

**SOAH DOCKET NO. 453-05-3726.M5
TWCC MDR NO. M5-05-0920-01**

**MEDPRO CLINICS
Petitioner**

V.

**METROPOLITAN TRANSIT
AUTHORITY
Respondent**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Medpro Clinics (Petitioner) requested a hearing to contest the January 5, 2005 Findings and Decision of the Texas Workers' Compensation Commission (Commission). The Commission relied upon a December 23, 2004 decision of Speciality Independent Review Organization, Inc., an Independent Review Organization (IRO), and denied reimbursement for services provided by Petitioner to injured worker __ (Claimant) from September 24, 2004, through September 29, 2004.¹

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that the disputed services provided by Petitioner were not reasonable and medically necessary.

The hearing convened on August 17, 2005, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. David Rabbani, D.C., represented Petitioner, and Beverly

¹ The IRO approved reimbursement for an office visit that occurred on September 29, 2004. Metropolitan Transit Authority did not contest that decision, consequently, the amount of the office visit is not in issue in this hearing and will not be considered.

Vaughn represented the Metropolitan Transit Authority (Respondent). The hearing concluded, and the record closed that day. Neither party objected to notice or jurisdiction.

Claimant suffered a work-related injury to his lumber spine on____, when a dump truck hit the bus he was driving. On April 13, 2004, Claimant presented to Dr. Rabbani who began physical therapy. On May 12, 2004, an MRI was performed on Claimant, which revealed a disk herniation at L5-S1 that was compressing the S1 nerve root. Because Claimant showed little improvement, Uday Doctor, M.D., gave Claimant an epidural steroid injection (ESI) on July 20, 2004. Petitioner continued to treat Claimant primarily with therapeutic exercises. Again, Claimant showed little improvement. So, on August 24, 2004, Dr. Doctor performed another ESI on Claimant. Petitioner began post-injection physical therapy on Claimant. Respondent reimbursed Claimant for treatments prior to September 24, 2004, but denied reimbursement for all treatments through September 29, 2004.

On September 22, 2004, Richard M. Larrey, M.D., P.A., conducted a required medical evaluation (RME) on Claimant and concluded that Claimant did not need further chiropractic treatment. Dr. Larrey's report indicated that there was no medical necessity for chiropractic treatment, physical therapy, injection therapy pain management treatment, surgical treatment, or further diagnostic imaging. Dr. Larrey also indicated that Claimant's work status was consistent with a non- restricted job release. Petitioner was present at the evaluation and indicated that the examination was not properly conducted, and Dr. Larrey was biased and prejudiced because Dr. Rabbani had previously reported him to the Commission for improper evaluations and recommendations.

The only issue in this proceeding is whether the services provided by Petitioner to Claimant from September 24, 2004, through September 29, 2004, were reasonable and medically necessary. Petitioner had the burden of proof. Petitioner failed to prove that the services were reasonable and

medically necessary. Petitioner's notes show that Claimant's perceived pain levels during the period from July 23, 2004, to September 29, 2004, were moderate to low (three-four). On July 23, 2004, Claimant arrived for treatment with a perceived pain level of four . Two months later on September 29, 2004, Claimant arrived for treatment with a perceived pain level of three and one-half.

Petitioner's description of Claimant's condition on July 23, 2004, is not substantially different from Petitioner's description of Claimant's condition on September 15, 2004, the last undisputed visit. Comparisons between Claimant's test results are not helpful in quantitatively measuring any improvement between July and late September 2004. There is no quantitative measure of improvement during the disputed time period.

The active therapy provided during the dates in dispute did not differ from the active therapy provided prior to the dates in dispute. The active therapy before and after the ESIs were the same. Between July 23, 2004 and September 29, 2004 the therapeutic exercises performed by Claimant were the same. Petitioner's explanation that there were limited exercises for the lumbar spine was conclusory and unpersuasive.

Simply showing some improvement in the Claimant's actual or perceived condition is not sufficient. The treatment must be reasonable as well as medically indicated. The credible evidence demonstrates a slight, but not significant, change in the Claimant's condition. His perceived level of pain diminished from four to three and one-half between July 23 and the last treatment in September. The decrease in Claimant's perceived level of pain is not significant. Claimant's had little change in his range of motion (ROM). Claimant's range of motion was about sixty percent, which Respondent asserted is the equivalent of a zero percent impairment rating.

Dr. Larrey indicated that prior to and during the disputed treatment dates, Claimant was fully capable of performing his job functions and his activities of daily living. Consequently, Petitioner

failed to demonstrate by a preponderance of the evidence that the services provided Claimant from September 24, 2004, through September 29, 2004, were reasonable and medically necessary. Petitioner is not entitled to reimbursement for services provided Claimant between September 24, 2004, and September 29, 2004.

II. FINDINGS OF FACT

1. ___ (Claimant) suffered a work related injury on___.
2. On May 12, 2004, an MRI was performed on Claimant, which revealed a disk herniation at L5-S1 that was compressing the S1 nerve root.
3. The physical therapy performed by Medpro Clinics (Petitioner) did not improve Claimant's condition, consequently, Uday Doctor, M.D., gave Claimant an epidural steroid injection (ESI) on July 20, 2004.
4. On August 24, 2004, Dr. Doctor performed another ESI on Claimant because Claimant showed little improvement from Petitioner's physical therapy.
5. Petitioner began post injection physical therapy on Claimant, and Metropolitan Transit Authority (Respondent) reimbursed Claimant for treatments prior to September 24, 2004, but denied reimbursement for all treatments through September 29, 2004.
6. Claimant's perceived pain levels during the period from July 23, 2004, to September 29, 2004, were moderate to low (three-four).
7. On July 23, 2004, Claimant arrived for treatment with a perceived pain level of four, and two months later on September 29, 2004, Claimant arrived for treatment with a perceived pain level of three and one-half
8. Petitioner's description of Claimant's condition on July 23, 2004, was not substantially different from Petitioner's description of Claimant's condition on September 15, 2004, the last undisputed visit.
9. Comparisons between Claimant's test results are not helpful in quantitatively measuring any improvement between July and late September 2004.

10. There is no quantitative measure of improvement during the disputed time period.
11. Claimant's experienced no change in his range of motion (ROM).
12. Claimant's range of motion was about sixty percent, which is the equivalent of a zero percent impairment rating.
13. The active therapy provided during the dates in dispute did not differ from the active therapy provided prior to the dates in dispute.
14. The active therapy was the same before and after the ESIs.
15. Between July 23, 2004, and September 29, 2004, the therapeutic exercises performed by Claimant were the same.
16. Claimant's condition did not significantly improve.
17. Claimant's perceived level of pain did not show any significant decrease between July 23, 2004, and September 29, 2004.
18. The treatment dates in issue are September 24, 2004, through September 29, 2004.
19. Respondent denied Petitioner reimbursement for the services provided Claimant between September 24, 2004, and September 29, 2004, as not medically necessary.
20. On January 5, 2005, the Texas Workers' Compensation Commission (Commission), acting through an Independent Review Organization (IRO), the Speciality Independent Review Organization, Inc., denied reimbursement for services provided by Petitioner to Claimant from September 24, 2005, through September 29, 2004.
21. On January 10, 2005, Petitioner requested a hearing before the State Office of Administrative Hearings (SOAH).
22. The Commission issued a notice of hearing on February 7, 2005.
23. The notice of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.

24. The hearing convened on August 17, 2005, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. David Rabbani, D.C., represented Petitioner, and Beverly Vaughn represented the Respondent. The hearing concluded, and the record closed that day.

III. 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, 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. The party requesting the contested case hearing has the burden of proof.
6. Petitioner failed to prove by a preponderance of the evidence that the services provided to Claimant between September 24, 2004, and September 29, 2004, were reasonable and medically necessary.

ORDER

THEREFORE IT IS ORDERED that Medpro Clinics, is not entitled to reimbursement from the Metropolitan Transit Authority for charges associated with services provided to injured worker __ (Claimant) from September 24, 2004, through September 29, 2004.

SIGNED October 12, 2005.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**