claimant's pain ranged from a sharp pain to a dull and achy pain.
32. Throughout September 2003, Dr. Bedford determined Claimant's condition was improving and low back pain and muscle spasms were diminished.
33. Dull and achy neck pain remained Claimant's major complaint.
34. On September 24, 25, and 29, 2003, Claimant's pain was diminished, mild and infrequent.
35. On October 1, 2003, Claimant's pain was a 7 on a 10-point scale.
36. On November 19, 2003, Claimant's low back pain was a 6.
37. Claimant began chronic pain treatment with Dr. Liebman and AmeriCARE on December 17, 2003.
38. Between December 18, 2003, and December 26, 2003, Claimant's perceived level of pain ranged from 4 to 6.
39. Contrary to Dr. Bedford's assertions, MR&D's treatment regimen did not alleviate or reduce Claimant's pain.
40. Despite daily treatments, MR&D determined Claimant achieved mixed results in lumbar range of motion.
41. Dr. Bedford's late-October determination that Claimant had regressed is inconsistent with Dr. Sloan's mid-November determination that Claimant's lumbar range of motion was within normal limits.

42. Claimant's statements about her condition made to Dr. Bangale on November 18, 2003, are inconsistent with other evidence and diminish the evidentiary value of Claimant's statements about her condition and the conclusions of the medical providers who relied upon those statements.
43. During her Functional Capacity Evaluation on October 2, 2003, Claimant provided poor effort and inconsistent pain behaviors.
44. A trial of care for four to six weeks, with three visits per week, was reasonable.
45. Given the Claimant's initial condition and the lack of demonstrated progress during the trial period of July 29, 2003 through August 29, 2003, 16 total office visits were reasonable.
46. For the remainder of the time period through October 28, 2003, one visit per week was reasonable to monitor Claimant.
47. After August 29, 2003, an additional nine office visits, one office visit per week for the period September 1, 2003, through October 31, 2003, were medically necessary to monitor Claimant.
48. MR&D is entitled to reimbursement from TMIC for 12 additional CPT Code 99213 office visits.
49. Manual therapy was initially invoiced on August 1, 2003, and was invoiced for the following dates of service: August 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 18, 19, 20, 22, 25, 26, 27, and 28. TMIC reimbursed MR&D for one unit of manual therapy on dates of service August 7 and 20.
50. One unit of manual therapy is reimbursable per reimbursable office visit from August 1 through August 29. A total of 13 office visits from August 1 through August 29 were reimbursable. As TMIC has already reimbursed by MR&D for two CPT Code 97140 manual therapy treatments during that time period, TMIC is liable to MR&D for an additional 11 units of CPT Code 97140 manual therapy treatments during that time period.
51. TMIC denied MR&D reimbursement for the disputed chiropractic treatment services based upon medical necessity.
52. The Texas Workers' Compensation Commission (Commission), acting through Independent Review Organizations (IROs), found that some, but not all, disputed treatment services were medically necessary for the treatment of Claimant.
53. In SOAH Docket No. 453-04-8367.M5, MR&D, on August 2, 2004, timely requested a hearing following a July 16, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission). The Commission's July 16, 2004 Findings and Decision relied upon a June 10, 2004 decision of Envoy Medical Systems, L.P., an (IRO), and denied reimbursement for chiropractic services and work hardening provided by MR&D to Claimant for dates of service ranging from July 29, 2003, through December 1, 2003. The treatment services included joint mobilization, therapeutic exercises, manual therapy techniques, office visits, massage therapy, muscle testing and neuromuscular re-education.

54. In SOAH Docket No. 453-05-2679.M5, on November 1, 2004, TMIC timely requested a hearing following an October 15, 2004 Findings and Decision of the Commission (October Decision). The Commission's October Decision for medical necessity dates of service ranging from August 6, 2003, through December 16, 2003, relied upon a September 30, 2004 decision of Specialty Independent Review Organization, Inc., an IRO, and ordered reimbursement for (1) four units per day of CPT Code 97110 therapeutic exercise for dates of service from August 6, 2003 through August 28, 2003, (2) one unit per day of CPT Code 97140 manual therapy for dates of service from August 6, 2003, through August 28, 2003, and (3) all CPT Code 99213 office visits. The October decision denied reimbursement for (1) CPT Code 95833 muscle testing, (2) CPT Code 97110 therapeutic procedures on October 7, 2003, (3) CPT Code 97032 electrical stimulation and CPT Codes 97545-WH and 97546-WH work hardening.
55. In its October Decision, the Commission addressed certain medical fee disputes through January 28, 2004, and ordered reimbursement for CPT Code 95831 on September 3, 2003, CPT Code 97750-FC on December 9, 2003, and CPT Code 99455-V5-WP on January 28, 2004 (Disputed Medical Fee Services).
56. By the commencement of the hearing on the merits, MR&D withdrew its request for hearing on all claims for work hardening and TMIC agreed to pay the Disputed Medical Fee Services.
57. As of the date the record closed, the treatment dates in issue were July 29, 2003, through October 28, 2003.
58. As of the date the record closed, the only services in dispute were chiropractic treatment services for the lumbar spine, including joint mobilization, therapeutic exercises, manual therapy techniques, office visits, massage therapy, muscle testing and neuromuscular re-education.
59. The Commission issued a notice of hearing on August 23, 2004, in SOAH Docket No. 453-04-8367.M5.
60. The Commission issued a notice of hearing on December 14, 2004, in SOAH Docket No. 453-05-2679.M5.
61. The notices of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
62. The dockets were joined for hearing and decision.
63. The hearing on the merits convened on August 10, 2005, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Scott Hilliard represented MR&D and Timothy Riley represented TMIC. David Alvarado, D.C., testified for TMIC and Osler Kamath, D.C., testified for MR&D. Following the conclusion of the evidentiary proceeding, the parties agreed to file additional written materials. Those materials, Joint Exhibit No. 1, were filed in the late afternoon of October 4, 2005, and were admitted into evidence by Order dated October 5, 2005. The record closed on October 5, 2005.

### III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The parties' requests for a hearing were timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The party requesting the contested case hearing has the burden of proof.
6. The preponderance of the evidence demonstrated some, but not all of the disputed treatment services provided by MR&D to Claimant were reasonable and medically necessary.
7. The preponderance of the evidence demonstrated MR&D is entitled to reimbursement from TMIC for the following disputed treatment services provided to Claimant: (1) eight additional units of disputed CPT Code 97110 therapeutic exercises for dates of service beginning July 29, 2003, and ending August 8, 2003; (2) 11 additional units of CPT Code 97140 manual therapy treatments for the period beginning July 29, 2003, and ending August 29, 2003; and (3) 12 additional CPT Code 99213 office visits for the period beginning July 29, 2003, and ending October 28, 2003.
8. With respect to all other remaining disputed treatment services, either the preponderance of the evidence demonstrated they were neither medically necessary nor reasonable and MR&D is not entitled to reimbursement from TMIC.

**ORDER**

**THEREFORE IT IS ORDERED** that Texas Mutual Insurance Company reimburse Main Rehab & Diagnostic for the following chiropractic treatment services, including any applicable interest, provided to injured worker \_\_\_ for dates of service beginning July 29, 2003, and ending October 28, 2003: (1) eight units of CPT Code 97110 therapeutic exercises; (2) 11 units of CPT Code 97140 manual therapy treatments; and (3) 12 CPT Code 99213 office visits. All relief not expressly granted herein is DENIED.

**SIGNED December 2, 2005.**

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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**