

**SOAH DOCKET NO. 453-04-132.M5
TWCC MR NO. M5-2475-01**

JEFFREY STANDIFER, D.C.	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
PROTECTIVE INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jeffrey Standifer, D.C. (Provider), appealed the decision of an Independent Review Organization (IRO) upholding the denial of reimbursement for a physical therapy program rendered to ___ (Claimant) from July 8, 2002, through March 17, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of showing that the treatment was reasonable and medically necessary for Claimant’s compensable injury. Therefore, Protective Insurance Company (Carrier) is not ordered to reimburse Provider for the treatment rendered.

The hearing convened and closed on January 21, 2004, before Steven M. Rivas, ALJ. Provider appeared and represented himself. Carrier appeared and was represented by James Sheffield, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ____. Following his injury Claimant underwent back surgery on ____. Claimant also had an MRI performed, and a series of facet injections before beginning his treatment with Provider on May 9, 2002. The disputed dates of service in this matter are from July 8, 2002, through March 17, 2003. Between those dates, Claimant made 23 office visits for treatment that consisted of various therapeutic exercises and myofascial release procedures. Provider billed Carrier for the treatment rendered, which Carrier denied as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical

Review Division of the Texas Workers' Compensation Commission. The dispute was sent to an IRO, which upheld all but one of Carrier's denial of reimbursement, and Provider filed a request for hearing before the State Office of Administrative Hearings (SOAH).

2. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021(a) provides that 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. The statute further states an employee is specifically entitled to health care that "cures or relieves the effects naturally resulting from the compensable injury, promotes recovery; or enhances the ability of the employee to return to or retain employment."

Under TEX. LAB. Code ANN. §401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

3. Evidence and Analysis

Provider's primary position was that he should be reimbursed for the disputed dates of service because the treatment rendered to Claimant "comforted" him after each session. In support of this position, Provider argued that Claimant would not have continued his treatment with Provider had it not brought "comfort" to Claimant. Provider also testified the treatment rendered to Claimant helped him with other problems he complained of like impotency, bladder control, leg pain, back aches, and numbness. Additionally, Provider testified that Claimant will most likely experience inflammation and exacerbation of his post-surgery back pain for the rest of his life, and that he rendered the treatment in dispute in order to do as much as he could to comfort Claimant.

However, Provider offered no documentation that identified the treatment that was even rendered, or any documentation that Claimant experienced any improvement as a result of the treatment rendered. Provider admitted he failed to submit any supporting documentation to the IRO

or SOAH because his focus was to make the Claimant well, and that “to the best of his ability” he submitted all documentation he thought was necessary. Carrier argued that due to the absence of any treatment notes (commonly referred to as SOAP notes) it was impossible to determine whether the treatment Provider billed was even rendered much less whether or not it brought any lasting relief to Claimant.

Provider offered 33 pages of documents at the hearing that consisted of an undated cover letter; a request for reconsideration dated March 17, 2003; a letter to the Carrier requesting payment dated March 12, 2003; an irrevocable power of attorney dated March 13, 2003; a discogram report dated March 25, 2003; Provider’s initial exam notes dated May 9, 2003; a range of motion test dated December 16, 2002; a report of medical evaluation dated December 16, 2002; a letter to Jerry F. Gurkoff, D.O. regarding Claimant’s impairment rating; the operative report from Claimant’s back surgery dated January 29, 2001; EMG test results dated November 22, 2002; results from an MRI examination dated October 23, 2002; letters discussing the discogram; MRI results from November 3, 1999; and an IRO decision dated October 11, 2002. Most of Provider’s documents were outside the disputed dates of service and the few that were within the dates of service did not support Provider’s position. In fact, the MRI examination results from October 23, 2002, indicated Claimant did have degenerative disc disease, but did not have a herniation or neural compression.

Furthermore, on cross-examination Provider testified Claimant’s level of pain on July 8, 2002, was a “five” on a scale of one-to-ten. And that his pain level was a “seven” on March 17, 2003. This testimony indicated Claimant had not improved after attending the 23 sessions for which Provider now requests reimbursement.

Provider offered insufficient evidence that the disputed services were actually rendered and, if they were rendered, whether they brought any relief to Claimant. Therefore, the ALJ is unable to find that any of the disputed services were medically necessary.

II. FINDINGS OF FACTS

1. On ____, Claimant ____ sustained a compensable back injury.

2. Claimant underwent extensive treatment including back surgery on ____.
3. Between July 8, 2002, and March 17, 2003, Claimant participated in 22 sessions of physical therapy with Provider Jeffrey Standifer, D.C., which included therapeutic exercises and myofascial release procedure.
4. Provider sought reimbursement for the physical therapy program from Protective Insurance Company (Carrier), which was denied as not medically necessary.
5. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
6. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing in this case was mailed to the parties on December 4, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
8. The hearing convened and closed on January 21, 2004, with Administrative Law Judge Steven M. Rivas presiding. Provider appeared and represented himself. Carrier appeared and was represented by James Sheffield, attorney.
9. Claimant's showed no signs of improvement after being treated by Provider.
10. Claimant's pain level gradually increased during the period he was treated by Provider.
11. Provider offered insufficient evidence that the physical therapy program was necessary to treat Claimant's compensable injury.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.

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. Provider timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to 28 TEX. ADMIN. CODE §148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a) (3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
7. The physical therapy program rendered to Claimant from dates of service July 8, 2002, through March 17, 2003, was not medically necessary for treatment of Claimant's compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Provider's appeal for reimbursement should be denied.

ORDER

IT IS ORDERED THAT the reimbursement requested by Provider for the physical therapy program for dates of service July 8, 2002, through March 17, 2003, be denied.

SIGNED March 24, 2004.

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