

**SOAH DOCKET NO. 453-05-9331.M5  
MR NO. M5-05-2474-01**

<b>ALIEF INDEPENDENT SCHOOL DISTRICT,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>HORIZON HEALTH,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

In this case, Petitioner Alief Independent School District (AISD) seeks relief from an order of the Texas Workers’ Compensation Commission’s<sup>1</sup> Medical Review Division, requiring it to reimburse Respondent Horizon Health (Horizon) \$5,148.65 for medical services. The Administrative Law Judge (ALJ) concludes AISD should pay Horizon Health the full amount in dispute.

**I. FACTUAL AND PROCEDURAL HISTORY**

Workers’ compensation claimant \_\_\_\_ (the Claimant) sustained a compensable injury to her lower back and right knee on \_\_\_\_\_. She was treated at Horizon from July 15, 2004, through September 3, 2004. The services provided included electrical stimulation (unattended), electrical stimulation (manual), manual therapy, one-on-one therapeutic exercises, office visits, neuromuscular reeducation, educational supplies, and self-care/home management training.

Horizon submitted requests for reimbursement to AISD, the self-insured workers’ compensation carrier, which denied all reimbursement except for a special report submitted on July 15 and use of a nonelectric heat pad on the same date. Except for two services, the coded reasons given for nonpayment on the Explanations of Benefits (EOBs) were either “U” unnecessary

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

treatment without peer review or “V” unnecessary treatment with peer review”. The only exceptions were for supplies and materials (CPT Code 99070) on July 15 and for an office visit for a new patient, moderate complexity (CPT Code 99204) on July 16. AISD denied those for lack of adequate documentation, EOB Code “N.”

Horizon filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission’s Medical Review Division (MRD). The MRD referred the medical necessity issues to an Independent Review Organization (IRO). The IRO found all the services except the electrical stimulation to have been medically necessary. The services it found to have been necessary totaled \$4,975.10. The MRD itself reviewed the other two services. It found the supplies not to have been adequately documented, and did not order reimbursement. It found the office visit to have been adequately documented, and ordered reimbursement of \$173.55 for that visit. The total reimbursement ordered was \$5,148.65.

AISD requested a hearing before the State Office of Administrative Hearings (SOAH).<sup>2</sup> After the issuance of proper and timely notice, the hearing was held May 22, 2006, with ALJ Henry D. Card presiding. The hearing was adjourned the same day. However, the record was left open for AISD to provide a list of therapeutic procedure units it contended were inadequately documented. It supplied that list on May 26, 2006. The record closed on June 2, 2006, with Horizon’s response to that pleading.

Under 28 TEX. ADMIN. CODE (TAC) §148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN.§ 413.031.

## **II. DISCUSSION**

The peer review stated the treatments provided by Horizon were not necessary. Carrie Schwartz, D.C., who treated the Claimant, testified they were necessary. That position was supported by the designated doctor examination. The ALJ found the positions of Dr. Schwartz and

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<sup>2</sup> Horizon did not request a hearing.

the designated doctor to be more persuasive. Although one-on-one therapy (CPT Code 97110) can be overused, Dr. Schwartz convincingly established that personal monitoring was necessary in this case, in which the Claimant was pregnant and was suffering from balance problems. Dr. Schwartz and the medical records also showed that the Claimant's condition steadily improved, so continuation of the course of treatment was justified.

On cross-examination, using the medical records, AISD established significant documentation problems with the one-on-one therapy. Over the course of approximately six weeks, from July 15 to September 3, 2004, Horizon's SOAP notes document 44 units of one-on-one therapy. Horizon appears to have charged for 65 additional units that are not documented in those notes.

AISD did not raise the issue of inadequate documentation in its explanations of benefits (EOBs), either originally or on reconsideration, or at the MRD level. TWCC's rule at 28 TEX. ADMIN. CODE (TAC) §133.304 (c), which applied to this case, stated:

At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carriers action(s) . . . .

AISD's EOBs for Code 97110 did not conform with that rule. Horizon did not have the opportunity to review or supplement its initial documentation, and the MRD did not have the opportunity to address the documentation issue. AISD's EOBs for that CPT code all addressed medical necessity, either with or without a peer review, which are discrete exception codes from "not appropriately documented." The ALJ concludes that AISD waived the documentation issue for CPT code 97110 by failing to raise it in its EOBs.<sup>3</sup>

AISD's EOB for Code 99204 on July 16, 2004, did challenge the documentation for that

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<sup>3</sup> See Docket No. 453-97-0973.M4, *Naehritz v. Texas Worker's Compensation Commission and Texas Workers' Compensation Insurance Fund* (May 1998); Docket No. 453-96-1446.M4, *Liberty Mutual Fire Insurance Company v. Texas Workers' Compensation Commission and Nervchek* (Nov. 1996).

office visit. The ALJ finds, however, that it was adequately documented.<sup>4</sup>

### III. FINDINGS OF FACT

1. Workers' compensation claimant \_\_\_\_ (the Claimant) sustained a compensable injury to her lower back and right knee on \_\_\_\_.
2. The Claimant was treated at Horizon Health (Horizon) from July 15, 2004, through September 3, 2004.
3. The services provided included electrical stimulation (unattended), electrical stimulation (manual), manual therapy, one-on-one therapeutic exercises, office visits, neuromuscular reeducation, educational supplies, and self-care/home management training.
4. Horizon submitted requests for reimbursement to Alief Independent School District (AISD), the self-insured workers' compensation carrier, which denied all reimbursement except for a special report submitted on July 15 and use of a nonelectric heat pad on the same date.
5. Except for two services, the coded reasons given for nonpayment on the Explanations of Benefits (EOBs) were either "U"-unnecessary treatment without peer review or "V"-unnecessary treatment with peer review.
6. The only exceptions were for supplies and materials (CPT Code 99070) on July 15 and for an office visit for a new patient, moderate complexity (CPT Code 99204) on July 16. AISD denied those for lack of adequate documentation, EOB Code "N."
7. Horizon filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD). The MRD referred the medical necessity issues to an Independent Review Organization (IRO).
8. The IRO found all the services except the electrical stimulation to have been medically necessary. The services it found to have been necessary totaled \$4,975.10.
9. The MRD itself reviewed the other two services. It found the supplies not to have been adequately documented, and did not order reimbursement. It found the office visit to have been adequately documented, and ordered reimbursement of \$173.55 for that visit. The total reimbursement ordered was \$5,148.65.
10. AISD requested a hearing before the State Office of Administrative Hearings (SOAH).
11. Horizon did not request a hearing.

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<sup>4</sup> AISD Ex. 1, pages 134-35.

12. Notice of the hearing was sent to the parties October 28, 2006.
13. 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.
14. The hearing was held May 22, 2006, with ALJ Henry D. Card presiding. The hearing was adjourned the same day. However, the record was left open for AISD to provide a list of therapeutic procedure units it contended were inadequately documented. It supplied that list on May 26, 2006. The record closed on June 2, 2006, with Horizon's response to that pleading.
15. Personal monitoring was necessary in this case, in which the Claimant was pregnant and was suffering from balance problems.
16. The Claimant's condition steadily improved, so continuation of the course of treatment was justified.
17. One-on-one therapy was medically necessary for the Claimant.
18. AISD did not raise the issue of inadequate documentation for Code 97110 in its explanations of benefits (EOBs), either originally or on reconsideration, or at the MRD level.
19. AISD's EOBs for that CPT code all addressed medical necessity, either with or without a peer review, which are discrete exception codes from "not appropriately documented."
20. The office visit of July 16, 2004 (Code 99204) was adequately documented.

#### **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. §2001.052.
3. AISD had the burden of proving it should not be required to reimburse Horizon for the services at issue. 28 TEX. ADMIN. CODE §148.14(a).
4. AISD waived the documentation issue for CPT code 97110 by failing to raise it in its EOBs.
5. AISD failed to carry its burden of proof.
6. AISD should pay Horizon for the services in dispute.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Alief Independent School District shall pay Horizon Health \$5,148.65, plus applicable interest, for the dates of services at issue.

**SIGNED July 27, 2006.**

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