

<b>AMCOMP ASSURANCE CORP.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>KIMBERLY DRIGGERS, D.C.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

AmComp Assurance Corporation (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division)<sup>1</sup> ordering additional reimbursement to Kimberly Driggers, D.C. (Provider) for medical care provided to Claimant, an injured worker. The Administrative Law Judge (ALJ) finds Provider is entitled to additional reimbursement in the amount of \$1,768.76, plus any applicable interest.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

The MRD issued its decision on April 14, 2008. Carrier filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties. The hearing convened on July 22, 2008, with ALJ Steven M. Rivas presiding. Carrier appeared and was represented by David Swanson, attorney. Provider appeared and represented herself. The record closed the same day.

**II. DISCUSSION**

**A. Factual Overview**

Claimant sustained a compensable low back injury on \_\_\_\_, and was admitted to Provider, where Claimant underwent treatment. Claimant was diagnosed with a lumbar sprain/strain and underwent physical therapy at Provider's facility. Following the treatment, Provider submitted a bill to Carrier in the amount of \$3,529.45. Carrier denied partial payment on the basis that the treatment provided to Claimant was in excess of the preauthorized services. The dispute was referred to the Commission's MRD, which ordered Carrier to reimburse Provider an additional \$1,835.68 for the

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<sup>1</sup> Effective September 1, 2005, the legislature dissolved the Texas Workers' Compensation Commission (Commission) and created the Division of Workers' Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005, Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

services rendered. Carrier timely requested a hearing before SOAH.

## **B. Issues**

### **1. Provider's request for preauthorization**

On November 16, 2006, Provider filed a preauthorization request with Carrier. The services for which Provider requested preauthorization included the following:

97110 Therapeutic Exercises (1 to 8 units depending on injury and necessity)  
97032 Attended Electrical Stimulation (1 unit)  
97140-59 Manual Therapy (1 to 3 units depending on injury and necessity)<sup>2</sup>

Provider requested preauthorization for 18 sessions to treat Claimant three times-a-week for six weeks. On November 20, 2006, Carrier issued its approval for the services, but limited the number of sessions to nine instead of 18. Carrier also noted in its approval that "there is to be an emphasis placed on instruction for home based procedures as well as to wean the [Claimant] from in office care."<sup>3</sup> Carrier placed no further restrictions to Provider's preauthorization request.

### **2. The services rendered to Claimant**

Between November 27, 2006, and December 14, 2006, Provider treated Claimant's compensable injury. For each date of service, Provider billed for an office visit under CPT code 99213, and for the following:

<b>Date</b>	<b>CPT code (units rendered)</b>	<b>Total therapy units<sup>4</sup></b>	<b>Length of therapy session</b>	<b>Billed amount</b>
<b>11/27/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (2 units)	11 units	2.75 hours	\$396.94
<b>11/28/06</b>	97140-59 (2 units) 97110 (6 units) 97032 (1 unit)	9 units	2.25 hours	358.94

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<sup>2</sup> Carrier's Exhibit No. 1, page 115.

<sup>3</sup> Carrier's Exhibit No. 1, page 119.

<sup>4</sup> Not including CPT code 99213, office visit, performed before each therapy session.

<b>11/30/06</b>	97140-59 (2 units) 97110 (7 units) 97032 (1 unit)	10 units	2.50 hours	393.94
<b>12/04/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	394.00
<b>12/05/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	394.00
<b>12/07/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	402.06
<b>12/11/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	394.00
<b>12/13/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	394.00
<b>12/14/06</b>	97140-59 (1 unit) 97110 (8 units) 97032 (1 unit)	10 units	2.50 hours	401.57
<b>Total</b>				<b>\$3,529.45<sup>5</sup></b>

### 3. Carrier's partial reimbursement

Provider billed Carrier \$3,529.45 for the services rendered and Carrier submitted the bills to Unimed for review. Debra Bailey of Unimed testified she reviewed Provider's bills and recommended partial reimbursement of \$1,632.21 for the services rendered over nine dates.

Provider requested reimbursement for 69 units for CPT code 97110, therapeutic exercises, rendered to Claimant.<sup>6</sup> On each date of service, Provider rendered between six and eight units of this modality. In calculating Provider's reimbursement, Ms. Bailey recommended Carrier reimburse Provider a *maximum* of two units for this service for each date of service on the basis that "the usual treatment session for this service is 30-45 minutes" or two 15-minute units. As noted in the above

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<sup>5</sup> The total amount includes \$24.45 billed for CPT code 99199, an unknown service that was rendered on five dates of service.

<sup>6</sup> On seven occasions, Provider billed for eight units of 97110. On two other occasions, Provider billed for six and seven units of 97110.

table, each therapeutic session lasted more than two hours. Ms. Bailey also recommended a reduced rate to \$33.46 (from \$35.00) for each unit that qualified for reimbursement, which rendered a total of \$602.28 reimbursement for this modality.

Provider requested reimbursement for 11 units for CPT code 97140-59, manual therapy. As noted on the table above, Provider rendered one unit of 97140-59 on seven dates of service, and two units on two dates of service. Ms. Bailey recommended Carrier reimburse Provider a *maximum* of one unit for CPT code 97140-59 for each date of service. In addition, Ms. Bailey recommended a reduced rate of \$31.15 (from \$32.00) for each unit that qualified for reimbursement, which rendered a total of \$280.35 reimbursement for this modality.

For CPT code 97032, electrical stimulation, Ms. Bailey recommended reimbursement at a reduced rate of \$18.94 (from \$20) for each date of service totaling \$170.46. For CPT code 99213, office visit, Ms. Bailey recommended reimbursement at a reduced rate of \$61.63 (from 62.00) for nine dates of service totaling of \$554.67. Ms. Bailey also recommended reimbursement of CPT code 99199, for an unknown service, for a total of \$24.45.

Unimed’s reimbursement scheme was as follows:

<b>CPT code</b>	<b>Units billed</b>	<b>Amount billed per unit</b>	<b>No. of units reimbursed</b>	<b>Reduced amount of unit<sup>7</sup></b>	<b>Total reimbursement</b>
97110	69	\$35.00	18	\$33.46	\$602.28
97140-59	11	32.00	9	31.15	280.35
97032	9	20.00	9	18.94	170.46
99213	9	62.00	9	61.63	554.67
99199	5	Various	5	n/a	24.45
<b>Total</b>					<b>\$1,632.21</b>

Following Unimed’s reimbursement scheme, Carrier denied reimbursement for 51 units of CPT code 97110.<sup>8</sup> Carrier adopted Unimed’s reasoning that “the usual treatment session for this service is 30-45 minutes” or two 15-minute units. In doing so, Carrier asserted Provider was entitled

<sup>7</sup> Provider did not dispute Carrier’s slight reduction in the amount per unit.

<sup>8</sup> The Commission’s MRD awarded Provider 53 units of CPT code 97110. However, after careful review of the EOBs and Provider’s bills, the ALJ found only 51 units of CPT code 97110 were not reimbursed at the reduced rate of \$33.46.

to reimbursement for only two units of CPT code 97110 for each date of service. Carrier reimbursed nothing for the remaining 51 units of CPT code 97110 that Provider rendered to Claimant. The amount in dispute for the remaining 51 units at \$33.46-per-unit is \$1,706.46.

For CPT code 97140-59, Carrier again adopted Unimed's reasoning that Provider was entitled to reimbursement for one unit of this service for each date of service. For the two dates of service that Provider rendered two units, Unimed recommended only one unit be reimbursed. The amount in dispute for the remaining two units of CPT code 97140-59 at \$31.15-per-unit is \$62.30

Since Unimed did not recommend denial of any other service, the total amount in dispute in this matter is \$1,768.76.

#### **4. Carrier's denial of CPT codes 97110 and 97140-59**

Carrier argued it was justified in denying the disputed services under the *Official Disability Guidelines – Treatment in Workers' Comp* (ODG),<sup>9</sup> which limits “the total length of each [therapy] visit to 45-60 minutes unless additional circumstances exist requiring extended length of treatment.”

Kenneth Jenkins, D.C, testified that he gave preauthorization for the services, but did not anticipate Provider would utilize the total number of therapeutic exercises (CPT code 97110) for which she made a request, otherwise he would not have agreed to such a high level of care to treat a lumbar sprain/strain.

Dr. Jenkins agreed with Carrier's reimbursement scheme because it limited the length of Provider's therapy sessions to one hour, which coincided with the ODG. Carrier denied all but two units of 97110 (therapeutic exercises), one unit of 97140-59 (manual therapy), and one unit of 97032 (electrical stimulation) for each date of service. These four 15-minute reimbursed units added up to a one-hour therapy session. Dr. Jenkins testified that a two hour therapy session was “inappropriate” for the services rendered.

Another reason Carrier provided only partial reimbursement to Provider was because

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<sup>9</sup> According to Carrier, the Division adopted the ODG on January 12, 2007, to become effective January 18, 2007 and to apply to all treatment provided on or after May 1, 2007. 32 TEX. REG. 193.

Provider did not submit any documentation to support the need for therapy sessions requiring extended length of treatment as noted in the ODG. Dr. Jenkins pointed out that the authorization letter stated “there is to be an emphasis placed on instruction for home based procedures as well as to wean the [Claimant] from in office care.” According to Dr. Jenkins, it did not appear from Provider’s notes that Provider placed an emphasis on having Claimant perform home-based exercises. Additionally, Dr. Jenkins stated he found no intent to wean Claimant from in-office care. The notes also showed Claimant was performing “low grade exercises,” which did not require two hours of one-on-one therapy sessions, according to Dr. Jenkins.

## **5. Provider’s position**

Provider argued Carrier’s reliance on the ODG is misplaced because the ODG did not apply to the disputed services, which occurred on November 27, 2006, through December 14, 2006. The ODG applies to treatment provided on or after May 1, 2007.

Furthermore, Provider asserted she sought preauthorization for a “range” of units that could have been necessary to treat Claimant. On her preauthorization request, Provider requested “1 to 8 units” of 97110 therapeutic exercises “depending on injury and necessity.” Provider acknowledged she did not conclusively know how many units of therapy Claimant would need when she made the request, so she included a range of proposed units instead of a set number of units. Provider testified Claimant required the maximum number of units that were preauthorized, but did not document the need for an extended length of therapy session because she believed she had already received preauthorization to render the full eight units of therapeutic exercises.

Additionally, Provider testified the preauthorization approval reduced the number of sessions from 18 to nine, but did not reduce or limit the number of units for any of the proposed services. Provider argues that Carrier had an opportunity to limit the number of proposed units for any of the requested services, but chose not to.

Provider further testified that this dispute is a fee dispute and that most of Carrier’s evidence was not relevant because it argued over the medical necessity of the services rendered. Provider asserted that since this is a fee dispute, Carrier cannot “retrospectively” review the services that were preauthorized.

### **C. Analysis and Conclusion**

Provider is entitled to \$1,768.76 additional reimbursement. The preauthorization letter clearly approves the services for the range of units requested. Carrier apparently disagreed with the number of sessions Provider requested and limited the number of sessions from 18 to nine. However, Carrier failed to limit the number of units Provider requested. Carrier, in fact, approved Provider's request for "1-8 units" of CPT code 97110 and "1-3 units" of CPT code 97140-59. The ALJ also agrees with Provider that Carrier's reliance on the ODG is misplaced because the disputed dates of service occurred before the ODG became effective.

Based on the foregoing, the ALJ finds Provider is entitled to \$1,768.76 additional reimbursement for the services provided to Claimant.

### **III. FINDINGS OF FACT**

1. Claimant sustained a compensable injury on \_\_\_\_\_, in the course and scope of his employment; his employer had coverage with AmComp Assurance Corporation (Carrier).
2. Kimberly Driggers, D.C. (Provider) provided physical therapy to Claimant for the compensable injury from November 27, 2006, through December 14, 2006.
3. Provider submitted itemized bills totaling \$3,529.45 for the services provided to Claimant for the treatment in issue.
4. Carrier denied partial reimbursement for the services on the basis that the treatment provided to Claimant exceeded the preauthorized services and that they were not medically necessary.
5. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
6. Effective September 1, 2005, the legislature dissolved the Commission and created the Division of Workers' Compensation within the Texas Department of Insurance. The Commission and its successor are collectively referred to as the Division.
7. On April 14, 2008, the MRD ordered Carrier to reimburse Provider \$1,835.68 for the treatment rendered to Claimant from November 27, 2006, through December 14, 2006.
8. Carrier timely requested a hearing before the State Office of Administrative hearings.
9. All parties were provided not less than 10-days notice of the hearing and of their rights under the applicable rules and statutes.

10. The hearing in this matter convened on July 22, 2008, with Administrative Law Judge (ALJ) Steven M. Rivas presiding. Carrier appeared and was represented by David Swanson, attorney. Provider appeared and represented herself. The hearing concluded and the record closed the same day.
11. Provider requested preauthorization for CPT code 97110, therapeutic exercises, 1-8 units depending on injury and necessity.
12. Provider also requested preauthorization for CPT code 97140-59, manual therapy, 1-3 units depending on injury and necessity.
13. Carrier approved Provider's request for preauthorization, and in doing so, reduced the number of Provider's request for therapy sessions from 18 to nine.
14. Carrier did not limit or reduce the number of units for any of the modalities including CPT code 97110 or 97140-59.
15. For each date of service, Provider was authorized to administer 1-8 units of CPT code 97110 and 1-3 units of CPT code 97140-59.
16. Under the *Official Disability Guidelines – Treatment in Workers' Comp.* (ODG), the length of a therapy session is limited to 45-60 minutes.
17. Claimant's therapy sessions exceed two hours on each date of service.
18. The ODG went into effect after the disputed dates of service.
19. Carrier is liable for 51 units of CPT code 97110 at the reduced rate of \$33.46-per-unit totaling \$1,706.46
20. Carrier is liable for 2 units of CPT code 97140-59 at the reduced rate of \$31.15-per-unit for a total of \$62.30.
21. The amount Carrier owes Provider is \$1,768.76.

#### **IV. 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. LAB. CODE ANN. § 402.073 and § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. § 2001.051 and § 2001.052.
4. Carrier had the burden of proof in this matter pursuant to 28 TAC § 148.21(h) and (i).

5. 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 in accordance with TEX. LAB. CODE ANN. § 408.021.
6. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of \$1,768.76, plus any applicable interest.

### **ORDER**

It is hereby **ORDERED** that AmComp Assurance Corporation reimburse Kimberly Driggers, D.C., the additional sum of \$1,768.76, plus any applicable interest, for services provided to Claimant.

**SIGNED September 19, 2008.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**