

**DOCKET NO. 454-10-1574.M4  
MR NO. M4-09-A611-01**

_____	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
v.	§	<b>OF</b>
	§	
<b>TASB RISK MANAGEMENT FUND,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. INTRODUCTION**

Petitioner \_\_\_\_ requested a hearing to contest the decision by Medical Fee Dispute Resolution of the Texas Department of Insurance, Division of Workers' Compensation denying payment for chiropractic treatment. The hearing convened on April 19, 2010, and the record closed on April 23, 2010, to allow the parties to provide additional evidence.<sup>1</sup> This decision finds that Petitioner is entitled to reimbursement in the amount of \$250.00 plus interest for the posture pump but not for physical therapy services.

Petitioner sustained a work-related injury on \_\_\_\_\_. After undergoing treatment for some time, she began to visit a chiropractor. Petitioner never told the chiropractor that she was a workers' compensation patient. Her chiropractor never requested preauthorization for her care and never submitted a claim to TASB Risk Management Fund, the insurer. Similarly, Petitioner did not seek preauthorization for her treatments. She paid for the costs herself in the total amount of \$12,998.18. Respondent argues that Petitioner is not entitled to reimbursement because the visits and procedures were not preauthorized, they did not relate to the compensable injury, and she did not timely file her appeal. After considering all of the evidence and arguments, the ALJ concludes that Petitioner is not entitled to reimbursement for physical therapy because physical therapy requires preauthorization,

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<sup>1</sup> At this time, the objection to the designated doctor's report is overruled, and the report is admitted as ALJ Exhibit 1.

which she did not receive. She is entitled to reimbursement for the posture pump because it did not require preauthorization.

## II. APPLICABLE LAW

This proceeding presented no contested issues of notice or jurisdiction. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion.

The Texas Workers' Compensation Act (Act) is found at TEX. LAB. CODE § 401.001, *et seq.* Under the Act, workers' compensation insurance covers all medically necessary health care, including all reasonable medical aid, examinations, treatments, diagnoses, evaluations, and services reasonably required by the nature of the compensable injury and reasonably intended to cure or relieve the effects naturally resulting from a compensable injury.<sup>2</sup> Section 413.011 of the Act provides that through its rules the Commission shall establish medical policies and guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services. Under these rules, certain medical treatments require preauthorization, including physical therapy.<sup>3</sup>

## III. DISCUSSION AND ANALYSIS

Petitioner sustained a work-related injury in \_\_\_ when she attempted to step over a barrier while carrying an infant. She tripped and fell on her back to avoid falling on the child. As a result of the fall, she injured her right shoulder, leg, knee, and back. She was first treated by a chiropractor. She later went to a pain management doctor who treated her with medications and epidural steroid injections. She did not improve significantly after those treatments. She paid for an MRI with her own money. At some point later, she began seeing Dr. Darrell West, a chiropractor.<sup>4</sup> Dr. West took x-rays and diagnosed bulging discs. He spent six weeks treating her back and then started treating her neck. The majority of his treatments were physical therapy, except for a posture

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<sup>2</sup> TEX. LAB. CODE § 401.011(19) and (31).

<sup>3</sup> 28 TEX. ADMIN. CODE § 134.600(p).

<sup>4</sup> The exact timeline of the facts in this case is unclear from the record.

pump that cost \$250.00. The treatments helped, and Petitioner no longer takes medication for pain. She is able to work, and has been able to engage in full activity for about two years.

Petitioner also seeks reimbursement for an office visit with Dr. West in the amount of \$155.00; however, there is no documentation showing a charge for that office visit, so the request for reimbursement of that item is denied.

During the time she was a patient of Dr. West, Petitioner spoke numerous times with an adjuster named Teresa Marshall. Ms. Marshall indicated that the insurance company would partially reimburse Petitioner for the MRI. According to Petitioner, Ms. Marshall refused to reimburse for the MRI unless Petitioner could show her a cancelled check. A doctor's statement was insufficient for Ms. Marshall, and she would not accept it as evidence of payment, so Petitioner claims she was never reimbursed for the MRI. No evidence was presented at the hearing showing what Petitioner paid for the MRI. Therefore, even if it were reimbursable, there is no evidence to support the amount Petitioner should be reimbursed.

Although Petitioner spoke with Ms. Marshall and with employees of the Division of Workers' Compensation (DWC), informing them of her treatment, neither Ms. Marshall nor DWC employees ever told Petitioner that she needed to get preauthorization for the physical therapy Dr. West was providing. Because Petitioner never told Dr. West that she was in the workers' compensation system, Dr. West could not have known that he needed to seek preauthorization on her behalf. Had Ms. Marshall simply told Petitioner that she needed preauthorization and how to seek preauthorization, she would have been able to request it and appeal from that determination if needed. By not seeking preauthorization, Petitioner forfeited her ability to receive reimbursement for the physical therapy because physical therapy is only reimbursable if preauthorized.<sup>5</sup>

Respondent also denied reimbursement for the posture pump. A request for medical dispute resolution must be filed within one year after the date of service.<sup>6</sup> Petitioner's request for dispute

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<sup>5</sup> 28 TEX. ADMIN. CODE § 134.600(p).

<sup>6</sup> 28 TEX. ADMIN. CODE § 133.307(c)(1)(A).

resolution was filed on July 15, 2009, for the posture pump received on December 20, 2007.<sup>7</sup> However, Petitioner received an extent of injury denial for her treatment, which tolls the one-year requirement for filing a request for dispute resolution until 60 days after final resolution of the extent of injury determination.<sup>8</sup> Once Petitioner received the extent of injury denial, she began having numerous phone conversations both with Ms. Marshall and with employees of DWC. Ms. Marshall was sent to a designated doctor, Ann Gerges, M.D. On May 8, 2008, Dr. Gerges submitted a report indicating that Petitioner's extent of injury included the cervical and lumbar spine, which the posture pump was designed to treat.<sup>9</sup> Ms. Marshall agreed to accept the designated doctor's report on July 30, 2008.<sup>10</sup> Once the doctor's report was accepted, Petitioner should have been reimbursed for the posture pump, which was needed to treat the compensable injury and did not require preauthorization. Therefore, Petitioner is entitled to reimbursement of \$250.00 plus interest.

#### **IV. FINDINGS OF FACT**

1. In \_\_\_\_, Petitioner, \_\_\_\_, suffered a work-related injury.
2. Petitioner visited a chiropractor and a pain management doctor.
3. Respondent TASB Risk Management paid for some visits to the chiropractor and the pain management doctor.
4. Petitioner's condition did not improve significantly after visiting those doctors.
5. Petitioner began treatment with Dr. Darrell West, a chiropractor.
6. Petitioner did not inform Dr. West that she was a workers' compensation patient.
7. Dr. West provided Petitioner with a posture pump.
8. Dr. West performed physical therapy on Petitioner.
9. Neither Petitioner nor Dr. West requested preauthorization for physical therapy as required under the applicable rules.

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<sup>7</sup> TASB Ex. 1 at 1, 3.

<sup>8</sup> TASB Ex. 7 at 25; 28 TEX. ADMIN. CODE § 133.307(c)(1)(B)(i).

<sup>9</sup> ALJ Ex. 1.

<sup>10</sup> TASB Ex. 7, at 30.

10. Petitioner paid for Dr. West with her own money in the amount of \$12,998.18 and seeks that amount in reimbursement.
11. Petitioner paid \$250.00 for a posture pump.
12. Respondent denied the reimbursement for both the physical therapy and the posture pump on the basis of the extent of injury.
13. Ann Gerges, M.D., a designated doctor, determined that Petitioner's extent of injury included the injuries for which Dr. West was providing treatment.
14. When Respondent refused payment, Petitioner filed a request for medical dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).
15. The Division determined that Petitioner was not entitled to reimbursement.
16. Petitioner requested a hearing with the State Office of Administrative Hearings, seeking reversal of the Division's decision.
17. The Division mailed notice of the hearing on December 4, 2009. The notice of hearing listed the time, place, and nature of the hearing; included a statement of the legal authority and jurisdiction under which the hearing was to be held; referred to particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
18. The hearing convened on April 19, 2010. All parties appeared and participated. The record closed on April 23, 2010, to allow the parties to submit additional documentation.
19. Because Petitioner's physical therapy was not preauthorized, she is not entitled to reimbursement for those services.
20. Petitioner's posture pump did not require preauthorization, and a designated doctor determined that the extent of her injury included injuries treated by the posture pump.

## **V. CONCLUSIONS OF LAW**

1. The Division has jurisdiction over this matter pursuant to TEX. LABOR CODE §401.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. GOV'T CODE ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 1 TEX. ADMIN. CODE ch. 155.
4. Petitioner had the burden of proof under 28 TEX. ADMIN. CODE § 148.14.

5. Because Petitioner did not request or receive preauthorization for physical therapy, a service that requires preauthorization pursuant to 28 TEX. ADMIN. CODE § 134.600(p), her request for reimbursement for those services is denied.
6. Petitioner is entitled to reimbursement for the posture pump as medically necessary health care. TEX. LAB. CODE ANN. § 401.011(19) and (31).

**ORDER**

**THEREFORE IT IS ORDERED** that \_\_\_ is entitled to reimbursement from TASB Risk Management Fund in the amount of \$250.00 plus interest.

**SIGNED June 1, 2010.**

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**WENDY K. L. HARVEL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**