

<b>SOUTH COAST SPINE &amp; REHAB, P.A.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
<b>V.</b>	§	<b>OF</b>
<b>AMERICAN MANUFACTURERS</b>	§	
<b>MUTUAL INSURANCE,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

## DECISION AND ORDER

### I. DISCUSSION

South Coast Spine and Rehab, P.A. (South Coast) requested a hearing to contest the denial for reimbursement of services including office visits, massage, aquatic therapy, and therapeutic exercises from March 25, 2004, through April 20, 2004. This decision GRANTS the relief sought by South Coast and requires reimbursement for the disputed services in the amount of \$1,223.41.

The hearing convened on February 24, 2005, before Administrative Law Judge (ALJ) Wendy K. L. Harvel. Robert S. Howell, D.C. represented South Coast. Tommy W. Lueders, II represented American Manufacturers Mutual Insurance (Carrier). There were no contested issues of notice or jurisdiction. The hearing adjourned and the record closed the same day.

### II. BACKGROUND<sup>1</sup>

Claimant sustained a work-related injury on \_\_\_\_, while loading a truck. He went to South Coast for treatment on October 31, 1996. He was diagnosed with lumbar spondylosis, lumbar disc degeneration, lumbar facet syndrome, and lumbar sprain/strain. On December 10, 1997, he underwent surgery and received a laminectomy, foraminotomy, discectomy, posterior lumbar interbody fusions, as well as other procedures.

On July 31, 1998, Claimant returned to South Coast for a consultation. Dr. Howell, Claimant's treating doctor, had been unaware that Claimant had undergone surgery. Claimant had also entered a return-to-work program with a different chiropractor, which was unsuccessful because Claimant was unable to return to work. Claimant subsequently entered a return-to-work program under Dr. Howell's supervision and was able to return to work.

On March 3, 2003, Claimant again presented to Dr. Howell, approximately two years after his previous visit. He complained that bending, lifting, or sitting was aggravating his lower back. He received an MRI, which revealed disc desiccation and central disc protrusion, as well as evidence of the surgery performed in 1997. On June 5, 2003, Claimant entered a treatment program for his back injuries, including aquatic therapy, spray and stretch, ultrasound, and massage. This treatment

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<sup>1</sup> The background information is in Ex. 2, at 121-124.

reduced his pain, and he began a home exercise program after his last day of therapy on June 25, 2003.

In March 2004, Claimant reported an exacerbation of his lower back pain. Dr. Howell recommended aquatic therapy, massage therapy, and therapeutic exercises. Following the therapy, Claimant improved his range of motion by between 12 and 20 percent. South Coast submitted its bills for the treatment on four dates of service: March 25, March 31, April 8, April 12, and April 20, 2004 to Carrier. Carrier denied reimbursement for the services as not medically necessary, citing the denial code U, for unnecessary treatment without peer review. South Coast appealed. An Independent Review Organization (IRO) found that the services were not medically necessary. The Texas Workers' Compensation Commission agreed with the IRO and issued a decision denying reimbursement on October 28, 2004.

### **III. ANALYSIS**

Dr. Howell argues that the therapy he provided for the Claimant allowed the Claimant's range of motion to improve significantly. He argues that he is continuing to treat Claimant's work-related injury and that his treatments improve the Claimant's condition and allow him to continue working.

Carrier argues that Claimant's range of motion did not improve until the last day of treatment. Carrier further argues that at the time Claimant underwent the treatment, he was working and had a full-duty release. Carrier contends there was no indication that Dr. Howell's care enhanced the ability of the Claimant to return to work.

Employees have a right to necessary health treatment under TEX. LABOR CODE §§ 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."

The ALJ agrees with Carrier that Dr. Howell's treatment did not enhance the ability of the Claimant to return to employment. However, the statute does not require that treatment provided enhance the ability of the employee to return to work. Rather, the statute also entitles the employee to care that relieves the effects naturally recurring from the compensable injury. Dr. Howell's treatment records indicate that he has seen the Claimant for lower back problems resulting from his compensable injury. Dr. Howell indicated that Claimant's increase in pain was the result of his compensable injury. The medical evidence indicates that Dr. Howell's care relieved the pain resulting from the compensable injury. Therefore, the ALJ concludes that Carrier shall reimburse Dr. Howell for the treatment provided.

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

1. Claimant sustained a work-related injury on \_\_\_ while loading a truck.

2. Claimant received an initial medical exam on October 31, 1996, at South Coast, where he was diagnosed with lumbar spondylosis, lumbar disc degeneration, lumbar facet syndrome, and lumbar sprain/strain.
3. On December 10, 1997, Claimant underwent surgery on his back and received a laminectomy, foraminotomy, discectomy, posterior lumbar inter-body fusions, and other procedures.
4. On July 31, 1998, Claimant returned to South Coast for a consultation. At that time, Claimant had not been able to return to work.
5. Claimant entered a return-to-work program at that time and successfully returned to work.
6. On March 3, 2003, Claimant returned to South Coast where he entered a treatment program that successfully reduced his pain.
7. In March 2004, Claimant returned another time to South Coast where he indicated he had an exacerbation in his lower back pain.
8. Claimant underwent aquatic therapy, massage therapy, and therapeutic exercises. Following this therapy, he improved his range of motion by between 12 and 20 percent.
9. South Coast Spine & Rehab Center, P.A. (South Coast), sought reimbursement from American Manufacturers Mutual Insurance for chiropractic services including office visits, massage, aquatic therapy, and therapeutic exercises, from March 25, 2004, through April 20, 2004.
10. Carrier denied reimbursement. South Coast timely appealed Carrier's denial. The Independent Review Organization found that the treatments were not medically necessary. The Medical Review Division of the Texas Workers Compensation Commission determined that South Coast did not prevail on the issue of medical necessity.
11. South Coast properly appealed the decision of the Texas Workers' Compensation Commission.
12. The treatment provided to Claimant relieved the effects naturally resulting from Claimant's compensable injury.
13. The treatment provided to Claimant was medically necessary.

## **V. 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. South Coast timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§ 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. South Coast had the burden of proof, which was the preponderance of evidence standard. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i).
6. South Coast demonstrated that Claimant's treatment was reasonable and medically necessary for the treatment of Claimant's injury, pursuant to TEX. LABOR CODE § 408.021(a).
7. Based upon the Findings of Fact and Conclusions of Law, South Coast is entitled to reimbursement in the amount of \$1,223.41.

**ORDER**

**THEREFORE IT IS ORDERED** that American Manufacturers Mutual Insurance shall reimburse South Coast Spine & Rehab, P.A., in the amount of \$1,223.41, plus applicable interest.

**SIGNED March 22, 2005.**

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**WENDY K. L. HARVEL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**