

**SOAH DOCKET NO. 453-05-4232.M5  
TWCC MR NO. M5-05-0104-01**

<b>MEGA REHAB,</b>	<b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>VS.</b>		§	<b>OF</b>
<b>DALLAS ISD,</b>	<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Mega Rehab challenges the decision of the Texas Workers’ Compensation Commission’s (Commission’s) Medical Review Division (MRD) denying reimbursement for one-on-one therapeutic exercises. The Administrative Law Judge (ALJ) concludes that Mega Rehab is not due additional reimbursement.

**I. BACKGROUND, PROCEDURAL HISTORY,  
NOTICE, AND JURISDICTION**

Claimant, an injured worker, was employed as a security officer for the Dallas Independent School District (DISD). While attempting to break up a fight on \_\_\_, she was thrown to the ground, causing injuries to her cervical and thoracic spine and left shoulder. DISD denied reimbursement for a number of services that Mega Rehab provided Claimant from February 25 to June 11, 2004. The Independent Review Organization (IRO), to which the MRD referred the dispute, found that the services were medically necessary. The MRD declined to order additional reimbursement, however, for therapeutic exercises provided and billed under CPT<sup>1</sup> code 97110 on March 8, 9, 11, 15, 18, and April 26 and 29 because the “SOAP notes do not clearly delineate exclusive one-on-one treatment nor did [Mega Rehab] identify the severity of the injury to warrant exclusive one-on-one therapy.”<sup>2</sup>

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<sup>1</sup> Current Procedural Terminology.

<sup>2</sup> Res. Ex. 1 at 2.

The hearing on the merits convened on May 17, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> St., Austin, Texas. Neither party challenged the adequacy of notice or jurisdiction. ALJ Katherine L. Smith presided. Mega Rehab was represented by Stephen Dudas, D.C. DISD was represented by Tom Lueders, an attorney. The record closed the day of the hearing.

## II. DISPUTE

Dr. Dudas testified that Jerome Kosoy, M.D., a designated doctor who evaluated Claimant on March 4, 2004, found that Claimant was not expected to reach maximum medical improvement until July 1, 2004, and that Dr. Kosoy recommended more aggressive physical therapy. Dr. Dudas also noted that DISD's peer review doctor, Lloyd Payne, D.C., stated on March 26, 2004, that a reasonable course of treatment was an additional 12 weeks or 36 visits. Dr. Dudas testified that the services provided were in that range. He also testified that a CARF<sup>3</sup> certified, licensed physical therapist provided the therapy and that she adequately documented what she performed and for how long. He stated that eighteen sessions were provided, and then Claimant was re-evaluated. Dr. Dudas testified further that group therapy was not appropriate at this early point in the therapy, and that Claimant was transitioned to group therapy on June 11, 2004.

Regarding the dates in dispute, Mega Rehab billed for three 15-minute units of one-on-one therapeutic exercises on March 8, 2004, and four 15-minute units of one-on-one therapeutic exercises on March 9, 11, 15, 18, and April 26 and 29, 2004. DISD paid a reduced amount for March 8, 9, 11, 15, and 18, including payment at the rate for group therapy. DISD provided no payment for the treatments of April 26 and 29 due to inadequate documentation.<sup>4</sup> DISD argues that Mega Rehab provided insufficient documentation indicating that one-on-one physical therapy was provided.

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<sup>3</sup> Commission of Accreditation of Rehabilitation Facilities.

<sup>4</sup> Pet. Ex. 1 at 20, 21, 23, 24, 29.

### III. ANALYSIS

When a healthcare provider bills for physical medicine treatment, the Commission's rules require the provider to submit progress or SOAP<sup>5</sup> notes substantiating the care given and the need for further treatment.<sup>6</sup> A review of the progress notes indicates that Claimant received 30 to 45 minutes of passive range-of-motion therapy to her left shoulder and left wrist.<sup>7</sup> Dr. Kosoy's recommendation did not include those areas. Dr. Kosoy noted only that Claimant had not received physical therapy to the lumbar spine and that the physical therapy to the neck had not been effective. Dr. Kosoy recommended more aggressive physical therapy to the neck.<sup>8</sup> Treatment to the cervical, thoracic, and lumbar spine in this case consisted of having Claimant perform 10 to 30 minutes of stretching and active range-of-motion exercises.<sup>9</sup> Why more intensive treatment was being provided to the left shoulder and wrist was not documented in the progress notes, nor was it justified in Dr. Dudas's testimony.

Prior SOAH decisions have interpreted CPT Code 97110 as requiring physical therapy on a one-on-one basis when a doctor or therapist works exclusively with the patient.<sup>10</sup> In this case, the progress notes and the type of regimen performed by Claimant bring into question whether exclusive

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<sup>5</sup> Subjective/Objective/Assessment/Plan.

<sup>6</sup> 28 TEX. ADMIN. CODE § 133.1(a)(3)(E)(I).

<sup>7</sup> Pet. Ex. 1 at 102-5, 107, 114, 115.

<sup>8</sup> Pet. Ex. 1 at 131.

<sup>9</sup> Pet. Ex. 1 at 102-5, 107, 114, 115.

<sup>10</sup> As requested by DISD, the ALJ takes official notice of 453-03-2716.M5, 453-05-3596.M5 and 453-05-0995.M5.

one-on-one therapy was provided or even warranted. The ALJ finds that the Mega Rehab has failed to show that the passive and active modalities provided Claimant constituted one hour's worth of one-on-one physical therapy.

Based on the above, the ALJ concludes that Mega Rehab failed to carry its burden of proving that it is due additional reimbursement for one-on-one therapeutic exercises for March 8, 9, 11, 15, 18, and April 26 and 29, 2004.

#### **IV. FINDINGS OF FACT**

1. On \_\_\_, Claimant sustained a work-related injury to her cervical and thoracic spine and left shoulder stemming from her work activities as a security officer with the Dallas Independent School District (DISD), which is self-insured.
2. Mega Rehab provided treatment, including physical therapy, to Claimant from February 25 to June 11, 2004, for which it sought reimbursement.
3. Using CPT code 97110, Mega Rehab billed for three 15-minute units of one-on-one therapeutic exercises on March 8, 2004, and four 15-minute units of one-on-one therapeutic exercises on March 9, 11, 15, 18, and April 26 and 29, 2004.
4. DISD paid a reduced amount for March 8, 9, 11, 15, and 18, 2004, including payment at the rate for group therapy. DISD provided no payment for the treatments of April 26 and 29, because one-on-one therapy was not sufficiently documented.
5. Mega Rehab filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission).
6. An independent review organization (IRO) reviewed the medical dispute and found that the treatments in dispute were medically necessary.
7. The Commission's Medical Review Division (MRD) declined to order additional reimbursement because the SOAP notes did not clearly delineate exclusive one-on-one treatment and because Mega Rehab did not identify the severity of the injury to warrant exclusive one-on-one therapy.
8. Based on the MRD decision, Mega Rehab requested a contested-case hearing before the State Office of Administrative Hearings (SOAH).

9. On February 23, 2005, the Commission issued the notice of the hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, and which provided a short, plain statement of the factual matters asserted.
10. The hearing was held on May 17, 2005, at 300 W. 15<sup>th</sup> St., Austin, Texas.
11. On the dates in dispute Claimant received 30 to 45 minutes of passive range-of-motion therapy to her left shoulder and left wrist.
12. Treatment to the cervical, thoracic, and lumbar spine consisted of having Claimant perform stretching and active range-of-motion exercises for 10 to 30 minutes.
13. The physical therapy progress notes did not justify why more intensive treatment was being provided to Claimant's left shoulder and left wrist.
14. The physical therapy progress notes do not show that the passive and active modalities provided Claimant constituted one hours worth of one-on-one therapeutic exercises.

## **V. CONCLUSIONS OF LAW**

1. SOAH 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) and TEX. GOV'T CODE ANN. ch. 2003.
2. Mega Rehab timely requested a hearing on the MRD decision pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 133.308(u) and 148.3(a).
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TAC 148.4(b).
4. Mega Rehab had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (I).
5. 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.

6. Mega Rehab failed to document the need for one-on-one therapeutic exercises beyond one unit. 28 TAC § 133.1(a)(3)(E)(I).

**ORDER**

**IT IS ORDERED THAT** Mega Rehab is not due additional reimbursement from DISD.

**Signed June 22, 2005.**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**