

DOCKET NO. 453-04-5183.M5

TEXAS MUTUAL INSURANCE CO.,	'	BEFORE THE STATE OFFICE
Petitioner,	'	
	'	
	'	
VS.	'	OF
	'	
BRAD CUDNIK, D.C.,	'	
Respondent	'	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Claimant ___ injured his back on ___, when the front end of the heavy equipment he was operating dropped into a trench, causing him to be thrown forward and then backward. He began seeing Brad Cudnik, D.C., the following day, and began a program of physical therapy at Dr. Cudnik's clinic. In dispute are therapeutic exercises and an office visit. Citing a lack of medical necessity, Texas Mutual Insurance Company (TMIC) denied reimbursement for the therapeutic exercises. An Independent Review Organization (IRO) concluded that the exercises were medically necessary. As to the office visit, TMIC asserted that the documentation was inadequate. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) determined that the documentation supported reimbursement. TMIC requested a hearing.

Dr. Cudnik did not appear, nor was he represented, at the hearing. Based on the evidence offered by TMIC, the Administrative Law Judge (ALJ) concludes that the carrier need not pay for the disputed services.

I. DISCUSSION

A. Procedural History

The IRO issued its decision December 9, 2003, and the MRD issued its decision on March 9, 2004. Both decisions were distributed by the Commission on March 11, 2004. TMIC made a timely request for hearing. The Commission issued notice of the hearing on May 6, 2004.¹ The hearing was convened on August 18, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Patricia Eads, attorney, represented TMIC. Dr. Cudnik failed to appear. The hearing concluded, and the record closed, that same day.

B. The Disputed Services

At ____ . s initial visit on January 7, 2003, Dr. Cudnik diagnosed the patient as having: lumbar intervertebral disc syndrome, lumbosacral radiculitis, lumbosacral sprain/strain, lumbar strain, and paraspinal muscle spasm.² ____ began a program of physical therapy at Dr. Cudnik . s clinic that lasted into March 2003.

Dr. Cudnik billed for one to five units of therapeutic exercise under CPT Code 97110 on each of 18 different dates between January 24, 2003, and March 7, 2003.³ On each of those dates, TMIC paid for at least one unit of therapeutic exercise but denied payment for the remaining units, asserting they were unnecessary.

¹ To ensure that the record in this case is complete, and in light of Dr. Cudnik . s failure to appear, the ALJ admits the notice of hearing as Exhibit C.

² TMIC Ex. A at 15.

³ *Id.* at 178-187.

Dr. Cudnik billed under CPT Code 99213 for an office visit on April 30, 2003. He also billed under CPT Code 99214 for an office visit on May 7, 2003. Although reimbursement for both visits was disputed, the MRD did not address the April billing. Dr. Cudnik has not appealed or sought remand of the MRD's failure to address that date of service; the only date of service at issue here is therefore May 7, 2003.

C. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims.⁴ In particular, the Act provides in pertinent part that:

- (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.

* * *

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.⁵

⁴ TEX. LAB. CODE ' 408.021.

⁵ TEX. LAB. CODE ' 401.011(19).

The 1996 Medical Fee Guideline (MFG), which is applicable to services provided prior to August 1, 2003, provides that CPT Code 97110 is for each 15 minutes of therapeutic exercises.⁶

Use of this code requires that the patient be subject to one-to-one supervision.⁷

The Commission's rules require documentation for the higher-level office visits that substantiates the care given and the need for further treatment, and indicates progress, improvement, the date of the next treatment, complications, and expected release dates.⁸ The MFG states that CPT Code 99214 is for office visits addressing problems of moderate to high severity, and involving two of these three components: a detailed history, a detailed examination, and medical decision making of moderate complexity.⁹

D. Burden of Proof

The burden of proof in this case is on TMIC to show by a preponderance of the evidence that the disputed services were not reasonable and necessary medical treatments and, in the case of the office visit, not properly documented.¹⁰

⁶ Medical Fee Guideline at 59 (1996). See 30 TEX. ADMIN. CODE ' 134.201(Commission's rule adopting the Medical Fee Guideline by reference). For services rendered after August 1, 2003, the 2002 Medical Fee Guideline is applicable. 28 TEX. ADMIN. CODE ' 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App. Austin 2004, no pet. hist.).

⁷ Medical Fee Guideline at 31 (1996) (Medicine Ground Rules I.A.9.b).

⁸ 28 TEX. ADMIN. CODE ' 133.1(a)(3)(E)(i).

⁹ Medical Fee Guideline at 20 (1996).

¹⁰ 28 TEX. ADMIN. CODE ' ' 133.308(p)(5), 148.21(h)-(i). See also TEX. LAB. CODE ' 413.031. The IRO decision is entitled to presumptive weight. 28 TEX. ADMIN. CODE ' 133.308(w).

E. IRO Decision

The IRO stated:

This patient underwent six weeks of reasonable and necessary physical therapy, which is the standard of care in this country for an injury such as his. He responded very well to this therapy and returned to work at his usual capacity with zero pain level. The therapy he underwent was quite reasonable and necessary for this six-week period.¹¹

F. General Description of the Evidence

The evidence in this case consists of: (1) medical records;¹² (2) the deposition testimony of Raymond Scott Herbowy, a licensed physical therapist;¹³ and (3) the live testimony of David Alvarado, D.C. Because Dr. Cudnik did not appear, all evidence in the record was offered by TMIC.

G. Analysis and Decision

Therapeutic exercise. Mr. Herbowy and Dr. Alvarado testified that there is little or no justification in the medical records for any of Dr. Cudnik's diagnoses except lumbar strain/sprain. Dr. Alvarado explained that for this type of injury, in a middle-aged man with no complicating factors that would raise safety concerns, one-to-one supervision of exercises is needed only to instruct the patient on how to do the exercises, to augment or intensify the program, and to assess the patient's progress. Dr. Alvarado and Mr. Herbowy both stated that the multiple units of directly supervised exercises done in the clinic several times a week were unjustified, especially since _____ was for the most part performing the same exercises visit after visit. Dr. Alvarado further pointed out that TMIC had paid for at least one unit of therapeutic exercise on each disputed date of service.

¹¹ TMIC Ex. A at 5.

¹² TMIC Ex. A at 6-168.

¹³ TMIC Ex. A at 1-35.

He stated that he disagreed with the IRO decision because it fails to address the intensity and duration of the therapeutic exercise regime at issue.

Office visit. Dr. Cudnik's notes from the May 7, 2003, visit are sparse. They indicate ___ was to return to work, and otherwise say see update and see exam.¹⁴ Dr. Alvarado pointed out that a functional capacity exam (FCE) was performed that same day, which probably explains the references to the exam. TMIC paid for the FCE. The ALJ sees no justification in the documentation for further reimbursement for an office visit of the 99214 level.

Summary. TMIC has met its burden to show that the disputed therapeutic exercises were unnecessary, and that documentation for the office visit of May 7, 2003, fails to support Dr. Cudnik's claim for reimbursement.

II. FINDINGS OF FACTS

1. Claimant ___ injured his back on ___, when the front end of the heavy equipment he was operating dropped into a trench, causing ___ to be thrown forward and then backward.
2. Texas Mutual Insurance Company (TMIC) is the workers' compensation insurer with respect to the claims at issue in this case.
3. On the day following his injury, ___ saw Brad Cudnik, D.C., and began a program of physical therapy at Dr. Cudnik's clinic that lasted into March 2003.
4. Dr. Cudnik billed for one to five units of therapeutic exercise under CPT Code 97110 on each of 18 different dates between January 24, 2003, and March 7, 2003.
5. For each date on which Dr. Cudnik billed for exercises under CPT Code 97110, TMIC paid for at least one unit of therapeutic exercise but denied payment for the remaining units, asserting they were unnecessary.

¹⁴ TMIC Ex. A at 141.

6. Dr. Cudnik billed under CPT Code 99213 for an office visit on April 30, 2003, and for another office visit under CPT Code 99214 on May 7, 2003.
7. TMIC declined to pay for the office visits, asserting that documentation was inadequate.
8. Dr. Cudnik requested medical dispute resolution.
9. An Independent Review Organization (IRO) reviewed the medical necessity of the therapeutic exercises. In a decision issued December 9, 2003, the IRO concluded the exercises were reasonable and necessary.
10. The Medical Review Division (MRD) of the Texas Workers . Compensation Commission (Commission) reviewed the office visit of May 7, 2003. In a decision issued on March 9, 2004, the MRD determined that the documentation supported reimbursement for the May 7 office visit.
11. The Commission distributed the IRO and MRD decisions on March 11, 2004.
12. TMIC made a timely request for hearing. Dr. Cudnik did not request a hearing on any issue.
13. The Commission issued notice of the hearing on May 6, 2004. The notice was sent to Dr. Cudnik at 6207 Pecan Valley Drive, San Antonio, Texas 78223, the address that appears on Dr. Cudnik . s documents in the medical records.
14. 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.
15. The hearing was convened on August 18, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Patricia Eads, attorney, represented TMIC. Dr. Cudnik did not appear. The hearing concluded, and the record closed, that same day.
16. ___ had a lumbar strain/sprain injury.
17. ___ had no condition that made it unsafe for him to exercise without one-to-one supervision.
18. ___ performed many of the same exercises visit after visit.
19. The disputed therapeutic exercises billed under CPT Code 97110 were not medically necessary.

20. Dr. Cudnik's office note for May 7, 2003, does not include documentation of the care given and the need for further treatment, does not indicate the patient's progress and improvement, and does not reflect a detailed history or detailed examination.
21. TMIC paid for a functional capacity exam administered on May 7, 2003.
22. The medical documentation does not support reimbursement for an office visit on May 7, 2003, billed under CPT Code 99214.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ' 413.031; TEX. GOV. T CODE ch. 2003.
3. TMIC timely filed a request for hearing as specified in 28 Texas Administrative Code ' 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV. T CODE ' 2001.052.
5. TMIC has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 133.308(p)(5) and (w), 148.21(h)-(i).
6. 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. TEX. LAB. CODE ' 408.021.
7. Services billed under CPT Code 97110, which relates to therapeutic exercises, must be provided with one-to-one supervision. Medical Fee Guideline at 31 (1996) (Medicine Ground Rules I.A.9.b); 30 TEX. ADMIN. CODE ' 134.201 (Commission's rule adopting the Medical Fee Guideline by reference).
8. The Act does not require reimbursement for the disputed therapeutic exercises billed under CPT Code 97110, which were not reasonable and necessary.

9. Documentation for higher-level office visits must substantiate the care given and the need for further treatment, and indicate progress, improvement, the date of the next treatment, complications, and expected release dates. 28 TEX. ADMIN. CODE ' 133.1(a)(3)(E)(i).
10. CPT Code 99214 is for office visits addressing problems of moderate to high severity, and involving two of these three components: a detailed history, a detailed examination, and medical decision making of moderate complexity. Medical Fee Guideline at 20 (1996).
11. Documentation of the office visit of May 7, 2003, was not sufficient to support reimbursement.
12. Based on the above Findings of Fact and Conclusions of Law, TMIC need not reimburse Dr. Cudnik for the disputed services.

ORDER

IT IS THEREFORE ORDERED that Texas Mutual Insurance Company need not pay for the disputed therapeutic exercises provided to ___ between January 24, 2003, and March 7, 2003, or for the office visit of May 7, 2003.

ISSUED August 25, 2004.

SHANNON KILGORE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE