

**SOAH DOCKET NO. 453-05-3198.M5
TWCC MR NO. M5-04-3283-01**

CHRISTOPHER M. LOAR, M.D.,
Petitioner

V.

**TEXAS MUTUAL INSURANCE
COMPANY,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Christopher M. Loar, M.D. (Petitioner), requested a hearing to contest the September 30, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through the Texas Medical Foundation, an Independent Review Organization (IRO), denying Petitioner reimbursement for a November 17, 2003 electrodiagnostic study¹ on the basis of medical necessity. The November 17, 2003 electrodiagnostic study consisted of an electromyography (EMG) of the upper right extremity and a nerve conduction study (NCV) of the upper right extremity. The amount in controversy is \$203.70.²

This Decision and Order grants the relief sought by Petitioner and orders reimbursement in the amount of \$203.70, plus any applicable interest.

¹ Electrodiagnostic studies are used to evaluate peripheral nerve function and are a diagnostic tool as opposed to a treatment modality.

² By the date of the hearing on the merits, all items in dispute were resolved except for one motor nerve conduction study (CPT Code 95903) and two sensory nerve conduction studies (CPT Code 95904). CPT Code 95903 has a Maximum Allowable Reimbursement (MAR) of \$80.14 and CPT Code 95904 has a MAR of \$61.78.

The hearing convened on June 14, 2005, before Administrative Law Judge (ALJ) Howard S. Seitzman. Petitioner appeared *pro se*. Timothy P. Riley represented Texas Mutual Insurance Company (TMIC or Respondent). Petitioner was the only witness who testified. The hearing adjourned and the record closed that same day.

___ (Claimant) sustained a repetitive motion work-related injury on ___. Claimant's treating physician referred Claimant to Petitioner, a board certified neurologist, for diagnostic testing. On November 17, 2003, Petitioner examined Claimant and administered an EMG/NCV. Claimant experienced pain, weakness and numbness in her right hand. Petitioner performed the EMG/NCV to evaluate for possible cervical radiculopathy, plexopathy or mononeuropathy of the median, ulnar or radial nerves.

Respondent relied solely on the rationale in the September 2, 2004 IRO Decision as its basis for alleging the one motor nerve and two sensory nerve conduction studies (Disputed Services) were not medically necessary. The September 2, 2004 IRO Decision is fundamentally flawed. For example, the IRO Decision refers to needle testing being conducted on the nerves. As Petitioner explained, needle testing is used on the muscle rather than on the nerve. While the IRO Decision stated, based on Claimant's history and examination results, that 'it was unlikely that the radial nerve was involved,' Claimant's physical examination and history did not preclude involvement of the radial nerve. As noted in both Petitioner's testimony and in the documentary evidence in the record, Claimant's description of the locus of her symptoms was insufficient to rule out involvement of the radial nerve.

The testing performed by Petitioner³ conformed to the American Association of Electrodiagnostic Medicine's 'Proposed Policy for Electrodiagnostic Medicine.' The IRO decision was authored by a pain management specialist.⁴ There is no evidence to suggest the IRO physician reviewer was a neurologist. Petitioner is a neurologist and not a pain management specialist. Perhaps this difference in specialties accounts for the inaccuracies and errors in the IRO decision with respect to the testing performed by Petitioner. Whatever the cause, the inaccuracies in the IRO Decision are fundamental.

Petitioner met his burden of proof. The preponderance of the credible evidence in the record shows that the Disputed Services provided by Petitioner to Claimant on November 17, 2003, were reasonable and medically necessary.

II. FINDINGS OF FACT

1. ___ (Claimant) sustained a repetitive motion work-related injury on ___.
2. Claimant's treating physician referred Claimant to Christopher M. Loar, M.D. (Petitioner), a board certified neurologist, for diagnostic testing.
3. On November 17, 2003, Petitioner examined Claimant and administered an electrodiagnostic study consisting of an electromyography (EMG) of the upper right extremity and a nerve conduction study (NCV) of the upper right extremity.
4. Electrodiagnostic studies are used to evaluate peripheral nerve function and are a diagnostic tool as opposed to a treatment modality.
5. Petitioner performed the EMG/NCV, one needle EMG, two motor NCVs and five sensory studies, to evaluate for possible cervical radiculopathy, plexopathy or mononeuropathy of the median, ulnar or radial nerves.
6. Claimant experienced pain, weakness and numbness in her right hand.

³ One needle EMG, two motor NCVs and five sensory studies.

⁴ As with all IRO decisions, the IRO reviewer is anonymous. Further, only a cursory summary of the IRO reviewer's decision and rationale is provided.

7. Claimant's physical examination and history did not preclude involvement of the radial nerve.
8. Claimant's description of the locus of her symptoms was insufficient to rule out involvement of the radial nerve.
9. The testing performed by Petitioner conformed to the American Association of Electrodiagnostic Medicine's "Proposed Policy for Electrodiagnostic Medicine."
10. By the date of the hearing on the merits, all items in dispute were resolved except for one motor nerve conduction study (CPT Code 95903) and two sensory nerve conduction studies (CPT Code 95904).
11. CPT Code 95903 has a Maximum Allowable Reimbursement (MAR) of \$80.14 and CPT Code 95904 has a MAR of \$61.78.
12. The Texas Medical Foundation, an Independent Review Organization (IRO), in a September 2, 2004 decision concluded that Petitioner was not entitled to reimbursement for the Disputed Services.
13. The Texas Workers' Compensation Commission (Commission), in its September 30, 2004 Findings and Decision (Commission Decision), denied Petitioner reimbursement for the Disputed Services because the IRO found them not medically necessary.
14. Petitioner requested a hearing to contest the Commission Decision.
15. The Commission issued a notice of hearing on January 31, 2005.
16. The hearing on the merits convened on June 14, 2005, before Administrative Law Judge (ALJ) Howard S. Seitzman. Petitioner appeared *pro se*. Timothy P. Riley represented Respondent. The hearing adjourned and the record closed that same day.

III. CONCLUSIONS OF LAW

1. The 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 proving by a preponderance of the evidence that the Disputed Services were reasonable and medically necessary. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Petitioner proved by a preponderance of the evidence that the Disputed Services were reasonable and medically necessary.
8. Petitioner is entitled to reimbursement from Respondent for the Disputed Services.

ORDER

THEREFORE IT IS ORDERED that Texas Mutual Insurance Company reimburse Christopher M. Loar, M.D., \$203.70, plus any applicable interest for the Disputed Services provided to Claimant on November 17, 2003.

SIGNED June 20, 2005.

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