

**SOAH DOCKET NO. 453-05-7903.M2 & 453-05-9158.M5  
TWCC MR NO. M2-05-1217-01 & M5-05-2374-01**

<b>TEXAS MUTUAL INSURANCE COMPANY,     Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE   OF   ADMINISTRATIVE HEARINGS</b>
<b>V.</b>		
<b>COTTON MERRITT, D.C.,     Respondent</b>		

**DECISION AND ORDER**

**I. INTRODUCTION**

Texas Mutual Insurance Company (Carrier) and Cotton Merritt, D.C.(Provider) each dispute a decision by an independent review organization (IRO), on behalf of the Texas Workers' Compensation Commission (TWCC), regarding medical services for \_\_ (Claimant). One IRO agreed with the Carrier and found the services that the Claimant obtained from the Provider from June 4, 2004, through February 7, 2005, were not reasonably medically necessary to treat the Claimant's compensable injury. Later, on April 21, 2005, a second IRO partially agreed with the Provider's request for pre-authorization and found that the Claimant reasonably needed 15 work-conditioning visits due to that same injury. After the second IRO's decision, the Provider furnished the work-conditioning services.

The Provider argues that all of the above services were medically necessary, while the Carrier argues that none of them were. Each disputes only the IRO decision that is contrary to its position. There are no other disputed issues. Though the dispute over the work-conditioning services is technically a pre-authorization dispute, the parties have agreed to be bound by the decision in this case for purpose of the reimbursement of those services as well, since they have already been provided.

As set out below, the Administrative Law Judge (ALJ) finds that only a few of the disputed services were medically necessary. He orders the Carrier to reimburse the Provider a total of

\$314.48 for those services. The Provider's request for pre-authorization of the work-conditioning services and to be reimbursed for the remaining services is denied.

## II. FINDINGS OF FACT

1. On\_\_\_\_, the Claimant sustained a work-related injury to his back when he fell ten feet from a scaffold to the ground when the scaffold broke.
2. On the date of injury, the Claimant's employer was\_\_\_\_, and its workers' compensation insurance carrier was the Carrier.
3. As a result of the compensable injury, the Claimant suffered pain in his lumbar spine.
4. Beginning in April 2003, the Provider furnished one-on-one therapeutic-exercise services, which included flexion and extension exercises, to the Claimant for his lumbar spine during 21 visits.
5. Beginning in October 2003, the Provider furnished one-on-one therapeutic-exercise services, which included flexion and extension exercises, to the Claimant for his cervical spine during 25 visits.
6. The above therapeutic exercises did not significantly relieve the Claimant's back pain or allow him to return to work.
7. On May 17, 2004, a Designated Doctor prescribed therapeutic exercises for the Claimant using MacKenzie protocols, which mostly consisted of extension exercises.
8. The Provider furnished medical services to the Claimant on the dates and with the Current Procedural Terminology (CPT) codes and maximum allowable reimbursements (MARs) shown below:

CPT	SERVICE DESCRIPTIONS	MAR	DATES
99213	Office visit with established outpatient	\$60.00	6/4 and 6/28/04
99212-25	Office visit with established outpatient	\$44.16	6/7, 6/9, 6/11, 6/14, 6/18, and 6/21/04
97110	One-on-one therapeutic exercises	\$68.92	6/7, 11/22, 11/29, 12/1, 12/6, 12/8, 12/10, 12/13, 12/13, 12/17, 12/20,

CPT	SERVICE DESCRIPTIONS	MAR	DATES
			12/21, 12/22, and 12/23/04
97110	One-on-one therapeutic exercises	\$103.38	6/9, 6/11, 6/14, 6/18, and 6/21/04
97110	One-on-one therapeutic exercises	\$172.30	6/16/04
97110	One-on-one therapeutic exercises	\$134.24	1/3 and 1/5/05
97110	One-on-one therapeutic exercises	\$132.87	1/21, 1/24, 1/26, and 1/28/05
97110	One-on-one therapeutic exercises	\$67.12	1/20/05
97110	One-on-one therapeutic exercises	\$131.94	1/31/05, 2/2/05, and 2/7/05
97112	Neuromuscular reeducation	\$68.60	6/7, 6/11, 6/14, 6/18, 6/21, 11/22, 11/29, 12/1, 12/6, 12/8, 12/10, 12/13, 12/13, 12/17, 12/20, 12/21, 12/22, and 12/23/04
97112	Neuromuscular reeducation	\$102.90	6/9/04
97112	Neuromuscular reeducation	\$137.20	6/16/04
97140	Manual therapy	\$95.19	6/9/04
97140	Manual therapy	\$63.46	6/11, 6/14, 6/18, 6/21, 11/22, 11/29, 12/1, 12/6, 12/8, 12/10, 12/13, 12/13, 12/17, 12/20, 12/21, 12/22, and 12/23/04
97140	Manual therapy	\$63.58	1/3, 1/5, 1/7, 1/10, 1/12, 1/13, 1/14, 1/18, 1/21, 1/24, 1/26, 1/28, 1/31, 2/2, and 2/7/05
97140	Manual therapy	\$30.54	1/20/05

9. The Provider timely sought reimbursement from the Carrier for the above services.

10. The Carrier timely sent an explanation of benefit (EOB) to the Provider denying the requested reimbursement and contending that the above services were not medically necessary to treat the compensable injury.
11. The Provider timely filed with the TWCC a request for medical dispute resolution concerning reimbursement of the above services.
12. An IRO reviewed the reimbursement request and found that the above services were not reasonably medically necessary to treat the compensable injury.
13. After the IRO decision concerning the reimbursement request was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) on that issue.
14. The therapeutic-exercise services that the Provider furnished to the Claimant beginning on June 7, 2004, included extension and flexion exercises.
15. The therapeutic exercises that Claimant engaged in under the Provider's care beginning on June 7, 2004:
  - § were simple;
  - § were similar to those that the Claimant had engaged in during his 46 previous therapeutic-exercise visits to the Provider that began on April 2003;
  - § could have been learned during a single 99212-25 office visit (to instruct the Claimant) on approximately June 7, 2005, and with a single unit of 97110 therapeutic exercises (to allow the Claimant to practice the exercises with supervision and with an MAR of \$34.46) on that same date;
  - § could have been adequately reviewed and corrected with a follow-up 99212-25 office visit and a single unit of 97110 exercises on approximately June 11, 18, and 21, 2004; and
  - § could have been just as successfully performed by the Claimant at home on all other dates without additional 99213, 99212-25, or 97110 services.
16. The Provider had little significant knowledge of the MacKenzie protocols.
17. The Provider retained a subcontractor to teach the MacKenzie protocol exercises to the Claimant and supervise the Claimant's engaging in them.
18. The Provider's subcontractor taught the Claimant to engage in the MacKenzie protocol exercises in an incorrect order, ending with flexion, that likely exacerbated the Claimant's primary back problem, a posterior disc bulge, and likely exacerbated the Claimant's lower back pain.
19. On November 8, 2004, the Claimant received the intradiscal electro thermal therapy (IDET) procedure on one of his spinal discs.

20. During the IDET procedure, a surgical disc is heated to provide pain relief.
21. On December 9, 2004, a doctor providing pain-management services to the Claimant prescribed physical therapy for the Claimant to gradually increase the Claimant's flexibility and abdominal and low back muscle strength.
22. Until the collagen structure in the spine heals following an IDET procedure, strenuous physical exercise is contraindicated for approximately 12 weeks and the only exercise in which a patient should engage is walking.
23. The Claimant should not have been provided therapeutic-exercise services from November 8, 2004, through February 8, 2005.
24. Providing passive modalities, such as 97112 manual therapy services that the Provider furnished to the Claimant from June 9, 2004, through February 20, 2005, beyond an initial conservative-care trial period of four to six weeks after a back injury is not effective and tends to undermine the Claimant's willingness to take responsibility for himself and return to work.
25. Neuromuscular reeducation is warranted when a patient has significant nerve or muscular damage.
26. There is no evidence that the Claimant had significant nerve or muscular damage.
27. On February 7, 2005, the Claimant underwent a functional capacity evaluation that showed that he was functioning at a sedentary level, while his pre-injury job required him to have a moderate to heavy physical demand level.
28. The FCE also showed, through the Claimant's heart rate level and other measures, that the Claimant was not giving a full effort.
29. On February 10, 2005, the Provider sought pre-authorization from the Carrier for 25 visits to provide work-conditioning services to the Claimant.
30. The Carrier timely denied the request for pre-authorization, contending that the work-conditioning services were not reasonably medically necessary.
31. The Provider timely filed with the TWCC a request for pre-authorization of the work-conditioning services.
32. A different IRO reviewed the pre-authorization request and found that 15 of the requested work-conditioning visits were reasonably medically necessary to treat the compensable injury but that the other 10 were not necessary.

33. After the IRO decision concerning the pre-authorization request was issued, the Provider furnished work-conditioning services to the Claimant during 15 visits from May 2, 2005, through May 20, 2005.
34. The work-conditioning services mostly consisted of exercises that were the same or similar to those provided to the Claimant by the Carrier during 76 therapeutic-exercise service sessions from April 2003 through February 2005 and additional neuromuscular reeducation.
35. When the Claimant began work conditioning, he had psychological problems that made it very unlikely that the work-conditioning services would allow him to return to work.
36. The Claimant has not returned to work.
37. The Provider timely billed the Carrier for the work-conditioning services.
38. The Carrier sent an EOB to the Provider declining to pay for the work-conditioning services.
39. After the IRO decision concerning the pre-authorization request for the work-conditioning services was issued, the Carrier asked for a contested-case hearing by a SOAH ALJ on that issue.
40. The disputes in this case were referred by TWCC and accepted by SOAH for hearing prior to September 1, 2005.
41. The required notices of contested-case hearings concerning all of the above disputes were mailed to the Carrier and the Provider.
42. On November 2, 2005, the Carrier, with the agreement of the Provider, asked that both the reimbursement dispute and the work-conditioning pre-authorization dispute be consolidated for hearing on November 3, 2005.
43. On November 3, 2005, SOAH ALJ William G. Newchurch held a contested-case hearing concerning both disputes at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
44. At the hearing, the Carrier and Provider agreed, for purposes of reimbursement, to be bound by the decision in this case concerning the medical necessity of the work-conditioning services.
45. The Carrier appeared at the hearing through its attorney, Katie Kidd.
46. The Provider appeared by telephone at the hearing.

### III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2005), TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, §8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC § 148.14 (2005); the Carrier has the burden of proof concerning the work-conditioning services, and the Provider has the burden of proof concerning the other services at issue in this case.
4. 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. Labor Code §408.021 (a).
5. Based on the above Findings of Fact and Conclusions of Law, one unit of 97110 therapeutic-exercise services on June 7, 11, 18, and 21, 2004, and a 99212-25 office visit on each of those same dates, were reasonably medically necessary to treat the Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, all other 97110, 99212-25, and 99213 services that the Provider furnished the Claimant from June 4, 2004, through February 7, 2005, were not reasonably medically necessary to treat the Claimant's compensable injury.
7. Based on the above Findings of Fact and Conclusions of Law, the 97112 manual therapy services that the Provider furnished to the Claimant from June 9, 2004, through February 20, 2005, were not reasonably medically necessary to treat the Claimant's compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, the 97112 neuromuscular-reeducation services that the Provider furnished to the Claimant from June 7 through December 23, 2004, were not reasonably medically necessary to treat the Claimant's compensable injury.
9. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014.

10. Pre-authorization is required for work-conditioning services. 28 TAC § 134.600.
11. Based on the above Findings of Fact and Conclusions of Law, the work-conditioning services that the Provider furnished to the Claimant from May 2 through May 20, 2005, were not reasonably medically necessary to treat the Claimant's compensable injury and should not have been pre-authorized.
12. Based on the above Findings of Fact and Conclusions of Law, the Carrier should reimburse the Provider a total of \$314.48 for one unit of 97110 therapeutic-exercise services on June 7, 11, 18, and 21, 2004 and a 99212-25 office visit on each of those same dates.
13. Based on the above Findings of Fact and Conclusions of Law, the Provider's request to be reimbursed for all of the other services at issue in this case, including the work-conditioning services should be denied.

### **ORDER**

**IT IS ORDERED THAT** the Carrier shall reimburse the Provider a total of \$314.48 for one unit of 97110 therapeutic-exercise services on June 7, 11, 18, and 21, 2004, and a 99212-25 office visit on each of those same dates. The Provider's request to be reimbursed for all of the other services at issue in this case, including the work-conditioning services, is denied. The Provider's request for pre-authorization of the work-conditioning services is also denied.

**Signed December 5, 2005.**

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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**