



The hearing convened on October 25, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Tim Riley represented Petitioner. Donald Phillips, D.C., represented Respondent. There were no contested issues of notice or jurisdiction. David Alvarado, D.C., testified for Petitioner while Dr. Phillips and Anthony M. Smith<sup>8</sup> testified for Respondent. The hearing adjourned the same day. The parties were allowed additional time to confer regarding the table of disputed services and to file any needed corrections. The record closed on November 3, 2004.

\_\_\_ (Claimant) sustained a work-related injury to his lumbar spine on or about \_\_\_, while lifting a welder. Claimant, who has a history of lower back pain, experienced pain in his lumbar region and radiating pain to his lower extremities. Claimant was referred to Respondent by his employer and began treating with Dr. Philips on May 17, 2002. His initial pain was 7/8 on a 1-to-10 scale. By May 30, 2002, Claimant's pain had decreased to 3. Subsequently, Claimant's pain remained relatively low with a very few sporadic spikes. On June 6, 2002, Claimant also reported thoracic pain. By June 10, 2002, the thoracic pain decreased significantly and by June 13, 2002, it temporarily disappeared.<sup>9</sup> Claimant was returned to work on May 22, 2002, on a restricted basis during treatment and subsequently returned to work on a full duty basis on September 5, 2002. Claimant increased his lifting ability from 50 pounds to 100 pounds during the course of his physical therapy.

Petitioner contends the Claimant experienced a sprain/strain of his lumbar spine and that the Claimant's midline protrusion at L4-5 was the primary source of pain. Petitioner proposes that the use of one-on-one therapy was excessive and that home exercise was more appropriate. Petitioner also contended that office visits should have occurred on a less frequent basis. Dr. Alvarado testified that office visits twice a week until July 5, 2002, would have been appropriate. Thereafter, he believed an appropriate frequency would be one office visit per week for one or two weeks and then one office visit every two weeks.

## II. ANALYSIS

Petitioner had the burden of proof in this proceeding. Petitioner sustained its burden only as to the frequency of office visits after July 5, 2002.

Petitioner admits that a trial period of care for four to six weeks is reasonable as long as progress is demonstrated. Respondent's May 21, 2002 initial treatment plan proposed three visits per week for four to six weeks. Claimant underwent one-on-one therapy from his initial treatment in May 2002 through September 2002. Claimant was able to significantly increase his lifting ability and was restored to his job requirements. Given the facts of this case, the one-on-one therapeutic exercise was necessary for increasing Claimant's lifting capacity and allowed Claimant to return to work at full capability. The evidence does not support Petitioner's position that home exercise and/or group exercise could have obtained the same or similar results. Petitioner failed to demonstrate that a lesser degree of supervision would have allowed Claimant to recover the lifting

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<sup>8</sup> Anthony Smith was Claimant's supervising occupational therapist.

<sup>9</sup> There are several curious entries in the August 2002 medical notes regarding the thoracic pain. On August 1, 2002, Dr. Phillips noted that Claimant reported a new condition of occasional thoracic pain with a severity rating of 0. On August 5, 2002, Dr. Phillips reported that Claimant's thoracic pain had not "noticeably changed" since the prior visit. On August 6, 2002, Dr. Phillip's noted that Claimant reports a "new condition" of occasional thoracic pain." The severity is 0.

capability necessary to return him to work at full job requirements. Petitioner failed to sustain its burden of proof as to CPT Code 97110.

Neither Claimant's condition nor treatment justified two to three office visits per week after July 5, 2002. The contemporary medical notes do not show significant changes requiring multiple office visits each week. Although Claimant reported thoracic pain to Respondent, thoracic pain with a severity rating of 0 is not a complicating factor and does not justify more frequent office visits. The minor variations in Claimant's lumbar pain do not justify more frequent office visits. Dr. Phillip's had an obligation to monitor Claimant's condition and progress. Under the facts of this case, an office visit approximately every two weeks would suffice when combined with the input from the occupational therapist, who observed and spoke with Claimant during the frequent therapeutic exercise visits.<sup>10</sup> Petitioner met its burden of proof that, after July 5, 2002, only one office visit was required approximately every two weeks. All office visits in excess of that frequency were neither reasonable nor medically necessary.<sup>11</sup>

Petitioner failed to meet its burden of proof as to the auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services provided to Claimant from June 27, 2002, through July 15, 2002. Because of Claimant's history of lower back pain and exacerbations to his condition, an extended period of passive therapy was appropriate. The auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services were reasonable and medically necessary.

### III. FINDINGS OF FACT

1. \_\_\_\_ (Claimant) sustained a work-related injury to his lumbar spine on or about \_\_\_\_, while lifting a welder.
2. Claimant, who has a history of lower back pain, experienced pain in his lumbar region and radiating pain to his lower extremities.
3. Claimant was referred to Franklin Chiropractic and Accident Clinics, Inc. (Respondent), by his employer and began treating with Donald Phillips, D.C., on May 17, 2002.
4. Claimant's initial pain was 7/8 on a 1-to-10 scale. By May 30, 2002, Claimant's pain had decreased to 3.
5. After May 30, 2002, Claimant's pain remained relatively low with a very few sporadic spikes.
6. On June 6, 2002, Claimant also reported thoracic pain. By June 10, 2002, the thoracic pain decreased significantly, and by June 13, 2002, it temporarily disappeared.
7. Claimant was returned to work on May 22, 2002, on a restricted basis during treatment and subsequently returned to work on a full duty basis on September 5, 2002.

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<sup>10</sup> It is possible to bill for a manipulation without billing for an office visit.

<sup>11</sup> Respondent is entitled to reimbursement for the following office visits (CPT Code 99213-MP): June 27; July 1, 5, 18 and 30; August 8 and 22; and September 16 and 30.

8. Claimant increased his lifting ability from 50 pounds to 100 pounds during the course of his physical therapy.
9. Claimant was able to significantly increase his lifting ability and was restored to his job requirements.
10. A lesser degree of supervision would not have allowed Claimant to increase his lifting ability from 50 pounds to 100 pounds during a similar period of time.
11. The one-on-one therapeutic exercise was necessary for increasing Claimant's lifting capacity and allow Claimant to return to work at full capability.
12. Respondent is entitled to reimbursement for one-on-one therapeutic exercises from June 27, 2002, through September 30, 2002.
13. Thoracic pain with a severity rating of 0 is not a complicating factor and does not justify more frequent office visits.
14. The minor variations in Claimant's lumbar pain do not justify more frequent office visits.
15. Neither Claimant's condition nor treatment justified two to three office visits per week after July 5, 2002, and the contemporary medical notes do not show significant changes requiring multiple office visits each week.
16. An office visit approximately every two weeks would suffice when combined with the input from the occupational therapist, who observed and spoke with Claimant during the frequent therapeutic exercise visits.
17. Respondent is entitled to reimbursement for the following office visits (CPT Code 99213-MP): June 27, 2002; July 1, 5, 18 and 30, 2002; August 8 and 22, 2002; and September 16 and 30, 2002.
18. Because of Claimant's history of lower back pain and exacerbations to his condition, an extended period of passive therapy was appropriate.
19. The auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services provided to Claimant from June 27, 2002, through July 15, 2002, were reasonable and medically necessary.
20. By revised decision dated December 4, 2003, Independent Review Incorporated, an Independent Review Organization, concluded that (1) all office visits with manipulations and therapeutic exercises from June 27, 2002 through September 30, 2002, were medically necessary; (2) all auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services provided to Claimant from June 27, 2002, through July 15, 2002, were medically necessary; and (3) all auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services provided to Claimant after July 16, 2002, were not medically necessary.

21. The Texas Workers' Compensation Commission (Commission), in its February 18, 2004 Decision, concluded that submitted documentation did not support reimbursement for services provided to Claimant on July 25, 2002; August 12, 2002; and September 5 and 12, 2002.
22. Petitioner timely requested a hearing to contest the Commission's decision.
23. Respondent did not request a hearing on the reimbursement denied by the Commission.
24. Respondent is not entitled to reimbursement for any services rendered to Claimant on July 25, 2002; August 12, 2002; and September 5 and 12, 2002.
25. The Commission issued a notice of hearing on April 14, 2004.
26. A hearing was convened by Administrative Law Judge Howard S. Seitzman on October 25, 2004, in the hearing rooms of the State Office of Administrative Hearings. The hearing adjourned the same day. The record closed on November 3, 2004.

#### **IV. 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. The State Office of Administrative Hearings 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. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Based upon the Findings of Fact, Petitioner proved by a preponderance of the evidence that after July 5, 2002, only one office visit was required approximately every two weeks. All office visits in excess of that frequency were neither reasonable nor medically necessary. Petitioner failed to meet its burden of proof on all other issues.

8. Because it did not request a hearing to contest the Commission's decision, Respondent is not entitled to reimbursement for services provided prior to June 27, 2002 or on July 25, 2002; August 12, 2002; and September 5 and 12, 2002.

### **ORDER**

**THEREFORE IT IS ORDERED** that Petitioner Texas Mutual Insurance Company pay Respondent Franklin Chiropractic and Accident Clinics, Inc., for (1) for therapeutic exercises from June 27, 2002, through September 30, 2002; (2) for office visits on June 27, 2002, July 1, 5, 18 and 30, 2002, August 8 and 22, 2002, and September 16 and 30, 2002; and (4) for auto-traction/physical medicine procedures, massage, ultrasound and electric stimulation services from June 27, 2002, through July 15, 2002, plus any and all applicable interest. Respondent is not entitled to reimbursement for any services provided to Claimant on July 25, 2002; August 12, 2002; and September 5 and 12, 2002.

**SIGNED December 20, 2004.**

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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**