

**SOAH DOCKET NO. 453-05-2835.M5
TWCC MDR NO. M5-05-0084-01**

**LIBERTY MUTUAL
INSURANCE COMPANY,
Petitioner**

v.

**DFW PAIN CENTER, INC.,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Liberty Mutual Insurance Company (Carrier) appealed the decision of Speciality Independent Review Organization, Inc., an independent review organization (IRO), in Texas Workers' Compensation Commission (TWCC)¹ Medical Review Division (MRD) tracking number M5-05-0084-01, granting partial reimbursement for medical services provided to the Claimant. This decision orders that the Carrier is required to reimburse DFW Pain Center, Inc. (Provider) \$3,052 for the contested services.

The Administrative Law Judge (ALJ) convened a hearing on August 22, 2005. The hearing was concluded and the record closed that day. The Carrier appeared through its representative Charlotte Salter, attorney. The Provider failed to appear.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Provider for medical services provided between September 8, 2003, and July 16, 2004, and billed under CPT Codes 99213 (office visit), 97530 (therapeutic activities), 97110 (therapeutic exercises), 95851 (range of motion testing), and 97750 (physical performance testing). The Carrier denied

¹ Effective September 1, 2005, the functions of TWCC were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

payment for the medical services provided to the Claimant on the basis that none of the services were medically necessary or reasonably required to treat the compensable injury. According to the table of disputed services, the amount in controversy is \$4,183.00.²

The issue presented in this proceeding is whether the Carrier should reimburse the Provider for medical services provided between September 8, 2003, and July 16, 2004, and billed under CPT Codes 99213 (office visit), 97530 (therapeutic activities), 97110 (therapeutic exercises), 95851 (range of motion testing), and 97750 (physical performance testing). The Carrier denied payment for the medical services provided to the Claimant on the basis that none of the services were medically necessary or reasonably required to treat the compensable injury. According to the table of disputed services, the amount in controversy is \$4,183.00.³

The documentary record consisted of two exhibits presented by the Carrier, Exh. A (620 pages) and Exh. B (5 pages). Additionally, Kevin Tomsic, D.C., testified as an expert witness on behalf of the Carrier.

The Claimant suffered an injury to his lumbar spine, right knee, and left hip on____, when he fell off a ramp while loading a truck. He was treated with passive and active therapies, surgery, injections, and rehabilitative services. Diagnostic tests included imagining studies of the lumbar spine, a lumbar CT and discogram, and neurodiagnostic testing. The Claimant was assigned an 11% impairment rating with maximum medical improvement on July 16, 2004.⁴

² The Carrier's expert witness testified that an additional \$1,302.00 in services denied by the IRO were medically necessary and should be paid. However, denial of those services was not appealed by the Provider and payment for those services will not be considered by the ALJ.

³ The Carrier's expert witness testified that an additional \$1,302.00 in services denied by the IRO were medically necessary and should be paid. However, denial of those services was not appealed by the Provider and payment for those services will not be considered by the ALJ.

⁴ Exh. A, pages 2 and 3.

Dr. Tomsic, who has been licensed by the State of Texas as a chiropractor since 1993, is board certified in several disciplines, including pain management, and is on TWCC's list of approved doctors. He reviewed the Claimant's medical records and the IRO decision in preparation for his testimony. According to Dr. Tomsic, the IRO was correct in finding that medical services billed under CPT Codes 99213, 97530, and 97110 delivered from September 8, 2003, through January 21, 2004, were medically necessary.

Regarding the remaining medical services, Dr. Tomsic stated that the Claimant's rehabilitation should have been completed by January 21, 2004, and that any services delivered after that date were not medically necessary. Further, Dr. Tomsic testified that range of motion and muscle testing billed under CPT Codes 95851 and 97750 should not be paid because the Carrier had paid for the services under CPT Code 99213. The Carrier concluded by requesting a decision comporting with the testimony of Dr. Tomsic.

Even though Dr. Tomsic testified for the Carrier, his testimony supported payment to the Provider for some of the services delivered to the Claimant. Based on the testimony of Dr. Tomsic, the ALJ concludes the Carrier failed to establish that the contested medical services billed under CPT Codes 99213, 97530, and 97110 delivered from September 8, 2003, through January 21, 2004, were not medically necessary.

Dr. Tomsic's testimony regarding the need for medical services after January 21, 2004, and the unbundling of range of motion and physical performance testing from office visits was not refuted due to the Provider's failure to appear. Therefore, the Carrier should not be required to reimburse the Provider for these services.

III. FINDINGS OF FACT

1. On ____, the Claimant suffered a compensable injury to his lumbar spine, right knee, and left hip.

2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Liberty Mutual Insurance Company (Carrier).
3. DFW Pain Center, Inc. (Provider) began treating the Claimant on July 8, 2003, for a diagnosis of lumbar spine injury.
4. The Carrier denied reimbursement to the Provider for medical services provided between September 8, 2003, and July 16, 2004, and billed under CPT Codes 99213 (office visit), 97530 (therapeutic activities), 97110 (therapeutic exercises), 95851 (range of motion testing), and 97750 (physical performance testing) on the basis that the treatment was not medically necessary to treat the injury.
5. The Carrier failed to submit evidence showing that the services billed under CPT Codes 99213, 97530, and 97110 in the amount of \$3,052 were not medically necessary.
6. The Claimant had adequate time to improve by January 21, 2004, and any services delivered after that date were not medically necessary.
7. The Provider billed the Carrier for office visits and range of motion and physical performance testing provided on the same dates of service.
8. The Carrier reimbursed the Provider for office visits but not for range of motion and physical performance testing provided on the same dates of service.
9. The Provider failed to justify unbundling range of motion and physical performance testing from the office visits provided on the same dates of service.
10. The Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC).
11. On November 1, 2004, the MRD issued its decision adopting the IRO decision concluding that the disputed expenses should be paid, and the Carrier timely appealed.
12. TWCC sent notice of hearing to the parties on December 20, 2004. The hearing notices informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
13. The hearing on the merits convened August 22, 2005, before Michael J. Borkland, Administrative Law Judge. The Carrier appeared through Charlotte Salter, attorney. The Provider failed to appear.

IV. CONCLUSIONS OF LAW

1. 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 and TEX. GOV'T CODE ch. 2003.
2. Based on Finding of Fact No. 12, the Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. §413.031.
4. Based on Finding of Fact No. 5, the medical services provided between September 8, 2003, and January 21, 2004, and billed under CPT Codes 99213 (office visit), 97530 (therapeutic activities), and 97110 (therapeutic exercises) were medically necessary.
5. Based on Findings of Fact Nos. 6 - 9, reimbursement for the disputed medical services billed after January 21, 2004, under CPT Codes 99213 (office visit), 95851 (range of motion testing), and 97750 (physical performance testing) should not be required.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Insurance Company is required to reimburse DFW Pain Center, Inc., \$3,052.00 for the disputed services provided in treating the Claimant.

SIGNED October 14, 2005.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**