

<b>LIBERTY MUTUAL INSURANCE CO.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>KRIS WILSON, D.C.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Liberty Mutual Insurance Company (“Petitioner”) challenged, in part, the decision of an independent review organization (“IRO”) on behalf of the Texas Workers’ Compensation Commission (“Commission”)<sup>1</sup> in a dispute regarding the medical necessity of chiropractic therapy. The IRO found that Petitioner wrongly denied reimbursement for physical therapy and related services that Kris Wilson, D.C., (“Respondent”) provided between September 10 and November 4, 2003, to a claimant suffering from a spinal injury.

Petitioner challenged the decision relating to these services on the grounds that the treatment was not, in fact, medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that Petitioner should be required to provide reimbursement for those disputed services previously found to be medically necessary.

**I. JURISDICTION, NOTICE, AND VENUE**

The Commission (or its successor agency) has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction, notice, or venue.

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers’ Compensation within the Texas Department of Insurance.

## II. STATEMENT OF THE CASE

The hearing in this docket was convened and adjourned on November 15, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by Charlotte Salter, Attorney. Respondent was represented by Patrick Davis, D.C., who appeared by telephone. Both parties presented evidence and argument.<sup>2</sup>

The record revealed that on \_\_\_\_\_, the claimant suffered a compensable injury to her cervical spine. In consequence, she underwent surgical fusion at the C5/6 level of the spine on April 10, 2002. That surgery was repeated on March 24, 2003, along with a fusion at the C6/7 level and the installation of a bone stimulator in the spinal area.

After the second round of surgery, the claimant sought rehabilitative therapy from Respondent on August 18, 2003. Respondent administered such treatment to the patient through November 7, 2003. Petitioner (the insurer for the claimant’s employer) subsequently denied reimbursement for much of this service, prompting Respondent to seek medical dispute resolution through the Commission.<sup>3</sup>

The IRO to which the Commission referred the dispute issued a decision on February 3, 2005, concluding that some of the disputed services were medically necessary B *i.e.*, neuromuscular re-education (CPT Code 97112), therapeutic exercise (CPT Code 97110), and manual therapy (CPT Code 97140) from September 10 through November 4, 2003, along with ancillary office visits.<sup>4</sup> The IRO presented the following rationale:

. . . . The treatment that was given in the area of neuromuscular re-education and therapeutic procedures along with manual therapy is warranted due to the additional trauma of both surgeries along with the fusions of these areas. . . . The office visits

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<sup>2</sup> The staff of the Commission (or its successor agency) formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of hearing.

<sup>3</sup> Petitioner denied all services at issue on grounds that they were medically unnecessary (*i.e.*, denial code “V” B indicating a conclusion based upon peer review.).

<sup>4</sup> The IRO also found other disputed services to be medically unnecessary in this case - including CPT Codes 97110, 97112, and 97140 on November 6 and 7, 2003, as well as manual manipulation, durable medical equipment, supplies, ultrasound, and electrical stimulation on all relevant dates of service. Respondent did not file any challenge to these findings, and reimbursement for these specific services is accordingly not at issue in this proceeding.

are obviously warranted in order to do the hands-on retraining and therapeutic procedures during this time frame. . . . The guidelines from Chiropractic Quality Assurance and Practice Parameters would basically support the fact that this patient's condition was chronic upon presentation. However, 24 visits were warranted during this time frame.

The Commission's Medical Review Division ("MRD" confirmed the IRO's decision in a separate decision dated February 8, 2005. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH, seeking reversal of the determination that some of the disputed services were medically necessary.

At the SOAH hearing, however, Petitioner acknowledged, on the basis of its own expert witness's testimony, that previously disputed services under CPT Codes 97110, 97112, and 97140 (along with ancillary office visits) were, in fact, medically necessary from September 10 through October 10, 2003. The focus of this contested case was thus narrowed to the services under those same categories that were provided from October 11 through November 4, 2003.

### **III. THE PARTIES' EVIDENCE AND ARGUMENTS**

#### **A. Petitioner**

Petitioner presented the testimony of Andrew Pratt, a licensed physical therapist, who, after reviewing case records, concluded that the therapy prescribed by Respondent in this case was excessive. Based upon his own extensive experience and his understanding of appropriate standards of care, Mr. Pratt asserted that, in a case like this one, rehabilitative therapy is justifiable for a maximum of only six to eight weeks. Since the claimant began such therapy on August 18, 2003, the eight-week limit for that treatment would have fallen on about October 10, 2003. Therapeutic treatment provided after that date would have provided markedly "diminishing returns" and could not reasonably be regarded as medically necessary, Mr. Pratt stated. This was particularly true, he added, given that the claimant is employed in a sedentary job and that her therapy did not even begin until several months after her latest surgery.

According to Mr. Pratt, the record also lacks objective clinical evidence defining the claimant's immediate physical condition or her relative medical progress during the period after October 10, 2003. The record thus gives no indication that treatment by Respondent after that date

assisted materially in the patient's recovery or return to work. Mr. Pratt concluded, instead, that the patient should have been able to manage her own recuperation, on the whole, after October 10, 2003, through a home exercise program and similar efforts.

## **B. Respondent**

Patrick Davis, D.C., a licensed chiropractor who practiced with Respondent in the past, testified on Respondent's behalf.<sup>5</sup> He emphasized the view that Respondent's treatment of the claimant led to a good clinical outcome, with progressive improvements in the patient's range of motion, strength, and functionality throughout the process.

## **IV. ANALYSIS AND CONCLUSION**

Both parties presented credible expert testimony, reflecting undoubtedly honest differences of opinion about the propriety of the services in dispute. However, Petitioner bears the burden of proving that the factual basis or analytical rationale for the IRO's decision in this case was invalid. It did not discharge that burden, in the ALJ's view.

Mr. Pratt, the Petitioner's witness, did not explain the specific basis or source of his contention that rehabilitative therapy should be strictly limited to eight weeks, nor did Petitioner otherwise rebut the declaration of the IRO that its decision on the disputed services was in accord with applicable guidelines for chiropractic quality and practice.

Accordingly, Petitioner should reimburse Respondent for those services previously found by the IRO to be medically necessary.

## **V. FINDINGS OF FACT**

1. On \_\_\_\_, claimant suffered an injury to her cervical spine that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.*

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<sup>5</sup> Respondent provided the disputed services at Fort Worth Injury Rehabilitation Clinic. Respondent no longer practices with this organization.

2. The claimant's injury ultimately necessitated surgical fusion at the C5/6 level of the spine on April 10, 2002; that surgery was repeated on March 24, 2003, along with a fusion at the C6/7 level and the installation of a bone stimulator in the spinal area.
3. After the claimant's surgery, Kris Wilson, D.C., ("Respondent") administered rehabilitative chiropractic therapy, along with ancillary services, from August 18 through November 7, 2003.
4. Respondent sought reimbursement for services noted in Finding of Fact No. 3 from Liberty Mutual Insurance Co. ("Petitioner"), the insurer for claimant's employer.
5. Petitioner denied the requested reimbursement for all services from September 10, 2003, onward, asserting that the services were medically unnecessary, based upon peer review.
6. Respondent made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.
7. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on February 3, 2005, concluding that some of the disputed services were medically necessary B *i.e.*, neuromuscular re-education (CPT Code 97112), therapeutic exercise (CPT Code 97110), and manual therapy (CPT Code 97140) from September 10 through November 4, 2003, along with ancillary office visits. The IRO determined that these services were appropriate under the "guidelines from Chiropractic Quality Assurance and Practice Parameters," while concluding that other disputed services in the case were not medically necessary.
8. The MRD reviewed and concurred with the IRO determination noted in Finding of Fact No. 8, in a decision dated February 8, 2005 (dispute resolution docket No. M5-05-0178-01).
9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH", seeking review and reversal of the IRO and MRD decisions regarding reimbursement, insofar as they found certain disputed services to be medically necessary, as noted in Finding of Fact No. 8.
10. The Commission mailed notice of the setting of hearing to the parties at their addresses on March 10, 2005. The hearing date was subsequently continued with proper notice to the parties.
11. A one-day hearing in this matter was convened before SOAH on November 15, 2005. Petitioner and Respondent were represented.
12. During the period encompassing the services that the IRO found to be medically necessary in this case, as noted in Finding of Fact No. 8, the claimant exhibited progressive improvements in range of motion, strength, and functionality for the portion of the body affected by the compensable injury.

13. Petitioner did not rebut the declaration of the IRO, as noted in Finding of Fact No. 8, that its decision on the disputed services was in accord with applicable guidelines for chiropractic quality and practice.

## **VI. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (or its successor agency, the Texas Department of Insurance) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE ("TAC" § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact and Conclusions of Law, the disputed services for the claimant noted in Finding of Fact No. 8 represent elements of health care medically necessary under § 408.021 of the Act, as previously determined by the IRO.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the IRO's decision in this matter, issued on February 3, 2005, was correct.
8. Petitioner should reimburse Respondent for the following services: neuromuscular re-education (CPT Code 97112), therapeutic exercise (CPT Code 97110), and manual therapy (CPT Code 97140) from September 10 through November 4, 2003, along with ancillary office visits.

**ORDER**

**IT IS THEREFORE, ORDERED** that Liberty Mutual Insurance Co. reimburse Kris Wilson, D.C. for medical services provided from September 10 through November 4, 2003 B including neuromuscular re-education (CPT Code 97112), therapeutic exercise (CPT Code 97110), and manual therapy (CPT Code 97140) along with ancillary office visits - in accordance with the findings and decision of an independent review organization issued in this matter on February 3, 2005.

**SIGNED November 22, 2005.**

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**MIKE ROGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**