

**SOAH DOCKET NO. 453-05-9681.M5
TWCC MR NO. M5-05-2273-01**

MARK C. SHERROD, D.C.
Petitioner

V.

**TEXAS MUTUAL INSURANCE
COMPANY,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves the question whether reimbursement is appropriate for treatment rendered to Claimant by Mark C. Sherrod, D.C. (Petitioner), between April 21, 2004, and June 22, 2004 (Service Period), for an injury sustained in___. Dr. Sherrod initially sought reimbursement from Texas Mutual Insurance Company (TMIC) in the amount of \$874.00.¹ TMIC denied reimbursement for the disputed services as not medically necessary. The Independent Review Organization (IRO) held that the disputed services were not medically necessary. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the recommendation of the IRO. In this Order, the Administrative Law Judge (ALJ) concludes the MRD was incorrect and finds Dr. Sherrod is entitled to reimbursement.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

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

Administrative Law Judge (ALJ) Paul Keeper convened the hearing on the merits at the offices of the State Office of Administrative Hearings (SOAH) in Austin on March 9, 2006, at 1:30 p.m. Dr. Sherrod appeared on his own behalf by telephone, and TMIC appeared through its counsel, Bryan Jones. The hearing adjourned the same day, and the record was closed upon the adjourning of the hearing.

¹ The amount was later reduced to \$791.00 upon the determination that Dr. Sherrod's request for a retrospective medical dispute resolution was not timely with respect to Dr. Sherrod's services rendered on April 19, 2004.

II. DISCUSSION

The fact question in this case is whether the care rendered by Dr. Sherrod was medically necessary to treat a compensable injury. TMIC argued that the cause of Claimant's pain was a combination of age-related spinal arthritis (spondylosis) and intermittent physical stress. Dr. Sherrod argued that he had treated Claimant's pain arising from a work injury that Claimant sustained in____. In essence, the parties' argument was that a determination of the underlying cause of Claimant's pain would decide the issue of medical necessity.

This Proposal for Decision will review the facts in greater detail in the Findings of Fact. However, the legal analysis must end here. The authority of the State Office of Administrative Hearings (SOAH) does not extend to determining compensability of an injury. Instead, SOAH's authority is to decide whether a particular type of care is medically necessary based on the assumption that the underlying injury is compensable.

In this case, the parties did not address the issue of compensability before the Commission and may not bring that dispute before SOAH-either directly or inferentially. In reaching the question of medical necessity, an ALJ may not be required to decide whether one cause or another created Claimant's ongoing pain. The authority to decide compensability of an injury is reserved to decision-makers of fact and law in forums other than SOAH, MRD, and the IRO.

The parties agreed that Dr. Sherrod's treatments were effective in controlling Claimant's pain and that Mark W. Scioli, M.D., an orthopedic surgeon, supported that treatment for their patient. As noted in many SOAH decisions, an employee who sustains a compensable injury is entitled to: (1) all health care reasonably required by the nature of the injury as and when needed, and (2) health care 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. TEX. LAB. CODE ANN. § 408.021.

Therefore, assuming without deciding that Claimant's pain was related to the injury, the ALJ concludes that Dr. Sherrod's treatment of Claimant was reasonably required by the nature of the compensable injury and that Dr. Sherrod's care was effective in relieving the effects naturally resulting from that injury.

III. FINDINGS OF FACT

1. Claimant sustained a compensable soft tissue injury to her shoulder, neck, and back on ____.
2. Mark C. Sherrod, D.C., Petitioner, treated Claimant's soft tissue problems from the date of her injury in ____ through January 5, 2006.
3. Dr. Sherrod treated Claimant with chiropractic manipulative treatment (CPT Code 98941), electrical stimulation (CPT Code G0283), and ultrasound (CPT Code 97035).
4. After many years of treatment, Claimant began to see Dr. Sherrod on an episodic basis when her neck, shoulder, and back pain would become more intense.
5. Mark W. Scioli, M.D., an orthopedic surgeon, also began treating Claimant in 2001 and found Dr. Sherrod's treatment to be worthwhile for Claimant.
6. Dr. Sherrod's intermittent care for these episodes was effective in relieving Claimant's pain.
7. Between April 21, 2004, and June 22, 2004 (Service Period), Dr. Sherrod rendered care to Claimant on six separate dates.
8. Dr. Sherrod sought reimbursement from Texas Mutual Insurance Company (TMIC), Respondent, for \$791.00 for the care that he rendered to Claimant during the Service Period.
9. TMIC denied reimbursement for the coverage on the grounds that the care was not medically necessary to treat a compensable injury.
10. Dr. Sherrod challenged TMIC's denial and sought review by an Independent Review Organization (IRO).
11. On August 22, 2005, the IRO upheld the decision of TMIC, and on August 23, 2005, the Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the recommendation of the Independent Review Organization (IRO).
12. On August 29, 2005, Dr. Sherrod filed a formal request for a hearing.
13. On November 15, 2005, the Texas Department of Insurance, Division of Workers' Compensation, notified Dr. Sherrod that the State Office of Administrative Hearings (SOAH) would conduct a hearing on March 9, 2006.
14. The hearing on the merits was convened on March 9, 2006.
15. Dr. Sherrod represented himself at the hearing on the merits, and Bryan Jones served as attorney for TMIC.
16. The hearing was adjourned on March 9, 2006, and the administrative record was closed that same day.

17. There is no evidence that TMIC sought or received a final decision from the Commission regarding the extent of the Claimant's injury pursuant to 28 TEX. ADMIN. CODE (TAC) §124.2.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. The State Office of Administrative Hearings (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.
3. Mark C. Sherrod, D.C., Petitioner, timely filed his request for a hearing. 28 TEX. ADMIN. CODE (TAC) §148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 28 TAC §148.4.
5. As Petitioner, Dr. Sherrod has the burden of proof in this matter. 28 TAC § 148.21(h).
6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury 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. TEX. LAB. CODE ANN. §408.021(a).
7. The care rendered by Dr. Sherrod to Claimant was reasonably required by the nature of the compensable injury and was effective in relieving the effects naturally resulting from that injury.
8. The IRO, MRD, and SOAH do not have jurisdiction to decide whether the source of the Claimant's pain is related to the Claimant's compensable injury.
9. If a carrier has raised a dispute pertaining to liability for a claim, compensability, or extent of injury in accordance with 28 TAC §124.2, the MRD is required to hold in abeyance the request for an IRO until those disputes have been resolved by a final decision of the Commission. 28 TAC § 133.308(f)(7).

ORDER

IT IS, THEREFORE, ORDERED that Mark C. Sherrod, D.C., is entitled to receive reimbursement from Texas Mutual Insurance Company for the treatment he rendered to Claimant from April 21, 2004 to June 22, 2004.

SIGNED March 21, 2006

**PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**