

SOAH DOCKET NO. 453-04-4568.M5

DON A. SALYER, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
LIBERTY MUTUAL INSURANCE	§	
COMPANY,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Don A. Salyer, D.C. (Petitioner) seeks reimbursement for office visits, electrical stimulation, therapeutic procedures, mechanical traction, supplies/materials, and myofascial releases provided to a worker's compensation claimant from September 27, 2002 through December 20, 2002. The Texas Workers' Compensation Commission (Commission),¹ acting through an independent review organization (IRO), denied reimbursement on the basis that the services were not medically necessary. This decision also denies the requested reimbursement.

I. NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed in the findings of fact and conclusions of law. The hearing convened on July 12, 2007 before Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner, Don A. Salyer, D.C., appeared by telephone and represented himself. Liberty Mutual Insurance Company (the Carrier) was represented by Robert Josey. The record closed on July 12, 2007.

II. BASIS FOR DECISION

On _____, the Claimant suffered a compensable injury when she tripped while picking up a box and hurt her right knee. She underwent extensive conservative care, including approximately 59 sessions of physical therapy followed by a diagnostic arthroscopy on July 24, 2002, which

¹ Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers' Compensation of the Texas Department of Insurance. This case arose before that transfer of authority. The hearing on the merits was delayed in order to allow the parties to address procedural and discovery matters and was reset on July 12, 2007, at the request of the Carrier.

included subchondral drilling into the bone in order to treat a chondral defect. Following this surgery, the Claimant apparently received an additional 129 sessions of physical therapy.²

The evidence at hearing consisted of medical records pertaining to the Claimant offered by the Carrier. In addition, Dr. Salyer testified on his own behalf, and the Carrier presented the testimony of Dr. Neal Blauzvern. In the ALJ's view, the Petitioner did not carry his burden of proving the disputed services were medically necessary. Dr. Blauzvern, a licensed physician and pain management specialist, testified that typical treatment following surgery of this type – which he described as arthroscopic and out-patient in nature, would consist of 12 to 18 sessions of physical therapy. Dr. Blauzvern testified that, instead, the treatment plan following this operation was based on a plan for an ACL repair, and that even then, standard protocols would allow only up to 34 sessions. The Carrier also observes that the Claimant's surgeon evaluated the Claimant on November 4, 2002, and recommended only a home exercise program.

Dr. Salyer, however, testified that articular chondral repair is a difficult procedure and requires extensive follow-up therapy. He also stated that the Claimant showed improvement as a result of the therapy sessions, although there were admittedly ups and downs and the care extended beyond the usual recovery period. Dr. Salyer focused on numerous shortcomings he identified in the peer reviews that found no more treatment was necessary. He argued that the reviewers based their conclusions on summaries provided by the Carrier rather than on all of the Claimant's records.

But Dr. Salyer, as the petitioner in this proceeding, bore the burden of proof to show the disputed services were medically necessary. His critique of the peer reviews conducted by other doctors does not satisfy that affirmative burden. The ALJ accepts that the drilling procedure included in the arthroscopic operation performed on July 24, 2002, added somewhat to the complexity of the procedure. Nevertheless, the documentary evidence indicates that the Claimant's progress in response to extensive physical therapy had reached a plateau by September 27, 2002, and no further physical therapy was shown to be necessary beyond that point.

² There were on-going documentation issues pertaining to this proceeding. Although Dr. Salyer stated that he provided all pertinent medical records to the Commission and the Carrier, treatment records pertaining to the period in dispute were not offered into evidence. The number cited here is based on the testimony of Dr. Neal Blauzvern.

Based on the foregoing, the ALJ finds the disputed services were not shown to be medically necessary and that the request for reimbursement should, therefore, be denied.

III. FINDINGS OF FACT

1. The Claimant sustained a compensable injury on _____, when she tripped while picking up a box and hurt her right knee.
2. Liberty Mutual Insurance Company (the Carrier) was the workers' compensation carrier for the Claimant's employer.
3. The Claimant underwent extensive conservative care, including approximately 59 sessions of physical therapy followed by a diagnostic arthroscopy on July 24, 2002, which included subchondral drilling into the bone in order to treat a chondral defect. Following this surgery, the Claimant received an additional 129 sessions of physical therapy.
4. The Carrier denied reimbursement for office visits, electrical stimulation, therapeutic procedures, mechanical traction, supplies/materials, and myofascial releases provided to the Claimant from September 27, 2002 through December 20, 2002.
5. The Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Carrier.
7. The Petitioner timely requested a hearing based on the IRO decision.
8. Timely notice of the hearing was sent to the parties.
9. 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.
10. The hearing was held July 12, 2007, with representatives of the Petitioner and the Carrier participating.
11. Prior to the time period of the disputed services, the Petitioner had already provided extensive physical therapy to the Claimant, and the results from such treatment had reached a plateau.
12. The disputed services were not shown to be medically necessary in light of the extensive physical therapy already received by the Claimant and the fact that the Claimant was no longer improving.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. The Petitioner did not establish that the disputed services were medically necessary to treat the Claimant's compensable injury.
6. The Petitioner's request for reimbursement should be denied.

ORDER

IT IS, THEREFORE, ORDERED that the request of Don A. Salyer, D.C., for reimbursement for office visits, electrical stimulation, therapeutic procedures, mechanical traction, supplies/materials, and myofascial releases provided to a worker's compensation claimant from September 27, 2002 through December 20, 2002, is denied.

Signed August 31, 2007.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**