

**SOAH DOCKET NOS. 453-05-2975.M5
MDR Tracking No. M5-04-2195-01**

LIBERTY MUTUAL FIRE	§	BEFORE THE STATE OFFICE
INSURANCE COMPANY,	§	
Petitioner	§	
V.	§	OF
	§	
THOMAS J. MUNDHEIM, D.C.,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Liberty Mutual Fire Insurance Company (the "Carrier") appeals the decision of the Independent Review Organization (IRO) requiring reimbursement of \$2,917 for therapeutic exercises, office visits, manual traction, kinetic activities, and aquatic therapy/exercises provided to a workers compensation claimant from March 17, 2003 through June 11, 2003. The Administrative Law Judge (ALJ) concludes the Carrier has proven by a preponderance of the evidence that the services in dispute were not medically necessary. Therefore, the ALJ reverses the decision of the IRO awarding reimbursement for these services.

I. NOTICE AND HEARING

The hearing convened March 16, 2005, at the hearing facilities of the State Office of Administrative Hearings (SOAH) before SOAH ALJ Kerry D. Sullivan. The Carrier was represented by Kevin J. Franta. Dr. Mundheim, the Provider, represented himself via telephone. The record was left open to allow the parties to file a table of disputed services and a copy of the IRO decision. The record finally closed on May 24, 2005.

II. BASIS FOR DECISION

The Claimant was injured on ____, when he was hit in the face by a 40-pound box while working for United Parcel Service. Since then, the Claimant has received extensive conservative

care, including 111 chiropractic visits prior to the services in dispute here. The Claimant was also undergoing a work hardening program during the period in dispute, and the Carrier reimbursed the Respondent for services billed pursuant to that program.

Objective diagnostic studies of the Claimant reveal only degenerative changes, indicating the compensable claim was a soft tissue injury.

The ALJ is persuaded by the testimony of Kevin Tomsic, D.C., who testified that the treatment provided was excessive. He testified that chiropractic care and active therapy should have been terminated by June 19, 2002, after which it failed to improve the Claimant's condition. Alternatively, Dr. Tomsic stated that the most generous medical guidelines would allow only six months of care for such injuries, and then only if the claimant were responding well to it – which this Claimant was not. The services in dispute fall well outside that time frame.

Finally, the disputed services were not billed as part of the work hardening program even though similar services were also provided in that program. The ALJ also does not believe the disputed services were necessary to supplement the work hardening program or to avoid deconditioning during the period leading up to the program. General conditioning could have been maintained through a home exercise program. While Dr. Mundheim stated that claimants often fail to comply with such programs, the ALJ does not believe an unverified concern regarding potential compliance warrants the more intensive and expensive treatment provided here.

III. FINDINGS OF FACT

1. The Claimant suffered a compensable work-related injury on ____.
2. Liberty Mutual Fire Insurance Company (the “Carrier”) is the provider of workers’ compensation insurance covering the Claimant for his compensable injury.
3. Respondent Thomas J. Mundheim provided therapeutic exercises, office visits, manual traction, kinetic activities, and aquatic therapy/exercises to the Claimant from March 17, 2003 through June 11, 2003.
4. The Carrier denied Dr. Mundheim reimbursement for the services described in Finding of Fact 3 on the basis that they were not medically necessary.

5. Dr. Mundheim requested medical dispute resolution by the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization.
6. The IRO found in favor of Dr. Mundheim with respect to the services in dispute in this proceeding.
7. On December 14, 2004, the Carrier requested a hearing, and the case was referred to the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent on December 28, 2004.
9. The notice contained a statement of the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing was to be held; a reference to the sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing was held March 16, 2005, with the Carrier and Dr. Mundheim participating. The hearing record closed on May 24, 2005.
11. The compensable injury was to soft tissue with no objective diagnostic findings. Chiropractic and physical therapy services should not normally be required more than six months after such injuries.
12. The disputed services were not necessary to avoid deconditioning leading up to or in conjunction with a work hardening program. Deconditioning could have been avoided through a home exercise program.
13. The services in dispute were not medically necessary.

IV. 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 (the 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 request for a hearing was 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. As the petitioner, the Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

6. The Carrier established by a preponderance of the evidence that the services in dispute were not medically necessary.
7. The Carrier should not be required to reimburse Thomas J. Mundheim, D.C., for the services in dispute.

ORDER

IT IS ORDERED that the Liberty Mutual Fire Insurance Company is not required to reimburse Petitioner for the therapeutic exercises, office visits, manual traction, kinetic activities, and aquatic therapy/exercises provided to the Claimant from March 17, 2003 through June 11, 2003.

SIGNED July 11, 2005.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**