

**SOAH DOCKET NO. 453-05-4144.M5**  
**MDR Tracking No. M5-05-0653-01**

<b>FIRST RIO VALLEY MEDICAL, P.A.</b>	‘	<b>BEFORE THE STATE OFFICE</b>
	‘	
<b>V.</b>	‘	<b>OF</b>
	‘	
<b>TEXAS WORKERS COMPENSATION SOLUTIONS</b>	‘	<b>ADMINISTRATIVE HEARINGS</b>
	‘	

**DECISION AND ORDER**

The provider, First Rio Valley Medical, P.A. (First Rio), sought reimbursement for approximately two weeks of office visits, aquatic exercise, and massage therapy provided to claimant \_\_\_in early 2004. Citing a lack of medical necessity, the carrier, Texas Workers Compensation Solutions (TWCS), declined to pay for the disputed services. An Independent Review Organization (IRO) determined that the disputed services were unnecessary. The total amount in dispute is approximately \$1,600.00.

The Administrative Law Judge (ALJ) concludes that the services were unnecessary and need not be reimbursed.

**I. NOTICE AND PROCEDURAL HISTORY**

**II.**

The hearing was convened on September 8, 2005, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Robert Howell, D.C., First Rio’s clinic director and \_\_\_s treating doctor at the time of the disputed services, appeared by telephone on behalf of First Rio. Steven Tipton, attorney, represented TWCS. The hearing adjourned and the record closed the same day. No party raised any issue concerning notice or jurisdiction.

## II. DISCUSSION

### A. Medical Necessity

First Rio has the burden of proof in this proceeding. The Texas Labor Code provides in pertinent part that:

- (a) 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. The employee is specifically entitled to health care that:
  - (1) cures or relieves the effects naturally resulting from the compensable injury;
  - (2) promotes recovery; or
  - (3) enhances the ability of the employee to return to or retain employment.<sup>1</sup>

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Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.<sup>2</sup>

### B. Background and Disputed Services

\_\_\_sustained a compensable back injury on\_\_\_, when she fell at her job as a kitchen worker and dishwasher. Dr. Howell saw her on February 24, 2003, and diagnosed moderate lumbar sprain and mild to moderate thoracic sprain.<sup>3</sup>

From late February through most of April 2003,\_\_\_ was treated at First Rio with physical medicine modalities and aquatic therapy, massage, ultrasound, spray and stretch, and inferential electrical therapy.<sup>4</sup> Complaining of continued pain, she resumed care in June 2003. An MRI of the lumbar spine on June 3, 2003, showed some early disc degenerative changes at L3-4 and facet

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<sup>1</sup> TEX. LAB. CODE § 408.021.

<sup>2</sup> TEX. LAB. CODE § 401.011(19).

<sup>3</sup> First Rio Exhibit 1 (Tab 4) at 12.

<sup>4</sup> For a history of I.O.'s treatment at First Rio, *see* First Rio Exhibit 1 (Tab 6) at 21-26.

degenerative changes at L4-5.<sup>5</sup> \_\_\_ was referred to a physician for pain management and again began a program of aquatic therapy, massage, ultrasound, spray and stretch, and inferential electrical therapy three times per week. In August 2003, she commenced an eight-week work hardening program that lasted into October. She began new work B as an instructor in a beauty school B at some point during 2003.<sup>6</sup> While I.O. kept seeing a physician for pain management in the fall of 2003,<sup>7</sup> it does not appear that she continued therapy at First Rio in 2003 following her completion of work hardening.

In January 2004 \_\_\_ saw Dr. Howell again and complained of more back pain due to her having to sit for long periods in her new job. She underwent two weeks of therapy, consisting of five office visits (billed for under CPT Code 99213) and five sessions each of massage therapy (two units per session billed under CPT Code 97124) and aquatic exercise (six units per session billed under CPT Code 97113). These dates of service, along with the initial evaluative office visit on January 30, 2004, (billed under CPT Code 99214) comprise the disputed services in this case. After the disputed therapy, \_\_\_'s pain was not relieved.<sup>8</sup>

The IRO reviewer stated that the massage therapy and aquatic therapy were unnecessary because the patient had already undergone a work hardening program that would have familiarized her with exercises she could have performed at home.<sup>9</sup> In addition, the IRO decision stated that the treatments in question did not facilitate the patient's return to work and did not alter her pain levels.

### **C. First Rio's Position and Evidence**

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<sup>5</sup> First Rio Exhibit 1 (Tab 6) at 23.

<sup>6</sup> The record is somewhat inconsistent concerning \_\_\_'s employment history following her injury in February 2003. Dr. Howell testified – and his written summary of \_\_\_'s treatment indicates – that while she was engaged in work hardening \_\_\_ was terminated from her job as a dish washer with the Brownsville Independent School District, after which she went to work at a beauty school. Petitioner Exhibit 1 (Tab 6) at 24. The work hardening program lasted from August through October 2003. However, the record also indicates that when \_\_\_ began the disputed treatments in January 2004 she had already been working at the beauty school for nine months. Petitioner Exhibit 1 (Tab 7) at 67.

<sup>7</sup> First Rio Exhibit 1 (Tab 13) at 243-246.

<sup>8</sup> First Rio Exhibit 1 (Tab 6) at 25.

<sup>9</sup> The IRO decision can be found at Respondent Exhibit 1 at 3-4.

Dr. Howell testified on behalf of First Rio. He criticized the IRO reviewer's apparently erroneous assumptions that \_\_\_ was not employed at the commencement of the disputed dates of service and that she remained unemployed following them. He testified that the brief two-to-three-week trial of massage and aquatic therapy was a reasonable and necessary response to an exacerbation of \_\_\_s compensable injury. According to Dr. Howell, \_\_\_ suffered the exacerbation because her job required her to sit for long periods. Once it became clear from the limited trial that the patient was not improving, he discontinued the treatments and told \_\_\_ there was nothing more he could do for her. According to Dr. Howell, this brief trial of therapy for a patient with an acute exacerbation was reasonable and necessary. And while acknowledging that aquatic therapy is costly, Dr. Howell asserted that a short period of an expensive, effective treatment can be more cost-effective than a series of cheaper, but failed, services. He offered written materials discussing the general benefits of aquatic therapy and massage.<sup>10</sup>

#### **D. TWCS's Position and Evidence**

TWCS offered no expert testimony, but argued that First Rio had not met its burden to show that the disputed treatments were medically necessary. TWCS argued that First Rio had failed to show that aquatic therapy, which is very expensive, was necessary B particularly in a patient who long before should have moved to self-directed exercise. The carrier also argued that \_\_\_ pain complaints did not constitute an exacerbation warranting a renewal of treatment.

#### **E. ALJ's Analysis and Conclusion**

The thrust of Dr. Howell's rationale for the disputed services is that \_\_\_ suffered an exacerbation that warranted additional treatment of both an active and passive nature. However, there is little evidence to support his contention. AExacerbation@ implies an aggravation (*i.e.*, an increase of severity) in a condition, or perhaps a recurrence of a previously resolved condition. The evidence indicates that \_\_\_ experienced significant pain, including pain worsened by prolonged sitting,

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<sup>10</sup> First Rio Exhibit 1 (Tab 8).

from her very first visit to First Rio in February 2003,<sup>11</sup> throughout the summer of 2003,<sup>12</sup> and into November of 2003.<sup>13</sup> In June 2003, she reported pain at a level of six on a scale of one to ten; by the end of October, at approximately the time when she completed the work hardening program, she reported that her pain was at a level of seven.<sup>14</sup> Her reports of pain in early 2004 were also at the level of six or seven, and appear to be a continuation of her ongoing condition, not an aggravation or recurrence.<sup>15</sup> \_\_\_s condition at the time of the disputed treatments cannot be fairly described as an Aexacerbation.@

Moreover, the particular treatments rendered had already proven ineffective in treating \_\_\_s pain. By the fall of 2003, First Rio had provided \_\_\_with multiple treatments for the better part of a year, and aquatic therapy and massage were included among the many therapies administered. Nevertheless, there had been little or no significant improvement in her pain. There is no apparent justification for a resumption of the previously unsuccessful treatments.

For these reasons, the ALJ determines that no reimbursement for the disputed therapies is warranted.

### **III. FINDINGS OF FACT**

1. Texas Workers Compensation Solutions (TWCS) is the workers' compensation insurer with respect to the claims at issue in this case.
2. Claimant\_\_\_ sustained a compensable back injury on \_\_\_\_, when she fell at her job as a kitchen worker and dish washer for the Brownsville Independent School District.

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<sup>11</sup> First Rio Exhibit 1 (Tab 7) at 42-43.

<sup>12</sup> First Rio Exhibit 1 (Tab 7) at 50-51, 56, 59-60.

<sup>13</sup> First Rio Exhibit 1 (Tab 13) at 243-246.

<sup>14</sup> First Rio Exhibit 1 (Tab 7) at 56, (Tab 13) at 243.

<sup>15</sup> First Rio Exhibit 1 (Tab 10).

3. Robert Howell, D.C., of First Rio Valley Medical, P.A. (First Rio) saw \_\_\_ on February 24, 2003, and diagnosed moderate lumbar sprain and mild to moderate thoracic sprain.
4. From late February through most of April 2003, \_\_\_ was treated at First Rio with physical medicine modalities and aquatic therapy, massage, ultrasound, spray and stretch, and inferential electrical therapy.
5. Complaining of continued pain, \_\_\_ resumed care at First Rio in June 2003. She was referred to a physician for pain management and again began a program of aquatic therapy, massage, ultrasound, spray and stretch, and inferential electrical therapy three times per week.
6. In August 2003, \_\_\_ commenced an eight-week work hardening program at First Rio that lasted into October.
7. \_\_\_ began new work B as an instructor in a beauty school B at some point during 2003.
8. On January 30, 2004, \_\_\_ saw Dr. Howell again and complained of more back pain due to her having to sit for long periods in her new job. Dr. Howell billed for the visit under CPT Code 99214.
9. \_\_\_ underwent two weeks of therapy, consisting of five office visits (billed for under CPT Code 99213) and five sessions each of massage therapy (two units per session billed under CPT Code 97124) and aquatic exercise (six units per session billed under CPT Code 97113).
10. After the therapy in February 2004, \_\_\_'s pain was not relieved.
11. \_\_\_'s pain levels did not significantly change as a result of any of her treatment at First Rio in 2003 and 2004.
12. TWCS denied reimbursement for the office visit on January 30 and the five days of therapy in February based on a lack of medical necessity. SCD requested dispute resolution.
13. An Independent Review Organization (IRO) determined that the disputed services were not medically necessary.
14. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its order, based on the IRO decision, on January 10, 2005.

15. First Rio requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the IRO's decision.
16. On February 14, 2005, the Commission issued a notice of hearing in this matter.
17. 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.
18. \_\_\_s pain in early 2004 was a continuation of her ongoing condition, not an exacerbation or recurrence.
19. There is no justification for the resumption in 2004 of massage and aquatic therapy, which had already proven unsuccessful in treating \_\_\_s back pain.
20. The disputed course of treatment administered to \_\_\_ at First Rio in 2004 was medically unnecessary.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Labor Code gives the Commission jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (TDI).
3. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE §413.031; TEX. GOV'T CODE ch. 2003.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE ' 2001.052.
5. First Rio has the burden of proof in this matter. 28 TEX. ADMIN. CODE ch.148; TEX. LABOR CODE ' 413.031.

6. 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. TEX. LAB. CODE § 408.021.
7. Based on the above Findings of Fact and Conclusions of Law, the Act does not require TWCS to reimburse First Rio for services rendered to\_\_ in January and February 2004 and billed under CPT Codes 99214, 99213, 97113, and 97124.

**ORDER**

**IT IS THEREFORE ORDERED** that Texas Workers Compensation System need not reimburse First Rio Valley Medical, P.A., for services rendered to claimant \_\_in January and February 2004 and billed under CPT Codes 99214, 99213, 97113, and 97124.

**ISSUED October 31, 2005.**

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**SHANNON KILGORE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**ADMINISTRATIVE LAW JUDGE**