

**SOAH DOCKET NO. 453-05-3199.M5
MR NO. M5-04-4091-01**

**REAL HEALTH CARE,
Petitioner**

V.

**TEXAS MUTUAL INSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Real Health Care (Petitioner) seeks reimbursement of \$4,975 for office visits, electrical stimulation, ultrasound, therapeutic procedures and activities, neuromuscular reeducation, massage, manual therapy technique, and mechanical traction provided to a worker's compensation claimant from August 1, 2003 through March 26, 2004. The Texas Workers' Compensation Commission (Commission), acting through an independent review organization (IRO), denied reimbursement on the basis that the services were not medically necessary. This decision also denies the requested reimbursement.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed in the findings of fact and conclusions of law. The hearing convened on June 15, 2005, before Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner was represented by Sam W. Randolph. Texas Mutual Insurance Company (the Carrier) was represented by Timothy Riley. The record closed on June 22, 2005, with the filing of the Carrier's withdrawal of its motion to dismiss.

II. BASIS FOR DECISION

On ____, the Claimant suffered a compensable injury when the bus she was driving was hit by a car and forced off the road into a ditch. The Claimant injured her neck, back, and both knees. She

underwent left knee arthroscopy in March 2003 and, prior to the time period of the disputed services, she received 73 office visits and a variety of active and passive physical therapy from the Petitioner.

The evidence at hearing consisted of 617 pages of medical records pertaining to the Claimant. In addition, the Carrier presented the testimony of William Defoyd, a chiropractor. In the ALJ's view, the Petitioner failed to carry its burden of proving the disputed services were medically necessary. Both the IRO and Dr. Defoyd believed the services were unnecessary in light of the many largely unsuccessful sessions of this type of treatment previously provided to the Claimant, their beliefs that such services beyond the initial stages of treatment can slow recovery and promote chronicity, and their opinions that the physical therapy could have been provided in a less intensive environment than the one-on-one setting employed here. There is no basis in the record to disagree with these assessments.

More to the point, the burden of proof rests with the Petitioner, and there is very little affirmative evidence in support of the Petitioner's position. The Petitioner's best point lies in the fact that some of the disputed services were provided during the same extended period the Claimant was also receiving a series of three epidural steroid injections. These were done in May, September, and October, 2003. The injections were apparently spread out over an unusually long period due to the Carrier's ultimately unsuccessful challenge to them.

The parties agree that some sort of physical therapy is appropriate as a follow-up to such injections while swelling is reduced. Additionally, the need for those injections has already been determined and is not before the ALJ. Nevertheless, the ALJ accepts the view of Dr. Defoyd that the procedures employed were excessive for this stage of recovery and that those activities which were necessary in some form – such as therapeutic exercise – could have been provided in a less intensive setting, and probably in the context of a home exercise program.¹ Billings for these sessions and their accompanying office visits comprise the large majority of the amount in dispute.

¹ The ALJ does not accept the Petitioner's suggestion that claimant's typically fail to comply with home exercise programs, rendering a more intensive setting necessary. Dr. Defoyd disputed this assertion and, in any event,

Based on the foregoing, the ALJ finds the disputed services were not shown to be medically necessary and that the request for reimbursement should, therefore, be denied.

III. FINDINGS OF FACT

1. The Claimant sustained a compensable injury on ____, when the bus she was driving was hit by a car and forced off the road into a ditch. The Claimant injured her neck, back, and both knees.
2. Texas Mutual Insurance Company (the Carrier) was the workers' compensation carrier for the Claimant's employer.
3. The Claimant's treating physician provided office visits, electrical stimulation, ultrasound, therapeutic procedures and activities, neuromuscular reeducation, massage, manual therapy technique, and mechanical traction from August 1, 2003 through March 26, 2004.
4. The Carrier denied reimbursement for the services described in Finding of Fact 3 as medically unnecessary.
5. The Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Carrier.
7. The Petitioner timely requested a hearing based on the IRO decision.
8. Notice of the hearing was sent February 2, 2005.
9. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing was held June 15, 2005, with representatives of the Petitioner and the Carrier participating.

claimants share the responsibility to participate in their recovery, at least in the absence of conditions that would preclude their doing so.

11. Prior to the time period of the disputed services, the Petitioner had already provided the Claimant 73 office visits and a variety of active and passive physical therapy without significant improvement.
12. The disputed services were not shown to be medically necessary in light of the extensive physical therapy already received by the Claimant without significant improvement. Additionally, a majority of the disputed services could have been provided in a less intensive group setting or through a home exercise program.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. The Petitioner did not establish that the disputed services were medically necessary to treat the Claimant's compensable injury.
6. The Petitioner's request for reimbursement should be denied.

ORDER

IT IS, THEREFORE, ORDERED that Real Health Care's request for reimbursement of \$4,975 for office visits, electrical stimulation, ultrasound, therapeutic procedures and activities, neuromuscular reeducation, massage, manual therapy technique, and mechanical traction provided to the Claimant from August 1, 2003 through March 26, 2004, is denied.

Signed September 8, 2005.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kerry D. Sullivan
Administrative Law Judge