

**SOAH DOCKET NOS. 453-04-1645.M5; 453-04-4686.M5; AND 453-05-3207.M5
M5-03-3309-01, M5-04-0963-01, AND M5-04-3218-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. WORK READY REHAB, Respondent		DECISION AND ORDER

I. STATEMENT OF CASE

Texas Mutual Insurance Company (Carrier) disputes three decisions of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission¹ in disputes regarding medical necessity for therapeutic exercises, procedures, gait training, and unusual travel fees provided by Work Ready Rehab (Provider) to ___ (Claimant). The IRO in each decision found that Carrier improperly denied reimbursement for certain services-therapeutic exercises, procedures, gait training, and unusual travel fees-provided from August 21, 2002, to July 17, 2003.

All IRO decisions involved the same Claimant, compensable injury, Carrier, and Provider. Carrier appealed these decisions. The only dispute addressed in this Decision and Order is whether the services were medically necessary, and the total amount originally in dispute is \$23,458.00. At the hearing Carrier agreed to reimburse Provider for additional services totaling \$4,388.00, reducing the disputed amount to \$19,070.00.² As set out below, the Administrative Law Judge (ALJ) finds most of the services were reasonably medically necessary to treat Claimant's compensable injury. The ALJ denies reimbursement for one unit of group therapeutic session and unusual travel, both which were erroneously billed twice in one day, and for device handling, for which there was no documentation. In sum, the ALJ finds that Carrier should reimburse Provider \$23,341.00, which consists of \$18,953 of the amount remaining in dispute and the agreed amount of \$4,388.00.

¹ Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

² Carrier agreed to reimburse certain services based on necessity for example, additional gait training after Claimant was fitted with a new prosthesis. Carrier agreed to pay \$4,388.00 out of \$23,458.00. See Carrier's Ex. 10.

II. JURISDICTION

The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2005. No party challenged such jurisdiction. However, Carrier argued in pre-hearing briefs that a third-party settlement impacted this dispute and that any SOAH final order granting reimbursement to Provider should require payment from Claimant, a non-party. In Joined Order No. 22, the ALJ determined that the only issue to be determined at hearing and in this Decision and Order was whether the contested services provided to Claimant were reasonable and necessary.

III. FINDINGS OF FACT

1. On___, Claimant___. suffered numerous injuries to his right side, shoulder, knee, and ankle when a load of steel fell off a truck and onto Claimant. The crushing injury broke bones and required multiple surgeries, including a partial amputation of Claimant's right foot in April 2002.
2. The injury described in Finding of Fact No. 1 was a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. ' 401.001 *et seq.*
3. On the date of Claimant's compensable injury, Texas Mutual Insurance Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
4. As a result of his compensable injury, Claimant was in the hospital for approximately two months and underwent eight surgeries.
5. Claimant had minimal physical therapy in the hospital.
6. Claimant first presented to Work Ready Rehab (Provider) on July 22, 2002, with a tear of the right medial collateral ligament, an external fixator in the right tibia and fibula, and amputation of his right toes and forefoot, with an open flap and drainage. He was in a wheel chair. Claimant had pain in his right knee and ankle, with a plate and screws in his right ankle, and severe right lower back pain. Additionally, Claimant's muscles were deconditioned and atrophic. He suffered from diabetes and had difficulty sleeping at night. Claimant could not perform independently some activities of daily living.
7. Claimant underwent range of motion strengthening for his right lower extremity, three times a week for four weeks beginning July 22, 2002. Carrier does not dispute these services.
8. Carrier initially contested the following medical services, which Provider furnished to Claimant. The table includes the dates, Current Procedural Terminology (CPT) codes, and maximum allowable reimbursements (MARs):

CPT	SERVICE DESCRIPTIONS	MAR (per)	CLAIM (units per)	DATES
97110	one on one therapy	\$35.00	\$35.00	6/24/03
97110	one on one therapy	\$35.00	\$70.00 (2 units)	9/13/02, 6/10/03, 6/12/03
97110	one on one therapy	\$35.00	\$105.00 (3 units)	10/17/02, 6/5/03
97110	one on one therapy	\$35.00	\$140.00 (4 units)	8/21/02, 8/23/02, 8/26/02, 8/27/02, 8/29/02, 9/04/02, 9/06/02, 9/11/02, 9/16/02, 9/19/02, 9/20/02, 9/23/02, 9/30/02, 10/1/02, 10/18/02, 10/22/02, 10/25/02, 10/29/02, 10/31/02, 11/11/02, 3/21/03, 6/26/03
97110	one on one therapy	\$35.00	\$175.00 (5 units)	9/26/02, 10/3/02, 10/7/05, 10/8/05, 10/11/05, 10/15/02, 10/24/02, 11/29/02, 1/6/03, 1/8/03, 1/10/03, 3/19/03, 6/16/03, 7/17/03
97110	one on one therapy	\$35.00	\$210.00 (6 units)	9/25/02, 10/28/02, 11/04/02, 11/05/02, 11/07/02, 11/27/02, 12/2/02, 12/4/02, 12/16/02, 12/20/02, 1/15/03, 1/24/03, 1/30/03, 2/5/03, 2/17/03, 2/19/03, 2/21/03, 3/6/03, 3/10/03, 3/12/03, 3/13/03, 3/26/03, 4/2/03, 4/8/03
97110	one on one therapy	\$35.00	\$245.00 (7 units)	9/5/02, 11/12/02, 12/4/02, 12/9/02, 12/11/02, 12/13/02, 12/16/02, 12/18/02, 1/13/03, 1/21/03, 1/23/03, 1/27/03, 1/31/03, 2/3/03, 2/12/03, 2/13/03, 2/14/03, 2/25/03, 3/20/03, 3/24/03, 4/3/03, 4/4/03, 6/13/03,
97110	one on one therapy	\$35.00	\$280.00 (8 units)	3/25/03
97116	gait training	\$35.00	\$35.00	2/17/03, 2/19/03, 2/21/03, 3/6/03, 3/21/03, 3/24/03, 5/22/03
97116	gait training	\$35.00	\$70.00 (2 units)	6/5/03, 6/10/03
97116	gait training	\$35.00	\$105.00 (3 units)	6/20/03, 6/24/03, 6/26/03, 6/27/03
97150	group therapeutic procedures	\$27.00	\$27.00	11/11/02, 11/27/02, 11/29/02, 12/2/02, 12/4/02, 12/6/02, 12/9/02, 12/11/02, 12/13/02, 12/16/02, 12/18/02, 12/20/02, 1/6/03, 1/8/03, 1/10/03, 1/13/03, 1/15/03, 1/21/03, 1/23/03, 1/24/03, 1/27/03, 1/30/03, 1/31/03, 2/3/03, 2/12/03, 2/13/03, 2/17/03, 2/19/03, 2/21/03, 2/25/03, 3/6/03, 3/10/03, 4/3/03, 4/4/03, 4/08/03, 5/22/03, 6/5/03, 6/10/03, 6/12/03, 6/13/03, 6/16/03, 6/20/03, 6/26/03, 6/27/03, 7/3/03, 7/11/03, 7/16/03, 7/17/03

97530	device handling	\$45.00	\$45.00	1/31/03
97750	physical performance test	\$38.00	\$76.00 (2 units)	5/22/03
99082	unusual travel	\$45.00	\$45.00	11/12/02, 11/27/02, 11/29/02, 12/2/02, 12/4/02, 12/6/02, 12/9/02, 12/11/02, 12/13/02, 12/16/02, 12/20/02, 01/6/03, 1/8/03, 1/10/03, 1/13/03, 1/15/03, 1/21/03, 1/23/03, 1/24/03, 1/27/03, 1/30/03, 1/31/03, 2/3/03, 2/5/03, 2/12/03, 2/13/03, 2/14/03, 2/17/03, 2/19/03, 2/21/03, 2/25/03, 3/6/03, 3/10/03, 3/12/03, 3/13/03, 3/19/03, 3/21/03, 3/24/03, 3/25/03, 3/26/03, 4/2/03, 4/3/03, 4/4/03, 4/8/03
99213	established patient office visit	\$48.00	\$48.00	10/7/02, 11/11/02, 1/30/03, 3/13/03
99213	established patient office visit	\$35.00	\$35.00	6/24/03

9. Carrier's billing records listed 13 units of CPT Code 97110, one-on-one therapeutic exercises, for December 4, 2002. However, Provider's daily notes indicate such services were performed over two days, December 4 and December 6, 2002. The chart in the above finding of fact reflects that Provider rendered six units of CPT Code 97110 on December 4 and seven units on December 6, 2002.
10. Carrier's estimate of \$23,458.00 as the amount originally in dispute was not contested by Provider.
11. On June 13, 2003, Provider billed twice for group therapeutic procedures, a code which cannot be charged twice on the same date of service.
12. On March 24, 2003, Provider erroneously billed twice for unusual travel.
13. There is no documentation concerning the need for Provider's charge under CPT code 97530, device handling, on January 31, 2003.
14. At the hearing, Carrier agreed to pay Provider for the following medical services to the Claimant on the dates and with the CPT codes and MARs shown below:

CPT	SERVICE DESCRIPTIONS	MAR (per unit)	PAYMENT	DATES
97110	one on one therapy	\$35.00	\$35.00	11/7/02, 11/11/02, 11/12/02, 12/11/02, 12/13/02, 12/16/02, 12/18/02, 12/20/02, 1/6/03, 1/8/03, 1/10/03, 1/13/03, 1/15/03, 1/21/03, 1/23/03, 1/24/03, 1/27/03, 3/20/03

97110	one on one therapy	\$35.00	\$70.00 (2 units)	11/25/02, 11/27/02, 11/29/02, 12/2/02, 12/4/02, 12/9/02, 1/30/03, 1/31/03, 2/3/03, 2/5/03, 12/13/03, 2/17/03, 2/19/03, 2/21/03, 2/25/03, 3/21/03
97110	one on one therapy	\$35.00	\$105.00 (3 units)	2/12/03, 2/14/03, 3/06/03, 3/24/03, 3/25/03; 6/5/03
97116	gait training	\$38.00	\$38.00	2/17/03, 2/19/03, 2/21/03, 3/21/03, 3/24/03, 5/22/03
97116	gait training	\$38.00	\$76.00 (2 units)	6/5/03; 6/10/03, 7/3/03; 7/16/03
97116	gait training	\$38.00	\$114.00 (3 units)	6/20/03
97150	group therapeutic procedures	\$27.00	\$27.00	11/7/02, 11/11/02, 11/25/02, 11/27/02, 11/29/02, 12/2/02, 12/4/02, 12/6/02, 12/9/02, 12/11/02, 12/13/02, 12/16/02, 12/18/02, 12/20/02, 1/6/03, 1/8/03, 1/13/03; 1/15/03, 1/21/03, 1/23/03, 1/24/03, 1/27/03, 1/30/03, 1/31/03, 2/3/03, 2/12/03, 2/13/03, 2/17/03, 2/19/03, 2/21/03, 3/6/03, 3/10/03, 4/3/03, 4/4/03, 4/8/03, 6/5/03, 6/10/03, 6/12/03, 6/13/03, 6/16/03, 6/20/03; 7/3/03, 7/11/03, 7/16/03, 7/17/03
97750	physical performance test	\$43.00	\$86.00 (2 units)	5/22/03
99213	established patient office visit	\$48.00	\$48.00	10/27/02, 11/11/02

15. Carrier's estimate of \$4,388.00 as the total amount for services no longer disputed by Carrier was not disputed by Provider.
16. Kevin J. Coupe, M.D., prescribed physical therapy for Claimant three times a week for four weeks on July 16, August 19, September 17, and October 16, November 19, and December 27, 2002, and February 7, and March 3, and July 3, 2003.
17. Provider's initial goal of Claimant's overall physical therapy was to return him to weightbearing status.
18. Richard Francis, M.D., examined Claimant on November 7, 2002. Claimant had pain in his lower back that did not respond to medication and made it unable for him to lie on his side. The pain was not coming from Claimant's spine but from his right back where a latissimus dorsi flap was removed for the amputation.
19. On November 7, 2002, Dr. Francis prescribed strengthening exercises and heat packs, tens unit, ultrasound, and phonophoresis, three times a week for eight weeks.
20. In the first months of therapy when Claimant could not stand, he was only able to tolerate a reduced number of exercises because he was confined to exercises on the mat and because he had high pain levels

21. Claimant took longer than usual to perform some exercises because he had a decreased tolerance for staying in certain positions. For instance, Claimant had less tolerance for exercises performed on his back and in the sitting position.
22. Overall, Claimant did not meet the criteria for most group exercises because he had an atypical and complex injury and, because of his level of pain, required constant modification such as repositioning, verbal and tactile cuing, and motivation. For instance, Claimant used cuff-type weights placed distal to his knee; however, these exercises were difficult to perform without involving the ankle and required extensive modification.
23. Extensive modifications to Claimant's rehabilitation exercises required one-on-one therapy because of pain, swelling, and knee problems
24. Claimant required one-on-one therapy because he had multiple injuries in the hip, knee, and ankle, which affected each other. Because the hip, knee, and ankle are all weight-bearing joints, progress required treatment targeted to one joint at a time.
25. Claimant's high pain complaints also necessitated one-on-one therapy to ensure proper compliance with the targeted muscle and to ensure motivation.
26. Based on Claimant's medial collateral ligament and meniscal injuries, Provider had specific safety concerns with certain exercises, and he required one-on-one therapy.
27. Even after ten months of physical therapy, Claimant was unable to perform his physical therapy in a gym setting because of the lack of supervision, safety concerns (Claimant was on crutches at the time), lack of independence, and inability to use even the minimum amount of weight found on gym machines.
28. A personal or athletic trainer, such as one found in a gym setting, is not a licensed physical therapist.
29. As early as October 18, 2002, Provider used group therapy billing for bicycle exercises.
30. Claimant was able use the stationary bicycle for ten minutes per session, which was billed under CPT code 97150, group therapy.
31. Provider prescribed a home exercise program for Claimant limited to lower-level exercises that he could perform correctly. This home exercise program was augmented over the course of treatment.
32. When Claimant first began physical therapy with Provider, his muscle strength was rated as two plus to three out of five, with five being the highest level. At the end of his therapy, he progressed to a four or four plus, which is good given the extent of Claimant's bone and tissue problems.
33. Weight-bearing activity occurs when a patient's heel touches the ground.
34. On August 14, 2002, Claimant performed hamstring curls, which required his foot to be on the floor.

35. As of August 29, 2002, Claimant was still addressing issues specific to traumatic amputation. He could only tolerate 40-45 minutes of his lower extremity hanging in the dependent position because of swelling.
36. As of August 29, 2002, Claimant was making slow and limited progress. He had increased range of motion, scar tissue mobility, and lower extremity strength.
37. By September 2002, Claimant progressed to partial and toe-touch weight bearing, as well as sitting weight bearing, using boards and applying pressure to the boards from a sitting position.
38. On November 11, 2002, Claimant had doubled the amount of time he could tolerate his lower extremity hanging in a dependent position. He was also able to partially bear weight through the right lower extremity for the first time.
39. On December 4, 2002, Claimant was putting some weight into his lower extremity but had not received a prosthesis. With Claimant's type of amputation, he required a further support system (such as a prosthesis) to be able to bear his full body weight.
40. On December 8, 2002, Claimant was relying on crutches as opposed to a wheelchair for ambulating community distances.
41. Provider's instructions concerning Claimant's treatment came from Dr. Coupe, Claimant's treating orthopedic surgeon.
42. Provider did not have treatment records or receive instructions for treatment from Claimant's plastic surgeon, Dr. Melissinos.
43. On December 11, 2002, Dr. Coupe examined Claimant. Claimant's swelling had resolved and motion was improving in his knee. Claimant had a positive lachman and ACL tear and possibly a meniscal tear, limiting his flexion. An ACL tear may result in knee instability and limit a patient's ability to maximally flex the knee. At the time, Claimant was not fully weight-bearing and had not been placed in a prosthesis or custom shoe.
44. Claimant was fitted for a prosthesis some time between December 13 and December 16, 2002.
45. As of January 30, 2003, Claimant had progressed in his tolerance for having his right leg in the dependent position for up to three hours.
46. As of March 13, 2003, Claimant had begun to ambulate with his prosthetic boot for up to one hour. He was able to perform some more advanced gait training activities such as ambulation on un-level surfaces and climbing of small steps.
47. Around late March 2003, Claimant began having more pain in his right knee and foot.
48. On March 21, 2003, approximately one year from the date of the accident, Dr. Coupe examined Claimant. Claimant had excellent range of motion of the ankle and knee, tenderness in the medial joint line of the knee, but no effusion. Dr. Coupe's stated goal or plan for Claimant included a discontinuation of crutches, use of the custom shoe, and full weight-bearing. Dr. Coupe scheduled Claimant for an MRI.

49. An MRI dated March 27, 2003, found a small joint effusion in the knee and probable partial tear of the medial collateral ligament. The medial collateral ligament is a very important ligament of structure around the medial side of the knee, supplying strength and stability to the knee.
50. On March 31, 2003, Claimant's foot flap re-opened. As a result, his prosthesis required revision and refitting. Provider put on hold further gait training activities.
51. As of April 4, 2003, Claimant's gait training had slowed due to open blisters. Claimant continued with strengthening exercises for his lower extremity.
52. On April 16, 2003, Barry A. Nelms, M.D., performed a required medical evaluation on Claimant. Claimant had still not been successfully fitted with a prosthesis that would not cause skin breakdown. His skin flap was problematic, and he had weakness in the knee and pain in his lower extremity and back.
53. As of April 16, 2003, the frequency and duration of the treatment, although extensive, had been appropriate for the injury.
54. As of April 16, 2003, Claimant required further gait training and physical therapy sessions to strengthen his lower extremities.
55. On May 13, 2003, Dr. Coupe prescribed gait training therapy for Claimant on an as-needed basis.
56. Gait training is teaching a patient how to walk in a different manner. Claimant required gait training with each orthotic shoe or change in condition in order to learn the appropriate stance and gait.
57. On June 13 and 16, 2003, Claimant was unable to perform gait training exercises because his prosthesis was being further modified.
58. On June 20, 2003, Claimant performed a number of gait training activities, including walking on a floor mat and on a ramp.
59. As late as July 16, 2003, Claimant was having problems associated with his prosthesis, swelling and blisters, which affected his gait activities.
60. Claimant progressed slowly but steadily during the services provided from July 22, 2002, through July 17, 2003.
61. A unit of billing under CPT code 97110, one-on-one therapeutic exercises consists of 15 minutes.
62. Provider varied the type of strengthening exercises during the period from July 22, 2002, to July 17, 2003, as well as Claimant's position (progressing from supine to a seated and/or standing position) and gravity and resistance.
63. Unusual travel, CPT code 99082, consists of either a physician traveling to see a patient or transportation and escort of a patient.
64. Claimant did not have his own method of transportation to Provider's clinic.

65. Provider timely sought reimbursement from Carrier for all of the services discussed above
66. Carrier timely sent explanations of benefit (EOB) to Provider denying the requested reimbursement and claiming that Provider had not shown that the medical services were medically necessary to treat the compensable injury.
67. Provider timely filed three requests for medical dispute resolution with the TWCC.
68. An IRO reviewed the medical disputes and found that the disputed services were medically necessary to treat the compensable injury.
69. Based on the IRO's findings, TWCC's Medical Review Division (MRD) granted Provider's request to be reimbursed for the disputed services.
70. After the IRO decisions and MRD orders were issued, Carrier asked for contested-case hearings by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the above disputes.
71. Required notice of contested-case hearings concerning each dispute was timely mailed to Carrier and Provider.
72. On May 21, 2003, a SOAH ALJ joined SOAH Docket Nos. 453-04-1645.M5 and 453-04-4686.M5. On March 18, 2005, a SOAH ALJ added and further joined SOAH Docket No. 453-05-3207.M5. The joined case consists of SOAH Docket Nos. 453-04-1645.M5; 453-04-4686.M5; and 453-05-3207.M5.
73. On September 9, 2005, SOAH ALJ Lilo D. Pomerleau held a contested-case hearing concerning the joined disputes at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
74. Carrier appeared at the hearing through its attorney, Katie Kidd.
75. Provider appeared at the hearing through its attorney, Carl Ritchie.

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. LABOR CODE ANN. § 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.051 and 2001.052.
3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE § 155.41(b) (2004), and 28 TEX. ADMIN. CODE § 133.308(u) and 148.14 (2005), Carrier has the burden of proof in this case.

4. 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 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. LABOR CODE ANN. § 408.021 (a).
5. Based on the above Findings of Fact and Conclusions of Law, Provider should be reimbursed \$23,341.00 for the disputed services at issue in this case.
6. Based on Findings of Fact Nos. 11, 12, and 13 and the above Conclusions of Law, Provider should not be reimbursed for one unit each of unusual travel (\$45.00), group therapy (\$27.00), and device handling (\$45.00) at issue in this case.

ORDER

IT IS ORDERED THAT Carrier shall reimburse the Provider \$23,341.00, an amount that includes reimbursement for the services at issue and for the services Carrier agreed to reimburse, as set out above.

SIGNED November 7, 2005.

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**