SOAH DOCKET NO. 453-04-3690.M5
TWCC MR NO. M5-03-2923-01

MAIN REHAB & DIAGNOSTIC, **Petitioner**	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
TEXAS MUTUAL INSURANCE COMPANY, **Respondent**	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. DISCUSSION

Main Rehab & Diagnostic (Main Rehab), Petitioner, sought reimbursement from Texas Mutual Insurance Company (TMIC), Respondent, for neurological procedures, therapeutic exercise, physical therapy sessions, office procedures, muscle testing, and range of motion testing.

Medical Review of Texas, an Independent Review Organization (IRO), issued a letter dated August 20, 2003, in which the IRO agreed with the prior adverse decision of TMIC to deny reimbursement to Main Rehab for all but two units of therapeutic exercise (CPT code 97110). The IRO based its decision on the absence of records or documentation to support the medical necessity of all other services rendered by Main Rehab.

In a letter dated January 26, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denied the two units of therapeutic exercise based on inadequate documentation. The MRD also approved three units of muscle testing (CPT Code 97750-MT), four units of range of motion testing (CPT Code 95851), and one unit of office visits (CPT Code 99213).

Main Rehab requested a hearing to contest the Commission's decision. By letter dated March 15, 2004, the Commission issued a timely and adequate notice of hearing.

A hearing was convened in this matter on August 5, 2004. The Administrative Law Judge (ALJ) was Paul Keeper. R. Scott Placek represented TMIC, and Scott C. Hilliard represented Main Rehab. At the hearing, TMIC withdrew its contest of all approved units of service and Main Rehab withdrew its claims for office visits. The ALJ left the record open for the parties to provide an updated chart of disputed amounts by August 18, 2004, after which the record would close. The parties did not provide a new chart of dispute amounts by the deadline, and the record was closed.

On ___, the Claimant (___) sustained a work-related injury to the lumbar of her back while doing repetitive lifting. On January 23, 2003, the Claimant presented to Main Rehab with severe midback pain that radiated to her right shoulder, Main Rehab began an active rehabilitation program for the Claimant with physical exercises. Many of the exercises were performed on a one-on-one basis. As part of Main Rehab's diagnostic procedures, an MRI was ordered. The MRI revealed that the Claimant had an undiagnosed mass. A CT scan was performed, and the mass proved to be unremarkable.

Dr. Osler Kamath, D.C., the clinician at Main Rehab, testified that no record was maintained of the exercises that the Claimant was asked to perform. Dr. Bill Defoyd, D.C., a chiropractor called to testify by TMIC, agreed that the documentation in the Claimant's file was inadequate to show that the exercises were performed and that they were medically unnecessary. He also testified that Dr. Kamath's daily notes were not individualized for the treatment of the Claimant. Dr. Nicholas Tsourmas, M.D., a physician called by TMIC, testified that the passive therapy administered to the Claimant was medically unnecessary for her chronic condition.

In the documentary evidence, Main Rehab included a list of disputed services and the reasons for TMIC's denial of each. The record reflects that for three units of muscle testing (February 7, 21, and April 2, 2003) and five units of range of motion testing (February 19, March 10, 31, April 18 and 28, 2003), TMIC denied reimbursement based on code G. Code G is used for "unbundling" or improper inclusion of a billed amount that should have been included with another, simultaneously provided billed service. In dismissing its entire claim against Main Rehab without coding these services for lack of medical necessity (or lack of documentation of medical necessity), TMIC may not now assert that Main Rehab has failed to prove medical necessity.

Other than these eight services, TMIC sustained its burden of proof in this proceeding. That burden was to show by a preponderance of the evidence that the services in dispute rendered were not medically necessary. The evidence demonstrates that Main Rehab failed to document the procedures properly and that the passive therapies were conducted unnecessarily on a one-on-one basis. Taking into account the testimony of the three witnesses and the documentary evidence, the ALJ finds that the disputed services were not medically necessary.

II. FINDINGS OF FACT

1. On ___, the Claimant (___) sustained a work-related injury to the lumbar of her back while doing repetitive lifting.

2. On January 23, 2003, the Claimant presented to Main Rehab with severe mid-back pain that radiated to her right shoulder.

3. Main Rehab began an active rehabilitation program for the Claimant with physical exercises. Many of the exercises were performed on a one-on-one basis.

4. As part of Main Rehab's diagnostic procedures, an MRI was ordered.

5. The MRI revealed that the Claimant had an undiagnosed mass. A CT scan was performed, and the mass proved to be unremarkable.

6. Dr. Osler Kamath, D.C., the clinician at Main Rehab, maintained no record of the exercises that the Claimant was asked to perform.

7. The documentation in the Claimant's file was inadequate to show that the exercises were performed and that they were medically unnecessary.

8. Dr. Kamath's daily notes were not individualized for the treatment of the Claimant.

9. The passive therapy administered to the Claimant was medically unnecessary for her chronic condition.

10. For three units of muscle testing (February 7, 21, and April 2, 2003) and five units of range of motion testing (February 19, March 10, 31, April 18 and 28, 2003), TMIC denied reimbursement based on code G. Code G is used for Aunbundling or improper inclusion of a billed amount that should have been included with another, simultaneously provided billed service.

11. Medical Review of Texas, an Independent Review Organization (IRO), issued a letter dated August 20, 2003, in which the IRO agreed with the prior adverse decision of TMIC to deny reimbursement to Main Rehab for all but two units of therapeutic exercise (CPT code 97110).

12. The IRO based its decision on the absence of records or documentation to support the medical necessity of all other services rendered by Main Rehab.

13. In a letter dated January 26, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denied the two units of therapeutic exercise based on inadequate documentation.

14. The MRD also approved three units of muscle testing (CPT Code 97750-MT), four units of range of motion testing (CPT Code 95851), and one unit of office visits (CPT Code 99213).

15. By letter dated March 16, 2004, the Commission issued a timely and adequate notice of hearing.

16. A hearing was convened in this matter on August 5, 2004. The Administrative Law Judge (ALJ) was Paul Keeper.

17. R. Scott Placek represented TMIC, and Scott C. Hilliard represented Main Rehab.

18. At the hearing, TMIC withdrew its contest of all approved units of service and Main Rehab withdrew its claims for office visits.

19. The ALJ left the record open for the parties to provide an updated chart of disputed amounts by August 18, 2004, after which the record would close. The parties did not provide a new chart of dispute amounts by the deadline, and the record was closed.

III. 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 TEX. ADMIN. CODE §148.21(h), TMIC has the burden of proof, pursuant to TEX. LAB. CODE ANN. §413.031.

4. In dismissing its entire claim against Main Rehab without coding these services for lack of medical necessity (or lack of documentation of medical necessity), TMIC may not now assert that Main Rehab has failed to prove medical necessity.

5. Other than these eight services, TMIC sustained its burden of proof in this proceeding to show that Main Rehab failed to document the procedures properly and that the passive therapies were conducted unnecessarily on a one-on-one basis. TEX. LAB. CODE ANN. §401.011(19)

ORDER

Texas Mutual Insurance Co. is not required to reimburse Main Rehab & Diagnostic for the disputed services provided Claimant from January 27, 2003, through April 28, 2003, other than for three units of muscle testing (February 7, 21, and April 2, 2003) and five units of range of motion testing (February 19, March 10, 31, April 18 and 28, 2003).

SIGNED October 7, 2004.

PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS