

TRINITY PHY-MED, L.L.C.,

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BEFORE THE STATE OFFICE

V.

OF

TEXAS MUTUAL INSURANCE
COMPANY

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Trinity Phy-Med, L.L.C., (Provider) challenged the decision of the Independent Review Organization (IRO) denying reimbursement for medical treatment provided to an injured worker (Claimant) whose employer was covered by workers compensation insurance provided by Texas Mutual Insurance Company (Carrier). Prior to the evidentiary hearing, Carrier filed a Motion for Summary Disposition (Motion) alleging that Provider failed to respond to discovery requests and failed to appear when subpoenaed to appear at a deposition. The Motion was set to be heard at the beginning of the evidentiary hearing. Provider did not appear at the evidentiary hearing. After reviewing the Motion and considering the evidence and arguments offered by Carrier during the hearing, the Administrative Law Judge (ALJ) concludes that summary disposition should be granted in Carrier's favor.

I. PROCEDURAL HISTORY AND BACKGROUND

Claimant suffered a compensable, work-related injury to his lower back on _____. He has had three surgeries to his back, an L5 microdiscectomy in 1985, an L5 laminectomy in 2000, and a 360-degree fusion in 2002. He also underwent core decompression to his right hip in 2003. Under the care of Blayne Love, D.C., Claimant received physical, manual, and aquatic therapy; neuromuscular reeducation; and office visits with examinations from August 20 to September 29, 2003 (disputed services). Carrier declined to reimburse these treatments, contending they were not medically necessary. The total amount in dispute is \$2,922.67.

Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).¹ The matter was referred to an IRO designated by the Commission for

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

the review process. The IRO's physician reviewer determined that none of the services were medically necessary treatment for Claimant's compensable injury. Provider then requested a hearing before the State Office of Administrative Hearings (SOAH).

Carrier properly served Provider with discovery, but failed to receive any answer. On August 17, 2005, Carrier's Motion to Compel was granted, ordering Provider to fully respond to the discovery requests, including the Requests for Admissions. To date, Provider has not complied with the order-compelling discovery. On August 23, 2005, a subpoena and commission to take deposition was issued by the Commission and received by Provider on August 24, 2005. The deposition was set for August 30, 2005, at 1:00 p.m. at Provider's office. Provider refused to participate in the deposition.

The hearing on the Motion and evidentiary hearing convened on September 8, 2005. As noted above, Provider did not appear at the hearing.

II. DISCUSSION AND ANALYSIS

Provider initiated this hearing with his appeal of the IRO decision. Yet, he has refused to participate in discovery and has instead ignored the SOAH order and the subpoena issued by the Commission. Accordingly, the Request for Admissions served upon Provider by Carrier are deemed admitted by operation of law. As detailed in the Findings of Fact below, the deemed admissions support Carrier's motion for summary judgement and establish that Provider's appeal should be denied.

Provider is advised that future similar action may result in monetary sanctions. Counsel for Carrier spent seven hours traveling to Provider's place of business to conduct the deposition. Pursuant to 1 TEX. ADMIN. CODE §155.15(b)(12)(B), the ALJ may charge all of the expenses of discovery against the offending party. While Carrier did not so move in this instance, the ALJ may on his own motion award monetary damages in the future when faced with such egregious disregard for the contested case process.

In support of the above determinations, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Claimant suffered a compensable, work-related injury to his low back on____.
2. Texas Mutual Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. Under the care of Blayne Love, D.C., Claimant received physical, manual, and aquatic therapy; neuromuscular reeducation; and office visits with examinations from August 20 to September 29, 2003 (disputed services).
4. Carrier denied reimbursement for the disputed services, contending they were not medically necessary.
5. Provider requested medical dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission), which referred the matter to an Independent Review Organization (IRO).
6. MRD declined to order reimbursement, in accordance with the IRO physician reviewer's determination that none of the disputed services were medically necessary.
7. On January, 20, 2005, Provider requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent by the Commission to all parties.
9. On July 5, 2005, Carrier served Petitioner with its First Set of Written Discovery, including 14 Requests For Admissions which asked Provider to admit that the disputed services were not medically necessary.
10. On August 11, 2005, Carrier filed a Motion to Compel Provider to respond to discovery.
11. On August 18, 2005, Administrative Law Judge (ALJ) Gary Elkins granted Carrier's Motion to Compel.
12. Provider failed to answer Carrier's First Set of Written Discovery, including the 14 Requests For Admissions.
13. The disputed services were not medically necessary.

14. ALJ Tommy L. Broyles convened a hearing in this case on September 8, 2005. Carrier appeared through its attorney. Provider failed to appear. The hearing concluded and the record closed that same day.
15. No party objected to notice or jurisdiction.

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, 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. In accordance with the above Findings of Fact, the Requests For Admission are deemed admitted. Tex. R. Civ. P. 198.2(c).
6. Carrier has shown, by a preponderance of the evidence, that the services provided to Claimant between August 20 and September 29, 2003, were not medically necessary for treatment of Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that Trinity Phy-Med, L.L.C., is entitled to no reimbursement from Texas Mutual Insurance Company for services provided to Claimant from August 20 to September 29, 2003.

SIGNED November 4, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**