

**DOCKET NO. 453-04-0995.M5**

<b>TEXAS MUTUAL INSURANCE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMPANY, Petitioner</b>	§	
	§	
<b>vs.</b>	§	<b>OF</b>
	§	
<b>AZALEA ORTHOPEDIC &amp; SPORTS,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue involved is whether Texas Mutual Insurance Company (Carrier) correctly denied payment for physical therapy billed by Azalea Orthopedic & Sports (Provider), using Current Procedural Technology (CPT) Code 97110. Carrier interprets CPT Code 97110 as requiring exclusive one-on-one patient contact. Provider contends that the Texas Workers' Compensation Commission (the Commission) rules allow for billing under CPT Code 97110 without exclusive one-on-one patient contact if direct supervision occurs. The Administrative Law Judge (ALJ) finds CPT Code 97110 requires exclusive one-on-one patient contact for the entire physical therapy session. In this case, the ALJ finds that Claimant received the equivalent of one unit (15 minutes) of one-on-one direct contact during his sessions from August 14, 2002, through September 30, 2002, except for a few dates in which the ALJ finds that exclusive one-on-one contact was provided for the entire session. The remainder of the time spent in each session should be billed under CPT Code 97150 (therapeutic exercises in a group setting).

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

On March 22, 2004, ALJ Michael J. O'Malley conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney R. Scott Placek represented Carrier, and Joyce Jones represented Provider *pro se*. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the record on March 24, 2004.

**II. BACKGROUND**

On \_\_\_\_, Claimant suffered a compensable workers' compensation injury. Claimant slipped and fell on a large hopper, and then fell seven to eight feet to the ground. On September 25, 2000,

Claimant underwent a lumbar fusion on the L1 through L4 levels. Claimant underwent another lumbar surgery to remove the screws. On March 15, 2002, Claimant underwent a second lumbar fusion, which resulted in postoperative complications, including a staph infection. Claimant began physical therapy with Provider on July 10, 2002. The issue in this case involves the billing for the therapeutic exercises provided Claimant by Provider between August 14, 2002, and September 30, 2002.<sup>1</sup> Using CPT Code 97110, Provider billed Carrier for one-on-one direct contact.

### **III. PARTIES' POSITIONS**

Carrier has not paid for physical therapy from August 14, 2002, through September 30, 2002, because the therapy was billed under CPT Code 97110 (direct one-on-one physical therapy), which Carrier contends did not occur. At the hearing, Carrier's attorney implied that Carrier might have paid for the physical therapy had it been billed under CPT Code 97150, which compensates for physical therapy for a group of two or more persons.

To support its position and meet its burden of proof, Carrier presented the testimony of N. F. Tsourmas, M.D., and the oral deposition testimony of Raymond Scott Herbowy. Dr. Tsourmas testified that the type of exercises performed by Claimant during his sessions would not require one-to-one direct supervision for a three-month period. He testified that most of the exercises could have been learned within a month and then performed at a health club facility or at home.

Mr. Herbowy, a physical therapist, testified that one-to-one supervision would be needed for safety, for implementation of the program, for monitoring symptom response, and for progression of the program. In reviewing the records of Provider, Mr. Herbowy testified that he did not see any notes monitoring symptom response, nor did he see any documentation showing that Claimant required any safety equipment while performing his therapy. He further stated that the exercises performed by Claimant could have been done independently and would not require direct one-to-one supervision. According to Mr. Herbowy, it is clear that Claimant's therapy was not one-to one. To support his position, he relies on the deposition testimony of Jill Elder, the physical therapist who worked with Claimant. She stated that, if the Claimant had difficulty or more pain, she would pay closer attention to him. According to Mr. Herbowy, if one-on-one physical therapy is being billed, the therapist's attention should be on the patient the entire session not on an as-needed basis. He further relied on the Medicare guidelines, which state that billing under CPT Code 97110 is for direct individual supervision on only one patient at a time.

Provider relies on the Medical Fee Guideline, 28 Tex. Admin. Code § 134.202 (Medicine

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<sup>1</sup> Although the physical therapy continued until October 11, 2002, the independent review organization (IRO) found these dates of service not medically necessary, and Provider did not appeal the IRO's decision.

Ground Rule I.A.9.d.), to support its billing for treatment when a supervising health care provider instructs and then observes the patient carrying out the recommended activity. Supervision is defined as:

[T]he presence of the licensed HCP at the location where the services are being rendered by a non-licensed individual and direct visual and verbal contact with the patient at scheduled intervals during the period of time for which treatment is being provided . . . .

To support its position, Provider presented the testimony of Todd M. Rabbe, M.D., and Jill Elder. Dr. Rabbe was the physician who performed the second lumbar fusion. He testified that, based on Claimant's condition, physical therapy was appropriate after the lumbar fusion. Dr. Rabbe referred Claimant for physical therapy, which he believed was appropriate given Claimant's inactivity and pain level. He testified that Claimant needed intensive therapy to decrease his pain and become more active. He further testified that Claimant could not perform the physical therapy exercises without supervision.

During her testimony, Ms. Elder admitted that she did not attend to Claimant all of the time he was in therapy. She testified that she had other patients in therapy while Claimant was in therapy.

She stated that she would get Claimant started on his program and attend to him as needed. For example, for the exercises in which he was sitting, such as the stationary bike, he could be left alone.

On certain days, she testified that she spent almost 100 percent of the time with Claimant either because his symptoms had flared up or because of safety concerns. Although Ms. Elder could not state with certainty that she spent 100 percent of the time with Claimant on these days, she did state that she focused most of her time on Claimant.

#### **IV. ANALYSIS**

The evidence in this case shows that Claimant needed physical therapy following his second lumbar fusion. In fact, Carrier paid for Claimant's physical therapy from July 10, 2002, until August 14, 2002. Although Carrier questioned whether physical therapy was needed from August 14, 2002, through September 30, 2002, the evidence supports the need for the physical therapy during this time.<sup>2</sup> Given that Claimant underwent two lumbar fusions and experienced post-operative complications, physical therapy was warranted for Claimant until it was safe for him to perform his physical therapy independently.<sup>3</sup> Because the physical therapy was needed, the only

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<sup>2</sup> The ALJ found the testimony of Dr. Rabbe to be very credible. Dr. Rabbe referred Claimant for physical therapy based on his unbiased evaluation of Claimant following Claimant's second lumbar fusion.

issue remaining involves the billing for the physical therapy under CPT Code 97110.

To qualify for reimbursement under CPT Code 97110, Provider must show that the physical therapy was conducted exclusively on a one-on-one basis. Provider, through the testimony of Ms. Elder, admitted that Claimant's physical therapy was not exclusive one-on-one therapy. Provider's records and the type of exercises performed by Claimant also indicate that exclusive one-on-one therapy was not provided or needed for Claimant's entire therapy session.<sup>4</sup>

Prior SOAH decisions have interpreted CPT Code 97110 as requiring physical therapy on an exclusive one-on-one basis. In Docket No. 453-00-2051.M4, the ALJ concluded that CPT Code 97110 applies when the doctor or therapist works only one-on-one with that patient's therapy. If two or more patients are performing the same or different therapeutic exercises in the same setting under the supervision of a doctor or health care provider, CPT Code 97110 would not apply because one-on-one contact is lacking; instead, CPT Code 97150 would apply. To qualify for reimbursement under CPT Code 97110 beyond one unit per session, the ALJ in Docket No. 453-00-1219.M5 found that the provider must prove that the units of physical therapy were conducted exclusively on a one-on-one basis. In Docket No. 453-01-1081.M4, the ALJ concluded that provider's records did not show that one-on-one therapy was provided; therefore, provider was not entitled to bill under CPT Code 97110 for the entire one hour session.

Provider argues that, because the physical therapist was on-site and had direct visual and verbal contact with Claimant, it was justified in billing for Claimant's physical therapy under CPT 97110. The ALJ disagrees. Although Provider may delegate care and treat more than one patient at a time, it may not be reimbursed for one-on-one care that is not being rendered on a one-on-one basis. Section I.C.9. of the *Medicine Ground Rules* states:

If any of the procedures (97110-97139) are performed with two or more individuals, then 97150 is reported. Do not code the specific type of therapy in addition to the group therapy.

In this case, the ALJ concludes that Claimant received therapy on a one-on-one basis on the following days: August 28, 2002, and September 3, 9, 16, and 18, 2002.<sup>5</sup> For all other dates of

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<sup>3</sup> Claimant began his home exercise program in October 2002.

<sup>4</sup> Dr. Rabbe even indicated that Claimant did not need exclusive one-on-one supervision during his physical therapy sessions.

<sup>5</sup> Ms. Elder testified that on these dates Claimant received one-on-one therapy because of safety concerns or because Claimant's symptoms and pain level warranted such therapy. The ALJ found this testimony to be credible and will allow payment for one-on-one therapy for these dates of service.

service from August 14, 2002, through September 30, 2002, Provider shall be reimbursed \$35.00 for one unit (15 minutes) of one-on-one therapy under CPT Code 97110, and \$27.00 under CPT Code 97150 for the remainder of each session. Therefore, for a one-hour session, Provider should be reimbursed \$62.00 (\$35.00 plus \$27.00). Based on the ALJ's decision, Carrier shall reimburse Provider at total of \$1,436.00 for the physical therapy performed from August 14, 2002, through September 30, 2002.

## **V. FINDINGS OF FACT**

1. On \_\_\_\_, Claimant suffered a compensable workers' compensation injury.
2. On September 25, 2000, Claimant underwent a lumbar fusion on the L1 through L4 levels.
3. On March 15, 2002, Todd M. Rabbe, M.D., performed a second lumbar fusion on Claimant at the L1 through L4 levels.
4. After the second lumbar fusion, Dr. Rabbe recommended and referred Claimant to Azalea Orthopedic & Sports (Provider) for physical therapy.
5. Texas Mutual Insurance Company (Carrier) did not pay for the physical therapy from August 14, 2002, through September 30, 2002, because the therapy was billed under CPT Code 97110Bdirect one-on-one physical therapy.
6. Claimant received no more than 15 minutes of direct one-on-one therapy during his physical therapy sessions from August 14, 2002, through September 30, 2002, except for August 28, and September 3, 9, 16, and 18, 2002.
7. During Claimant's physical therapy sessions, Jill Elder, Claimant's physical therapist, would be supervising more than one patient and would attend to Claimant as needed to assist him with his exercises.
8. On August 28, and September 3, 9, 16, and 18, 2002, Claimant had special needs, such as safety and increased pain that required Ms. Elder to spend the entire session working exclusively one-on-one with him.
9. Provider is entitled to bill one 15-minute unit of one-on-one physical therapy under CPT Code 97110 (\$35.00) for each day of Claimant's physical therapy from August 14, 2002, through September 30, 2002. Provider is entitled to bill the remaining time for these sessions under CPT Code 97150 (therapeutic exercises in a group setting).

10. For the physical therapy on August 28, and September 3, 9, 16, and 18, 2002, Provider is entitled to bill the entire session under CPT Code 97110.
11. On September 18, 2003, the Independent Review Organization ordered reimbursement for the physical therapy from August 14, 2002, through September 30, 2002.
12. On October 10, 2003, Carrier appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
13. The Commission issued the notice of hearing on November 6, 2003. The hearing notice informed the parties the matters to be determined, the right to appear and be represented, the date, time, and place of the hearing, and the statutes and rules involved.
14. The hearing was held on March 22, 2004, and the record closed on March 24, 2004.

## **VI. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. SOAH 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.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. CPT Code 97110 applies when the therapist works directly one-on-one with a patient on that patient's therapy only. *Medicine Ground Rule I.A.9.b.*
5. If two or more patients are performing the same or different therapeutic exercises in the same setting under the supervision of a health care provider, the group code, CPT Code 97150 applies. *Medicine Ground Rules I.A.9.b and I.C.9.*
6. Based on the findings of fact and conclusions of law, Provider is not entitled to reimbursement under CPT Code 97110 for the physical therapy from August 14, 2002, through September 30, 2002, except for 15 minutes of each session and for August 28, and September 3, 9, 16, and 18, 2002.

7. Based on the findings of fact and conclusions of law, Provider is entitled to reimbursement under CPT Code 97150 for the physical therapy from August 14, 2002, through September 30, 2002.

**ORDER**

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company shall reimburse Azalea Orthopedic & Sports in the amount of \$1,436.00 for the physical therapy performed on Claimant from August 14, 2002, through September 30, 2002.

**SIGNED this 26<sup>th</sup> day of March, 2004.**

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**MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**