

SOAH DOCKET NO. 453-05-4349.M5  
TWCC MR NO. M5-05-0542-01

DEEP EAST TEXAS SELF INSURANCE FUND, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE   OF   ADMINISTRATIVE HEARINGS
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DECISION AND ORDER

In this case, Petitioner Deep East Texas Self Insurance Fund (DETSIF) seeks relief from an order of the Texas Workers' Compensation Commission's<sup>1</sup> Medical Review Division requiring it to reimburse Respondent East Texas Chiropractic for aquatic therapy and office visits provided an injured worker (the Claimant) from October 17, 2003, through November 14, 2003. The Administrative Law Judge finds DETSIF met its burden of proving the services were not medically necessary. He orders that DETSIF not be required to reimburse East Texas Chiropractic for them.

I. FACTUAL AND PROCEDURAL HISTORY

The Claimant sustained a compensable injury to her right knee on . She received treatment from J. Dan Carter, M.D., from June 5, 2003, through August 14, 2003. Dr. Carter's diagnosis was a contusion and hematoma; his treatments consisted of a knee immobilizer, periodic aspiration of the knee, and anti-inflammatory medications. At the end of his treatment of the Claimant, Dr. Carter observed:

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<sup>1</sup> Now the Texas Department of Insurance, Division of Workers' Compensation.

Knee looks much better. There is very little residual fluid. Not enough to even aspirate. She has a little residual soreness and weakness in the knee and would like to (sic) some physical therapy. We're not going to be participating in the Workers' Comp. system in the near future, and she wishes to be referred to a chiropractor near where she lives who can help her obtain some additional physical therapy. Return here prn.<sup>2</sup>

The Claimant began treatment at East Texas Chiropractic on September 19, 2003. She began aquatic therapy on September 22, 2003. That therapy continued through December 16, 2003. After DETSIF declined to pay for therapy from October 17, 2003, through December 16, 2003, East Texas Chiropractic filed a request for medical dispute resolution with the Texas Workers' Compensation Commission.<sup>3</sup> The Independent Review Organization (IRO) to which the matter was referred found the services provided from October 17 through November 14, 2003 were medically necessary. It found the services provided from November 17 through December 16, 2003, were not medically necessary. Based on the IRO decision, the Medical Review Division ordered reimbursement for the services provided from October 17 through November 14, 2003.

DETSIF filed a timely request for a hearing before SOAH.<sup>4</sup> After several continuances, the hearing was held November 21, 2006, before the undersigned ALJ. DETSIF and East Texas Chiropractic participated in the hearing through their counsel. The hearing was adjourned and the record closed that same day.

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<sup>2</sup> Carrier Ex. 1 at 57.

<sup>3</sup> The Claimant resumed therapy with East Texas Chiropractic from February 16 through March 18, 2004, but those services were not the subject of this request.

<sup>4</sup> East Texas Chiropractic did not request a hearing. Therefore, the services provided after November 14, 2003, were not at issue in this case.

## II. DISCUSSION

Two peer reviews, performed by Dr. Canard and Dr. Crane, stated the aquatic therapy and the related office visits were not medically necessary. Both suggested a home exercise program would have been the most effective and appropriate treatment for the Claimant's condition after her treatments with Dr. Carter. Dr. Crane went farther, suggesting the therapy program may have been detrimental to the Claimant. Dr. Alvarado, who testified at the hearing, also stated that the aquatic therapy was unnecessary and that a home-based exercise program should have been recommended instead.

The treating chiropractor did not testify at the hearing, nor do the medical records provide any persuasive rationale for the disputed aquatic therapy. Although Dr. Carter referred the Claimant to East Texas Chiropractic, he did not recommend a course of aquatic therapy. His notes suggested that the Claimant required only minimal additional treatment, if any. Nor did the IRO physician explain why the aquatic therapy was needed.

DETSIF's evidence and arguments were persuasive. The ALJ finds the treatments in question were not medically necessary.

East Texas Chiropractic also argued that the Explanations of Benefits (EOBs) provided by DETSIF did not properly raise the medical necessity issue. After reviewing them, the ALJ finds the EOBs did properly raise that issue.

The ALJ orders that DETSIF not be required to reimburse East Texas Chiropractic for the services at issue in this case.

### III. FINDINGS OF FACT

1. The Claimant, an injured worker, sustained a compensable injury to her right knee on
2. The Claimant received treatment from J. Dan Carter, M.D., from June 5, 2003, through August 14, 2003.
3. Dr. Carter's diagnosis was a contusion and hematoma; his treatments consisted of a knee immobilizer, periodic aspiration of the knee, and anti-inflammatory medications.
4. The Claimant began treatment at East Texas Chiropractic on September 19, 2003.
5. The Claimant began aquatic therapy on September 22, 2003. That therapy continued through December 16, 2003.
6. After DETSIF declined to pay for therapy from October 17, 2003, through December 16, 2003, East Texas Chiropractic filed a request for medical dispute resolution with the Texas Workers' Compensation Commission.
7. The Independent Review Organization (IRO) to which the matter was referred found the services provided from October 17 through November 14, 2003, were medically necessary. It found the services provided from November 17 through December 16, 2003, were not medically necessary.
8. Based on the IRO decision, the Medical Review Division ordered reimbursement for the services provided from October 17 through November 14, 2003.
9. DETSIF filed a timely request for a hearing before SOAH.
10. East Texas Chiropractic did not file a request for a hearing.
11. Notice of the hearing was sent to the parties March 2, 2005.
12. 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.
13. After several continuances, the hearing was held November 21, 2006, before the undersigned ALJ. DETSIF and East Texas Chiropractic participated in the hearing through their counsel. The hearing was adjourned and the record closed that same day.

14. A home exercise program would have been the most effective and appropriate treatment for the Claimant's condition after her treatments with Dr. Carter.
15. The aquatic therapy and the related office visits were not medically necessary.
16. The Explanations of Benefits (EOBs) provided by DETSIF properly raised the medical necessity issue.

#### IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. DETSIF had the burden of proving it should not be required to reimburse East Texas Chiropractic for the services at issue. 28 TEX. ADMIN. CODE §148.14(a).
4. DETSIF proved the services at issue were not medically necessary.
5. DETSIF should not be required to reimburse East Texas Chiropractic for the services at issue.

#### ORDER

**IT IS, THEREFORE, ORDERED** that Deep East Texas Self Insurance Fund shall not be required to reimburse East Texas Chiropractic for the services at issue in this case.

**SIGNED** January 19, 2007.

  
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**HENRY D. CARD**  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS