

**SOAH DOCKET NO. 453-05-4779.M5**  
**MRD NO. M5-05-0502-01**

<b>TEXAS MUTUAL INSURANCE COMPANY</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>ORTHOPEDIC INSTITUTE OF TEXAS</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

Texas Mutual Insurance Company (Carrier) has challenged a decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission)<sup>1</sup> in a dispute regarding the medical necessity of physical therapy services provided by Orthopedic Institute of Texas (Provider) to an injured claimant between November 17 and December 11, 2003. The MRD's decision was based on the findings of an independent review organization (IRO), which concluded that Carrier improperly denied reimbursement for all of the services in dispute.<sup>2</sup> Carrier challenged the decision on the basis that the treatment at issue was, in fact, not medically necessary within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LAB CODE ANN. ch. 401 *et seq.* The amount in controversy is \$2,053.31.

The Administrative Law Judge (ALJ) concludes that the services in dispute should be reimbursed.

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<sup>1</sup> 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.

<sup>2</sup> The IRO also found some services during the same period of time not reimbursable, but those findings were not appealed by Provider and are not at issue here.

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

The hearing in this matter was convened October 19, 2005, at the State Office of Administrative Hearings with ALJ Carol S. Birch presiding. Carrier was represented by its attorney, Patricia Eads. Provider was represented by its administrator, Edward Wiggins. After presentation of evidence and argument by the parties, the hearing was adjourned and the record closed the same day. The evidence on the issue of medical necessity consisted of medical records submitted by both parties, and the testimony of John Pearce, M.D., an orthopaedic surgeon, on behalf of Carrier, and Danette Anderson, an occupational therapist, on behalf of Provider.

There were no contested issues of jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

## **II. DISCUSSION**

### **1. Background Facts**

The record revealed the claimant suffered a compensable injury to his right shoulder on\_\_\_\_, while lifting a 50-pound load. The claimant was ultimately diagnosed with a torn rotator cuff, resulting in surgery on June 10, 2005. Following surgery, the claimant continued to have pain and weakness in his shoulder, and was unable to return to work. In October 2005, two separate physicians recommended a six-week period of strengthening exercises.

The claimant was referred to Provider who administered 12 sessions of therapy, consisting primarily of strengthening exercises, over a three-week period. At the end of the treatment period, the claimant was able to return to work without further problems.

When Provider billed Carrier for the dates of service disputed in this proceeding, Carrier denied payment for all services during that period of time on the basis that they were not medically necessary.

## **B. IRO Decision**

Based on a review of the medical records, the IRO physician found that:

[t]he duties of this \_\_\_-year old manual laborer require repetitive lifting. The therapeutic exercises and equipment used by the occupational therapist could not have been done at home. The rehabilitative program of the rotator cuff repair was very appropriate.

The reviewer concluded that the services provided on the disputed dates of service were medically necessary.

## **C. Applicable Law**

Under Texas law, 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. The statute provides that the purposes for which health care is to be rendered to a claimant include any 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.

The types of health care to which an employee is entitled are similarly broad, including “all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services.” TEX. LAB. CODE § 401.11(19).

Although the law describes few limitations on a claimant’s entitlement to care, the law places upon the treating physician an obligation to maintain efficient utilization of health care. TEX. LAB. CODE § 408.025(c).

**D. Burden of Proof**

Under the Commission's rules, an IRO decision is deemed a Commission decision and order.<sup>3</sup> The burden of proof in this case is on Carrier to prove by a preponderance of the evidence that the disputed services were not reasonable and necessary medical treatments.<sup>4</sup>

**E. Argument and Analysis**

The basic facts are not in dispute in this case, although the parties' interpretations of the medical evidence differ significantly. Carrier argues that the treatment at issue was not medically necessary as follows:

One-to-one therapy was not reasonable or necessary. The exercises done, while appropriate, would not require intense supervision.

The claimant could have been rehabilitated by just using weights at home or in a gym.

The treatment provided was not billable as one-to-one therapy because the therapist was not working exclusively with the claimant at all times.

Provider responded by pointing out the following:

The post-operative therapy was reasonable and necessary to increase strength and return the claimant to work.

The care provided was done on the advice of two physicians.

One-to one therapy was necessary for this patient because the exercises had to be closely monitored.

The care provided was not excessive, and in fact, the claimant was able to return to work in less time than anticipated by the referring physicians.

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<sup>3</sup> 28 TEX. ADMIN. CODE §133.308(p)(5).

<sup>4</sup> 28 TEX. ADMIN. CODE §§133.308(p)(5), 148.14(a).

The therapy provided constitutes one-to-one therapy as the therapist understands it.

Although Carrier argues that the supervision provided during the claimant's therapy was less than that required to bill for one-to-one therapy, it offered no evidence of what the standard is and cited no relevant authority. The prior decisions of the State Office Of Administrative Hearings referenced by Carrier include testimony or other evidence of what is required and they also refer to guidelines no longer in effect at the time the services were provided.

Because Ms. Anderson's testimony, which was supported by the record, was both credible and at least as persuasive as that of Dr. Pearce, Carrier has not demonstrated by a preponderance of the evidence that the treatment in issue was not medically necessary.

Based on the evidence in this case as discussed above, and as set forth in the findings of fact, the ALJ concludes Carrier failed to meet its burden of proof to show that chiropractic care was not reasonable and necessary for the disputed dates of service to treat the claimant's injuries. Although all of the evidence presented was not discussed in this decision, it was considered. The findings of fact and conclusions of law are based on all of the evidence in the record.

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

1. An injured worker, the claimant, suffered a compensable injury to his right shoulder on \_\_\_, while lifting a 50-pound load.
2. At the time of the claimant's injury, his employer had workers' compensation insurance with Texas Mutual Insurance Company (Carrier).
3. The claimant was diagnosed with a torn rotator cuff, resulting in surgery on June 10, 2003.
4. The claimant was referred to occupational therapy on the advice of two physicians.
5. Orthopedic Institute of Texas (Provider) provided 12 sessions of therapy, consisting primarily of strengthening exercises, to the claimant over a three-week period.

6. At the end of the treatment administered by Provider, the claimant was able to return to work.
7. Carrier denied the requested reimbursement for those 12 dates of service.
8. Provider made a timely request to the Texas Workers' Compensation Commission (the Commission) for medical dispute resolution with respect to the services in dispute.
9. The Commission referred the dispute to an independent review organization (IRO), which concluded that the services indispute were medically necessary.
10. The Commission's Medical Review Division (MRD) reviewed and concurred with the IRO's decision.
11. Carrier timely requested a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
12. This case was referred by the Commission and accepted by SOAH for hearing prior to September 1, 2005.
13. The Commission mailed notice of the hearing setting to the parties on March 15, 2005.
14. A hearing in this matter was convened on October 19, 2005, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Carol S. Birch, an Administrative Law Judge with SOAH. Provider and Carrier were represented and participated in the hearing.
15. The amount in dispute is \$2,053.31.
16. The services at issue were not excessive or unreasonable.

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

1. The Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to §§ 402.073(b) and 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003, and Acts 2005, 79<sup>th</sup> Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.

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. Carrier, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.14(a).
6. Carrier did not meet its burden of proving that Provider should not be reimbursed for the services in dispute.
7. Pursuant to TEX. LAB. CODE ANN. § 413.031, Carrier should reimburse Provider \$2,053.31.

**ORDER**

**IT IS THEREFORE, ORDERED** that Texas Mutual Insurance Company shall reimburse Orthopedic Institute of Texas \$2,053.31, plus interest, for the services in dispute in this proceeding.

**SIGNED on December 19, 2005.**

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**CAROL S. BIRCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**