

**SOAH DOCKET NO. 453-05-4328.M5
TWCC MDR NO. M5-04-2833-01**

LIBERTY MUTUAL FIRE INSURANCE CO.,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
	§	
V.	§	OF
	§	
PAIN & RECOVERY CLINIC NORTH & NESTOR MARTINEZ, D.C.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Liberty Mutual Fire Insurance Company (Liberty Mutual) requested a hearing to contest the decision requiring Liberty Mutual to reimburse Pain & Recovery Clinic North and Nestor Martinez, D.C. (Respondent) for services including office visits, therapeutic procedures, myofascial release, joint mobilization, and neuromuscular reeducation from May 14, 2003, through June 30, 2003. This decision grants the relief sought by Liberty Mutual.

The hearing convened on June 8, 2006, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) Wendy K. L. Harvel. Kevin Franta, attorney, represented Liberty Mutual. William Maxwell, attorney, represented Respondent. There were no contested issues of notice or jurisdiction. The hearing adjourned and the record closed the same day.

II. BACKGROUND

Claimant sustained a work-related injury in___, when she fell, injuring her back. In November 2002, she underwent a percutaneous disc decompression in an effort to relieve some of her pain. Following that procedure, Liberty Mutual paid for 28 dates of service for physical therapy and other modalities for rehabilitation post-procedure. Beginning May 14, 2003, Liberty Mutual began denying payment for procedures performed on the Claimant as not medically necessary.

III. ANALYSIS

Liberty Mutual argues that a percutaneous disc decompression is a minor procedure that does not require lengthy post-procedure rehabilitation. Liberty Mutual also argues that during Claimant's rehabilitation, she did not improve. Specifically, they argue that Claimant did not respond to treatment in that she did not improve and actually decreased in lumbar range of motion. They also argue that Claimant needed psychological intervention rather than additional physical treatment.

Respondent argues that although some individuals may improve after two to four weeks of rehabilitation following a percutaneous disc decompression, this particular Claimant needed additional treatment because she did not progress as anticipated. Respondent argues that the literature supports two to four months of physical therapy following this type of back surgery. Respondent did not introduce evidence to support the contention that two to four months of rehabilitation is recommended in "the literature."

Employees have a right to necessary health treatment under TEX. LABOR CODE §§ 408.021 and 401.011. Section 408.021(a) provides "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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

The ALJ agrees with Liberty Mutual that treatment after May 14, 2003, did not improve the Claimant's condition. Neal Blauzvern, D.O. testified that extensive therapy following a percutaneous disc decompression is not necessary. He also noted that Claimant's functionality declined during her rehabilitation. The ALJ finds Dr. Blauzvern's testimony to be credible. Therefore, the ALJ finds that care provided to the Claimant beginning May 14, 2003, was not medically necessary.

IV. FINDINGS OF FACT

1. Claimant sustained a work-related injury in ____, when she fell.
2. Claimant underwent a percutaneous disc decompression in November 2002 in an effort to relieve some of her back pain caused by her work-related injury.
3. Claimant received office visits, therapeutic procedures, myofascial release, joint mobilization, and neuromuscular reeducation following the November 2002 procedure.
4. Beginning May 14, 2003, Liberty Mutual Fire Insurance Company (Liberty Mutual) denied the claims for reimbursement of the procedures listed in Finding of Fact No. 3.
5. Pain & Recovery Clinic North and Nestor Martinez, D.C. (Respondent) timely appealed the denial of reimbursement. The Independent Review Organization found that the treatments between May 14, 2003, and June 30, 2003, were medically necessary. The Medical Review Division of the Texas Workers' Compensation Commission determined that Respondent prevailed on the issue of medical necessity.
6. Liberty Mutual properly appealed the decision of the Texas Workers' Compensation Commission.
7. The treatment provided to Claimant beginning May 14, 2003, did not relieve the effects naturally resulting from Claimant's compensable injury, promote her recovery, nor enable her to return to work because her functioning actually decreased while in rehabilitation.
8. Extensive rehabilitation following percutaneous disc decompression is not medically necessary.
9. The treatment provided to Claimant from May 14, 2003 through June 30, 2003, was not medically necessary.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Liberty Mutual timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§ 102.7 and

148.3.

4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. Liberty Mutual had the burden of proof, which was the preponderance of evidence standard. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i).
6. Liberty Mutual demonstrated that Claimant's treatment was not reasonable and medically necessary for the treatment of Claimant's injury, pursuant to TEX. LABOR CODE § 408.021(a).
7. Based upon the Findings of Fact and Conclusions of Law, Liberty Mutual is not required to reimburse Respondent for treatment provided beginning May 14, 2003.

ORDER

THEREFORE IT IS ORDERED that Liberty Mutual Fire Insurance Company is not required to reimburse Pain & Recovery Clinic North and Nestor Martinez, D.C. in this matter.

SIGNED June 22, 2006.

**WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**