

<p><b>TEXAS MUTUAL INSURANCE COMPANY,</b>     <b>Petitioner</b></p> <p><b>V.</b></p> <p><b>CENTRAL DALLAS REHAB,</b>     <b>Respondent</b></p>	<p>'</p> <p>'</p> <p>'</p> <p>'</p> <p>'</p> <p>'</p> <p>'</p> <p>'</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
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**DECISION AND ORDER**

Texas Mutual Insurance Company (Petitioner) requested a hearing following a December 29, 2003 Decision of the Texas Workers' Compensation Commission (Commission). The Commission, relying upon a December 24, 2003 decision of Maximus, an Independent Review Organization (IRO), authorized reimbursement for chiropractic services provided by Central Dallas Rehab (Respondent) to injured worker \_\_\_\_ (Claimant) from July 21, 2003, through August 8, 2003.

The amount in dispute is \$2,039.71. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that the chiropractic services provided by Respondent from July 21, 2003, through August 8, 2003, were not medically necessary and should not be reimbursed.

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

The parties pre-filed all exhibits and testimony. The hearing convened on May 10, 2004, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. R. Scott Placek represented Petitioner and Scott Hilliard represented Respondent. After receiving the court reporter ' s certification of pre-filed testimony on May 17, 2003, the record closed. Neither party objected to notice or jurisdiction.

**II. DISCUSSION**

Claimant suffered a work-related injury on \_\_\_\_\_. Claimant ' s injury occurred when he slipped and hit his head and neck on a stool. Between April 15, 2003 and July 21, 2003, Claimant was treated by various physicians, occupational therapists, and chiropractors. These professionals performed 14 sessions of active and passive chiropractic modalities and 10 occupational therapy sessions. Claimant also visited an osteopath 5 times. Because Claimant moved from Fort Worth to Dallas in July 2003, Osler C. Kamath, D.C., referred Claimant to Christopher Plate, D.C., who works for Respondent in Dallas.

On May 27, 2003, a cervical spine MRI was performed on Claimant. On June 18, 2003, a lumbar spine MRI was performed on Claimant. Mark Cutler, M.D., of Texas Imaging Diagnostic Center, interpreted the cervical spine MRI as unremarkable. Dr. Cutler's findings were that the vertebral bodies were in normal alignment. Dr. Cutler also found that the intervertebral disc spaces and vertebral body heights, marrow, and disc signals appeared normal. Bruce A. Cheatham, M.D., of Lone Star Imaging, interpreted the lumbar spine MRI as unremarkable. Dr. Cheatham found that the MRI showed homogenous and expected bony structure densities and appearance without bony compression, fracture, or contusion.

On July 21, 2003, Dr. Plate<sup>1</sup> commenced chiropractic therapy and continued the sessions until August 8, 2004. Petitioner disputed Respondent's charges, and the clinical need for Claimant's therapy, which included office visits, joint mobilization, myofascial release, manual traction, exercises, activities and testing. Respondent filed a medical dispute, and the IRO decided the treatments were medically necessary.

### **III. EVIDENCE AND DECISION**

All testimony and documentary evidence was pre-filed. Petitioner presented the written testimony of David Alvarado, D.C., and Nicholas F. Tsourmas, M.D. Respondent presented the deposition of Dr. Plate, who is Claimant's doctor.

#### **A. Petitioner's Evidence and Arguments.**

Petitioner presented the testimony of Dr. Alvarado. Dr. Alvarado explained when, in his opinion, passive modalities and active modalities should be utilized.<sup>2</sup> He indicated that passive modalities are medically necessary in the acute stage of the injury, which is three to four weeks post-injury. Dr. Alvarado asserted that after this initial period, passive modalities are no longer of therapeutic benefit. Dr. Alvarado said that any disputed service of the passive variety was not medically necessary. In his opinion, none of the disputed services were medically necessary. He cited the report of Howard Bernstein, M.D. The Commission directed Dr. Bernstein to examine Claimant as the Commission's designated doctor. Dr. Bernstein's report indicated that Claimant had: full range of motion of the cervical spine; full range of motion of the right shoulder, although with pain; full range of motion to the thoracic spine; and normal tone, movement, and power in the upper extremity. In Dr. Bernstein's July 22, 2003 report, he concluded that Claimant had an

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<sup>1</sup> Dr. Plate works for Respondent; therefore, in this decision, Respondent and Dr. Plate shall be used interchangeably.

<sup>2</sup> Dr. Alvarado said that joint mobilization, myofascial release, and manual traction are passive modalities, and therapeutic exercises are active modalities. An active modality does not involve hands-on therapy, but a passive modality does.

adequate amount of treatment for the diagnoses. Dr. Bernstein placed Claimant at maximum medical improvement (MMI) on July 22, 2003, and reported that Claimant did not have any permanent

impairment resulting from the compensable injury. Dr. Alvarado determined that the passive and active modalities performed on Claimant were not medically necessary.

Dr. Tsourmas' testimony is similar to Dr. Alvarado's testimony. Dr. Tsourmas explained the difference between active and passive therapy, and the time each should be applied. He said that in the acute phases of an injury, where there is swelling, a lot of pain, and inflammatory response, modalities of a passive nature would be helpful and beneficial. Dr. Tsourmas asserted that after three months Claimant was in the chronic treatment stage and passive modalities would not be efficacious. In his opinion, chronic treatment requires active modalities. Dr. Tsourmas described active modalities as those that require a patient to participate actively with its own musculature to increase range of motion or increase strength.

Petitioner argued that Claimant was three months post-injury and in the chronic stage of treatment. According to Petitioner, once Claimant was in the chronic stage of treatment, passive modalities were inappropriate, ineffective, and not medically necessary. Petitioner indicated that the designated doctor ruled out the medical necessity of the therapeutic exercises. Respondent indicated in his deposition that he did not realize that Claimant underwent physical therapy prior to the referral. In his deposition, Dr. Plate also admitted that he billed therapeutic exercise at the higher supervised rate, when some of the exercises were not supervised. Petitioner argued that none of the services were medically necessary.

## **B. Respondent's Evidence and Arguments.**

Dr. Plate's main assertion was that Claimant's condition improved. His pain decreased and his range of motion increased. Dr. Plate said that at the time of his initial evaluation and recommendations, the therapies were meant to provide pain relief and to improve function with the patient so that he could return to work. Respondent indicated that he believed these therapies helped expedite those goals.

Dr. Plate admitted he was not aware of Claimant's previous physical therapy treatments. He adopted Dr. Kamath's plan of treatment, and testified that his test information indicated that there was a possible compression injury, shoulder pain, and a compression of the neural structures resulting from a disk. Dr. Plate indicated that Claimant could have had a cervical disk injury. Dr. Plate said that the services rendered were medically necessary to treat Claimant's condition. According to Dr. Plate, Claimant had objective improvement resulting from his therapy. Respondent argued that the services were medically necessary as indicated by Claimant's improvement. Respondent also noted that the IRO held that all services were medically necessary.

## **C. ALJ'S Decision.**

The ALJ finds that the facts preponderate in Petitioner's favor. Claimant's passive modalities, occurring three months post-injury, were not medically necessary. Passive modalities are

medically necessary in the acute phase of the injury when there may be swelling, great pain, and tenderness. According to Dr. Alvarado and Dr. Tsourmas, the acute phase generally lasts three to four weeks. After approximately four weeks, Claimant was in the chronic phase and required active modalities. Consequently, the passive modalities were not medically necessary three months post-injury. Further, Claimant received a regimen of physical therapy prior to being referred to Respondent. The therapeutic exercises, which are active modalities, were not medically necessary on the basis of Dr. Bernstein's July 22, 2003, report. Dr. Bernstein, the designated doctor, reported that on July 22, 2003, Claimant reached maximum medical improvement (MMI), and he did not have impairment.

The ALJ found Petitioner's witnesses more credible than Dr. Plate. The reasons for this determination are threefold: Dr. Plate knew or should have known that Claimant had previous physical therapy; Dr. Plate knew or should have known that on July 22, 2003, the designated doctor determined that Claimant had no impairment; and Dr. Plate admitted overcharging for therapeutic exercises. Dr. Plate stated that he did not know Claimant had previous physical therapy except for hot and cold packs. The record has numerous references where the referring doctor reported that Claimant needs to continue his physical therapy. Giving Dr. Plate the benefit of the doubt, he owed a duty to Claimant to determine what treatments, if any, were previously performed on Claimant.

Dr. Plate continued the physical therapy sessions after Dr. Bernstein reported that Claimant was not impaired. Dr. Bernstein's report was just one day subsequent to the initial therapy session. Dr. Plate should have known that once Petitioner received Dr. Bernstein's determination, it would deny reimbursement.

Therapeutic exercises can be conducted individually, by group, or by one-on-one supervision. The rate for one-on-one supervision is significantly higher than the individual or group rate. Dr. Plate admitted that he charged the one-on-one rate for exercises that either did not need supervision, or where there was no one-on-one supervision.

The ALJ concludes that Respondent should not be reimbursed for passive modalities given three months post-injury, and after the designated doctor determined there was no impairment. The ALJ further concludes that Respondent should not be reimbursed for therapeutic exercises because Claimant was not impaired. Neither the passive modalities nor the therapeutic exercises were medically necessary.

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

1. \_\_\_\_ (Claimant) suffered a work-related injury on\_\_\_\_.

2. Between April 15, 2003 and July 21, 2003, Claimant was treated by various physicians, occupational therapists, and chiropractors.
3. Claimant received 14 sessions of active and passive chiropractic modalities and 10 occupational therapy sessions. Claimant also visited an osteopath 5 times.
4. Because Claimant moved from Fort Worth to Dallas in July 2003, Osler C. Kamath, D.C., referred Claimant to Christopher Plate, D.C., who works for Respondent in Dallas.
5. On May 27, 2003, a cervical spine MRI was performed on Claimant, which was interpreted as unremarkable.
6. On June 18, 2003, a lumbar spine MRI was performed on Claimant, which was interpreted as unremarkable.
7. On July 21, 2003, Dr. Plate commenced chiropractic therapy and continued the sessions until August 8, 2004.
8. Passive modalities are medically necessary in the acute stage of the injury, which is three to four weeks post-injury, but after the initial three or four week period, passive modalities are no longer of therapeutic benefit.
9. Any disputed service of the passive variety was not medically necessary.
10. The Texas Workers Compensation Commission (TWCC) directed Dr. Bernstein to examine Claimant as TWCC ' s designated doctor.
11. Dr. Bernstein ' s report indicated that Claimant had: full range of motion of the cervical spine; full range of motion of the right shoulder, although with pain; full range of motion to the thoracic spine; and normal tone, movement, and power in the upper extremity.
12. Dr. Bernstein ' s concluded that Claimant had an adequate amount of treatment for the diagnoses.
13. Dr. Bernstein placed Claimant at MMI on July 22, 2003, and reported that Claimant does not have any permanent impairment resulting from the compensable injury.
14. Petitioner disputed Respondent ' s charges, and the clinical need for Claimant ' s therapy, which included office visits, joint mobilization, myofascial release, manual traction, exercises, activities and testing.

15. The Commission, acting through Maximus, an Independent Review Organization (IRO), found that the physical therapy treatments provided by Respondent were medically necessary for the treatment of Claimant.
16. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
17. The hearing convened and concluded on May 10, 2003, with State Office of Administrative Hearings ALJ Stephen J. Pacey presiding. Petitioner appeared through its attorney R. Scott Placek. Respondent appeared through its attorney, Scott C. Hilliard. The record closed May 17, 2003.

## **V. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order pursuant to TEX. LABOR CODE ANN. ' 413.031(k), and TEX. GOV ' T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV ' T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV ' T CODE ANN. ' ' 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).
6. The physical therapy treatments provided by Respondent to Claimant from July 21, 2003 through August 8, 2003, were not medically necessary.

**ORDER**

**THEREFORE IT IS ORDERED** that Texas Mutual Insurance Company is not required to reimburse Central Dallas Rehab for charges associated with physical therapy treatments provided to injured worker \_\_\_ from July 21, 2003 through August 8, 2003.

**SIGNED July 14, 2004.**

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**STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**