

**DOCKET NO. 453-05-9362.M5
MR NO. M5-05-2774-01**

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|-------------------------------------------------|---|--------------------------------|
| DEEP EAST TEXAS SELF INSURANCE FUND, | § | BEFORE THE STATE OFFICE |
| | § | |
| Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| NACOGDOCHES REHABILITATION GROUP, | § | |
| | § | |
| Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

The provider, Nacogdoches Rehabilitation Group, sought reimbursement for approximately one month of services provided to claimant ___in the summer of 2004. The carrier, Deep East Texas Self-Insurance Fund, declined to pay for the disputed services on the basis that the services were not medically necessary. An Independent Review Organization (IRO) determined that the disputed services were medically necessary. The Administrative Law Judge (ALJ) concludes that the disputed services were not medically necessary and orders no reimbursement. The amount in dispute is \$822.22.

I. NOTICE AND PROCEDURAL HISTORY

The hearing was convened on June 6, 2006, before State Office of Administrative Hearings (SOAH) Judge Suzanne Formby Marshall. Deep East Texas Self-Insurance Fund (Carrier) appeared through Beverly Vaughn, attorney. Nacogdoches Rehabilitation Group (Provider) appeared by telephone through Belle Cuevas, an employee. The record closed the same day. No party raised any issue concerning notice or jurisdiction.

II. DISCUSSION

A. Medical Necessity

Carrier has the burden of proof in this proceeding.¹ The Texas Labor Code provides in pertinent part that:

- (a) An employee who sustains a compensable injury is entitled to all health

¹ 28 TEX. ADMIN. CODE § 148.14; TEX. LABOR CODE § 413.031.

care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care 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.²

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.³

B. Background, Disputed Services, IRO Decision

___ (Claimant) was injured on ____, while she was driving a van for the Woden Independent School District. The van was struck by another vehicle and Claimant sustained injuries to her cervical and lumbar spine. Claimant was treated by Randall Vinther, M.D., after the accident and was referred to Michael Randall, M.D., who performed a laminectomy (back cage fusion) at the L4-5 level on April 3, 2002. Claimant is also diabetic and has been noncompliant with her health care. On March 19, 2003, Claimant reached maximum medical improvement and was recommended for 10% whole person impairment. Throughout her medical history post-injury, Claimant has been prescribed medications such as Soma, Vicodin, and Prozac.

In 2003, she sought treatment from W. W. Hairston, D.O., for pain in her neck, back and lower legs. An MRI was obtained in May 2004 was negative for disc herniation or bony encroachment on the neural canal. In May 2004, she was referred for physical therapy, including aquatic

² TEX. LAB. CODE § 408.021.

³ TEX. LAB. CODE § 401.011(19).

exercise.⁴ She did not attend all the sessions and discharged herself in July 2004.⁵

The provider billed for the physical therapy sessions, under CPT Codes 97140 (manual therapy technique), 97113 (aquatic therapy), 970335 (ultrasound), GO283 (electrical stimulation), 97002 (physical therapy reevaluation), and 97110 (therapeutic exercises) for the time period June 8 through July 2, 2004. The carrier declined to pay, using the “U: unnecessary treatment” and “N: not appropriately documented” denial codes.

The IRO issued its decision on August 4, 2005.⁶ The IRO reviewer found the physical therapy services to be medically necessary, stating that “The patient had a clearly, well-defined surgical failure in the lumbar spine. A serious exacerbation was treated conservatively and appropriately by the requesting clinic.” The IRO’s finding that Claimant suffered from failed back surgery syndrome was the basis of approval for the physical therapy. The IRO found that Claimant had benefited from the physical therapy program through reduced pain and increased functional ability.

C. The Carrier’s Position and Evidence

Carrier relies on the testimony of Casey Cochran, M.D., and the medical records to support its assertion that physical therapy was not medically necessary.⁷ Dr. Cochran is board-certified in family and occupational medicine. Dr. Cochran testified that Claimant’s complaints of pain were unrelated to the compensable injury, noting the amount of time that had passed since the accident. Dr. Cochran testified that Claimant’s pain could not be attributable to the injury because she had not experienced any structural changes after the laminectomy, as

⁴ From the records submitted by Provider, it appears that Dr. Hairston referred Claimant for twelve weeks of physical therapy from May 26, 2004, to June 23, 2004. Progress notes dating from May 26, 2004, until July 2, 2004, are included in the records.

⁵ Petitioner missed five of the prescribed sixteen sessions.

⁶ Provider’s Exhibit 2, p. 4.

evidenced by the MRI, that could have caused the pain. He noted that Claimant's diabetes and resulting peripheral neuropathy could be the cause of pain in her feet, legs and lower back. Additionally, Dr. Cochran testified that Claimant had experienced several falls at home.

According to Dr. Cochran, the physical therapy services provided to Claimant did not offer an advantage over a well-designed home exercise program, considering that Claimant's injury had occurred more than two years earlier. Dr. Cochran was critical of the progress notes from the physical therapy sessions that stated Claimant was receiving a benefit from the services, but failed to support this conclusion by objective criteria. Dr. Cochran also observed that Claimant continued to complain of severe pain during this time frame, despite being prescribed narcotic and opiate medications and receiving physical therapy; consequently, the treatment did not seem to improve Claimant's condition.

Dr. Cochran also disputed the IRO's conclusion that Claimant suffered from a failed back surgery, citing Claimant's assertions that she was pain-free after the surgery and the MRI results which showed no disc deterioration or other structural problem that would explain continued pain in her back that could be a natural consequence of her injury.

D. Provider's Position and Evidence

Provider asserted that Carrier had denied payment of all the physical therapy sessions and that the sessions were medically necessary to treat Claimant's chronic back pain syndrome. Provider contended that Claimant benefited from the services and introduced progress reports to support this contention.⁸ The progress notes include an initial plan of care dated May 26, 2004, that contains objective findings and measurable goals for the physical therapy sessions. It notes that the therapy was prescribed due to Claimant's limitation of motion, muscle weakness, pain

⁷ Carrier's Exhibit 1.

⁸ Provider's Exhibit 1, pp. 1-9.

syndrome, difficulty walking, and balance impairment.⁹ The progress notes indicate that Claimant reported feeling better and her range of motion continued to improve on observation.

E. ALJ's Analysis and Conclusion

The ALJ is persuaded by Dr. Cochran's testimony that the physical therapy services provided to Claimant were not medically necessary to treat her compensable injury. The ALJ notes that

Claimant indicated that the laminectomy had improved her back pain and Dr. Randall's notes indicate that Claimant "did incredibly well" after the surgery.¹⁰ Claimant complained of neck pain and pain in her legs and feet. The records show that Claimant had suffered a broken neck many years earlier and suffered from diabetes that was not well-controlled. As noted by Dr. Cochran, these conditions could also explain the pain experienced by Claimant.

Claimant did not demonstrate improvement as a result of the physical therapy sessions and did not attend the sessions on a regular basis. The progress notes from the physical therapy sessions contain no objective criteria indicating that Claimant's condition had improved as a result of the sessions. Instead, there were notations that Claimant "feels better" and her range of motion "continues to improve on observation." Claimant met only one of the goals of the physical therapy, *i.e.*, ability to walk 15 minutes or more at a time.¹¹

Claimant also discontinued the physical therapy sessions before completing all the sessions, citing that her job duties made it necessary to do so. The fact that Claimant was able to work while undergoing therapy provides some evidence that Claimant's condition did not require

⁹ *Id.* at p. 2.

¹⁰ Carrier's Exhibit 1, p. 64.

¹¹ Provider's Exhibit 1, p. 1.

the physical therapy services in order to return to work. Therefore, the ALJ concludes that the physical therapy services at issue were not medically necessary.

III. FINDINGS OF FACT

1. Deep East Texas Self-Insurance Fund (Carrier) is the workers' compensation insurer with respect to the claims at issue in this case.
2. Claimant,_____, injured her cervical and lumbar spine on_____, when the van she was driving on behalf of Woden Independent School District was struck by another vehicle.
3. After the accident referenced in Finding of Fact No. 2, Claimant was treated by Randall Vinther, M.D.
4. Dr. Vinther referred Claimant to Michael Randall, M.D., who performed a laminectomy at L4-5 with a BAK cage on April 3, 2002.
5. As a result of the laminectomy, Claimant's condition improved.
6. In 2003, Claimant sought treatment from W. W. Hairston, D.O., for pain in her back, legs, feet and neck.
7. Dr. Hairston diagnosed Claimant's condition as an exacerbation of the original injury and prescribed medications and physical therapy.
8. Claimant attended physical therapy at the Nacogdoches Rehabilitation Group (Provider). The services provided to Claimant included CPT Codes 97140 (manual therapy technique), 97113 (aquatic therapy), 970335 (ultrasound), GO283 (electrical stimulation), 97002 (physical therapy reevaluation), and 97110 (therapeutic exercises) for the time period June 8 through July 2, 2004.
9. Claimant did not attend all of the physical therapy sessions prescribed by Dr. Hairston and discontinued treatment on July 12, 2004, due to her job duties.
10. The progress notes from the physical therapy sessions do not contain objective findings of Claimant's range of motion.
11. The progress notes from the physical therapy sessions do not contain objective findings indicating improvement by Claimant.

12. Dr. Hairston's medical records, including the referral to physical therapy, do not indicate objective goals for the treatment.
13. A home-based exercise program would have the same benefit to Claimant as the services provided to her by Provider.
14. There was no medical evidence that Claimant's complaints of back pain were due to a failed back surgery.
15. Provider failed to demonstrate that the physical therapy services were medically necessary to treat Claimant.
16. Carrier declined to pay for the physical therapy, using the "unnecessary treatment" and "not appropriately documented" denial codes.
17. Provider requested medical dispute resolution.
18. An Independent Review Organization (IRO), in a decision dated August 4, 2005, determined that the disputed services were medically necessary.
19. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its order, based on the IRO decision, on August 8, 2005.
20. Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the IRO's decision.
20. On November 3, 2005, the Commission issued a notice of hearing in this matter.
21. 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.

IV. CONCLUSIONS OF LAW

1. The Texas Labor Code gives the Commission jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. 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.

3. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
5. Deep East Texas Self-Insurance Fund has the burden of proof in this matter. 28 TEX. ADMIN. CODE ch.148; TEX. LABOR CODE § 413.031.
6. 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.
7. Based on the above Findings of Fact and Conclusions of Law, the Act does not require Deep East Texas Self-Insurance Fund to reimburse Nacogdoches Rehabilitation Group for services rendered to B. P. from June 8 through July 4, 2004, and billed under CPT Codes 97140, 97113, 97035, G0283, 97002, and 97110.

ORDER

IT IS THEREFORE ORDERED that Deep East Texas Self-Insurance Fund need not reimburse Nacogdoches Rehabilitation Group for services rendered to claimant B. P. from June 8, 2004, through July 2, 2004, and billed under CPT Codes 97140, 97113, 97035, G0283, 97002, and 97110.

SIGNED August 7, 2006.

**SUZANNE FORMBY MARSHAL
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE**

