

**SOAH DOCKET NO. 453-04-2025.M5  
TWCC MDR NO. M5-03-1477-01**

<b>TEXAS MUTUAL INSURANCE COMPANY, Petitioner</b>	'	<b>BEFORE THE STATE OFFICE</b>
	'	
	'	
<b>V.</b>	'	<b>OF</b>
	'	
<b>REAL HEALTH CARE, Respondent</b>	'	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This is a dispute over services rendered to workers' compensation (Claimant) from February 14, 2002, through July 31, 2002. The Administrative Law Judge (ALJ) concludes Petitioner Texas Mutual Insurance Company (TMIC) should reimburse Real Health Care for the disputed services rendered from February 14, 2002, through February 28, 2002. TMIC proved the disputed services rendered from March 4, 2002, through July 31, 2002, were not medically necessary, however, and should not be required to provide reimbursement for those dates of service. The ALJ orders TMIC to reimburse Respondent Real Health Care \$490.00.

**I. HISTORY**

The Claimant, who was a truck driver, fractured his right ankle and injured his right knee ligaments on \_\_\_\_\_. He began treatment with Real Health Care on November 13, 2000. TMIC refused to pay for services rendered to the Claimant after December 3, 2001.

After requesting reconsideration, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission) on February 13, 2003. The Commission's Medical Review Division (MRD) declined to review any services provided before February 14, 2002, based on the Commission's one-year rule, 28 TEX. ADMIN. CODE (TAC) §133.307(d)(1). Because TMIC had not provided timely explanations of benefits (EOBs) for the period from February 14 through February 28, 2002, the MRD reviewed those dates to determine whether the services had been provided. It determined that office visits (CPT Code 99213MP) and ultrasound (CPT Code 97035) had been provided, but that the documentation did not support the provision of one-on-one therapeutic exercises (CPT Code 97110). The MRD found Real Health Care should receive \$490.00 for the two codes it found had been documented.

The Independent Review Organization (IRO) considered the medical necessity for the treatments provided from March 4, 2002, through July 31, 2002, which included the aforementioned services, plus myofascial release (CPT Code 97250), massage therapy (CPT Code 97124), electrical stimulation therapy (CPT Code 97014), and manual traction therapy (CPT Code 97122). TMIC had provided EOBs for those dates. The IRO found those services to have been medically necessary.

TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).<sup>1</sup> After notice to the parties, the hearing was convened September 9, 2004, with ALJ Henry D. Card presiding.<sup>2</sup> The hearing was adjourned, and the record closed, the same day.

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<sup>1</sup> Real Health Care did not request a hearing.

<sup>2</sup> The hearing was a joint hearing in this docket and Docket Nos. 453-04-3417.M5 and 453-04-4486.M5, which involve the same parties, but different Claimants.

## II. DISCUSSION

Under TEX. LAB. CODE ANN. ' 408.021(a),

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 employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.

Real Health Care's SOAP notes show it provided the office visits and ultrasound from February 14, 2002, through February 28, 2002. The medical necessity of those services was not at issue, because TMIC did not provide EOBs. The ALJ finds those services were adequately documented and that TMIC should reimburse Real Health Care for them.

The medical records, the testimony of David Alvarado, D.C., and the written opinion of Scott Herbowy, P.T.<sup>3</sup> establish that the services provided the Claimant after March 4, 2002, were not medically necessary. Testing showed the ankle fracture had healed, although the Claimant continued to complain of pain. The Claimant also had successful knee surgery in 2001. Both Dr. Alvarado and Mr. Herbowy described the treatments performed by Real Health Care as excessive. They observed that the goals of the treatment were vague and that the medical purposes of the specific treatments were unexplained. Mr. Herbowy pointed out that the Claimant's condition did not improve, despite the quantity of treatment he received.

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<sup>3</sup> TMIC Ex. C.

Real Health Care's SOAP notes and other records do not rebut Dr. Alvarado's and Mr. Herbowy's observations. They do not explain the reasons for providing the particular services or show positive results from the Claimant's long course of treatment.

The amount in dispute from March 4, 2002, through July 31, 2002, is \$6,856.00. The ALJ concludes TMIC proved those treatments were not medically necessary, and denies reimbursement for them.

### III. FINDINGS OF FACT

1. \_\_\_\_, the Claimant, who was a truck driver, fractured his right ankle and injured his right knee ligaments on \_\_\_\_.
2. The Claimant began treatment with Real Health Care on November 13, 2000.
3. The workers' compensation carrier, Texas Mutual Insurance Company (TMIC), refused to pay for services rendered to the Claimant after December 3, 2001.
4. After requesting reconsideration, Real Health Care filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission) on February 13, 2003.
5. The Commission's Medical Review Division (MRD) declined to review any services provided before February 14, 2002, based on the Commission's one-year rule, 28 TEX. ADMIN. CODE (TAC) ' 133.307(d)(1).
6. Because TMIC had no provided timely explanations of benefits (EOBs) for the period from February 14 through February 28, 2002, the MRD reviewed those dates to determine whether the services had been provided.
7. The MRD determined that office visits (CPT Code 99213MP) and ultrasound (CPT Code 97035) had been provided, but that the documentation did not support the provision of one-on-one therapeutic exercises (CPT Code 97110).

8. The Independent Review Organization (IRO) considered the medical necessity for the treatments provided from March 4, 2002, through July 31, 2002, which included the aforementioned services, plus myofascial release (CPT Code 97250), massage therapy (CPT Code 97124), electrical stimulation therapy (CPT Code 97014), and manual traction therapy (CPT Code 97122). The IRO found those services to have been medically necessary.
9. TMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
10. Real Health Care did not file a request for a hearing.
11. Notice of the hearing was sent to the parties January 12, 2004.
12. 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.
13. The hearing was convened September 9, 2004, with ALJ Henry D. Card presiding. The hearing was adjourned, and the record closed, the same day.
14. Real Health Care's SOAP notes show it provided the office visits and ultrasound from February 14, 2002, through February 28, 2002.
15. The amount in dispute for the treatments provided from February 14, 2002, through February 28, 2002, is \$490.00.
16. The Claimant's ankle fracture had healed by March 4, 2002, although the Claimant continued to complain of pain.
17. The Claimant had successful knee surgery in 2001.
18. The goals of the treatment provided by Real Health Care after March 4, 2002, were vague.
19. The medical purposes of the specific treatments provided by Real Health Care after March 4, 2002, were unexplained.
20. The Claimant's condition did not improve from the treatments provided after March 4, 2002, despite the quantity of treatment he received.
21. The amount in dispute from March 4, 2002, through July 31, 2002, is \$6,856.00.

#### **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. ' 2001.052.
3. Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.
4. The office visits and ultrasound from February 14, 2002, through February 28, 2002, were adequately documented.
5. The treatments provided from March 4, 2002, through July 31, 2002, were not medically necessary.
6. Pursuant to TEX. LAB. CODE ANN. ' 408.021(a), TMIC should be required to reimburse Real Health Care \$490.00 for the office visits and ultrasound provided the Claimant from February 14, 2002, through February 28, 2002.
7. Pursuant to TEX. LAB. CODE ANN. ' 408.021(a), TMIC should not be required to reimburse Real Health Care for the treatments provided the Claimant from March 4, 2002, through July 31, 2002.

#### **ORDER**

Texas Mutual Insurance Company shall reimburse Real Health Care \$490.00 for the services in dispute in this proceeding.

**SIGNED November 2, 2004.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

