

SOAH DOCKET NO. 453-03-3859.M5
TWCC MRD NO. M5-03-1770-01

MAIN REHAB & DIAGNOSTIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
LIBERTY MUTUAL INSURANCE CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over reimbursement for chiropractic services and diagnostic tests performed for an injury suffered by Claimant while lifting heavy equipment. The Administrative Law Judge (ALJ) concludes the services were not medically necessary and denies reimbursement.

I. FACTUAL AND PROCEDURAL HISTORY

Claimant reported a work-related injury to his low back on _____. He was diagnosed with lumbar disc disorder, lumbar neuritis/ridiculitis, and muscle spasms and was treated conservatively beginning on April 4, 2002. Liberty Insurance Co. (Carrier) reimbursed Main Rehab & Diagnostic (Provider) for 39 sessions of physical therapy. Beginning on May 22, 2002, Carrier objected to the continued conservative treatment based on a lack of medical necessity. In dispute are 20 dates of service from May 22, 2002 to August 22, 2002 (Disputed Services) and \$3,649.00.

Provider filed a timely Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Carrier that the treatments were not medically necessary. On April 29, 2003, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the Disputed Services.

On June 10, 2003, Provider filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). The hearing was held March 8, 2004, before ALJ Barbara C. Marquardt. Provider and Carrier participated in the hearing, which was adjourned the same day Due

to Judge Marquardt's retirement from SOAH, this case was transferred to ALJ Tommy Broyles who listened to the tape recording of the hearing, reviewed the documentary evidence, and issued this Decision and Order.

II. DISCUSSION

Osler Kamath, D.C., (Claimant's treating doctor) testified that the Disputed Services were medically necessary given the seriousness of Claimant's injury. Dr. Kamath stated that Claimant needed continued one-on-one therapy and extensive testing in order to qualify him for the work hardening program that he eventually participated in. In particular, Dr. Kamath pointed to deficits in Claimant's straight leg raises as indication that additional physical therapy was necessary, even after 39 visits. Finally, Dr. Kamath maintained that the whirlpool was medically necessary in order to lessen Claimant's pain, to help him sleep better at night, and to help him withstand the aggressive therapy he was undergoing.

Casey Cochran, D.O., testified on behalf of Carrier that the Disputed Services were not medically necessary. He noted that the EMG revealed mostly degenerative findings and that the NCV studies were negative. Dr. Cochran opined that Claimant's injury was not serious and did not warrant more than 20-24 physical therapy sessions. He testified that the results reported for Claimant on the straight leg raises (pain at 19 and 20 degrees) were not possible according to anatomy and physiology, adding that even with a big herniated disc, you would not get a positive reading until the leg reached 25 degrees. Dr. Cochran further opined that with a negative testing for nerve root compression, Claimant could not have had a positive straight leg raise. This led Dr. Cochran to conclude that the person performing the straight leg raise simply did not know how to measure the test.

Dr. Cochran also noted that Claimant's lumbar flexion, lumbar extension, lateral flexion, and right lateral flexion were 131, 119, 172 and 163 percent of normal, respectively, and argued that these ranges of motion are those expected of a gymnast. He added that they certainly did not need to be treated with physical therapy. This is supported by testing performed on Claimant after physical therapy which revealed a decrease in ROM.

The ALJ is persuaded by Dr. Cochran's testimony that none of the Disputed Services was medically necessary. Dr. Kamath testified that the treatment was necessary to improve Claimant's strength and ROM prior to work hardening. Yet, Claimant's ROM decreased with physical therapy and the straight leg raise test was either performed improperly or pain was falsely reported by Claimant. In either event, the results are not reliable.

Further, the evidence suggests Claimant received in-office physical therapy when a home program was more appropriate, received passive modalities far after they provided any benefit, and was provided a water agitator when it provided no medical benefit over a hot bath. The preponderance of the evidence shows the Disputed Services were not reasonable or necessary medical services, accordingly, the ALJ denies reimbursement for them.¹

III. FINDINGS OF FACT

1. Claimant reported a work-related injury to his low back on _____.
2. Claimant suffered a lumbar strain due to this injury.
3. Provider treated Claimant conservatively with 39 sessions of physical therapy, all reimbursed by Carrier.
4. Provider continued to treat Claimant with an additional 20 sessions from May 22, 2002 to August 22, 2002.
5. Claimant did not medically need the Disputed Services to improve his ROM, which was far greater than normal.
6. Provider failed to prove that the ROM testing provided during the Disputed Services were medically necessary.
7. Claimant did not need the Disputed Services to improve muscle strength.
8. The straight leg deficits reported by Provider for Claimant were not possible according to

¹One other issue not addressed by the ALJ is whether the mid-level office visits are global and include ROM testing. Given that the reported ROM numbers were far better than average, Provider failed to prove that further ROM testing was at all medically necessary, whether a part of or separate from the office visits.

anatomy and physiology. The test was either read improperly by the Provider or performed improperly by Claimant.

9. The whirlpool provided Claimant failed to offer any medical benefit.
10. Physical therapy performed during the Disputed Services were not medically necessary and offered no medical benefit over a home exercise program.
11. Carrier declined to reimburse Provider for the Disputed Services because it considered the sessions not to have been medically necessary pursuant to a peer review.
12. Provider filed a timely Request for Medical Dispute Resolution.
13. The IRO agreed with Carrier, finding that the treatments were not medically necessary.
14. On April 29, 2003, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the Disputed Services.
15. On June 10, 2003, Provider filed a timely request for a hearing before SOAH.
16. Notice of the hearing was sent to all parties on July 23, 2003.
17. 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.
18. The hearing convened and closed March 8, 2004. Provider and Carrier participated in the hearing.
19. The Disputed Services were neither medically reasonable nor necessary.

IV. CONCLUSIONS OF LAW

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Under 28 TEX. ADMIN. CODE §148.21(h), Provider has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. The Disputed Services were not reasonable or necessary medical treatments under TEX. LAB. CODE ANN. §401.011(19).

5. Carrier should not be required to reimburse Provider for the physical therapy sessions in dispute.

ORDER

Liberty Mutual Insurance Co., is not required to reimburse Main Rehab & Diagnostic for the Disputed Services provided Claimant from May 22, 2002 to August 22, 2002.

SIGNED April 26, 2004.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**