SOAH DOCKET NO. 453-05-0119.M2
TWCC MR NO. M2-04-1555-01

THERASPA OF TEXAS,	**§**	**BEFORE THE STATE OFFICE**
Petitioner	**§**	
	§	
V.	**§**	**OF**
	§	
ACE INSURANCE COMPANY OF	**§**	
TEXAS,	**§**	
Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This is a dispute over a request for preauthorization for a permanent in-home hydrotherapy spa for workers' compensation claimant ___ (Claimant). The Administrative Law Judge (ALJ) concludes the request should be denied.

I. HISTORY

The Claimant suffered a lower back injury on ___. He underwent lumbar fusion surgery, but it was unsuccessful. He has had physical therapy and biofeedback, but continues to suffer from debilitating lower back pain, which has prevented him from working since his accident.

The Claimant is currently being treated by Bill Weldon, D.O., and is taking narcotic pain medications and muscle relaxants for his pain. On April 14, 2004, Dr. Weldon recommended the purchase of a hydrotherapy spa to be installed permanently in the Claimant's home to relieve the Claimant's pain. The spa was to be purchased from TheraSpa of Texas (TheraSpa). TheraSpa requested preauthorization for the spa from the Claimant's workers' compensation carrier, Ace Insurance Company of Texas (Ace). Ace denied the request. After its request for reconsideration was also denied, TheraSpa filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The request was assigned to an Independent Review Organization (IRO), which denied it. TheraSpa then filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was held November 29, 2004, with Administrative Law Judge (ALJ) Henry D. Card presiding. TheraSpa was represented by its owner, Brian Schoenhofer. Ace was represented by its attorney, John Pringle. Various documents were admitted into evidence and Mr. Schoenhofer and Charles Graham, M.D. testified. The hearing was adjourned and the record closed the same day.

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**.**

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. Under 28 TEX. ADMIN. CODE (TAC) § 148.21(h), the Petitioner, in this case TheraSpa, has the burden of proof in hearings conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

Under 28 TAC §134.600(h)(11), durable medical equipment (DME) in excess of $500 must be preauthorized.[1] The spa would cost approximately $3,000.

Mr. Schoenhofer was a forthright witness who clearly described the features and potential therapeutic benefits of TheraSpa's product. He is not a medical professional, however, and was not able to address whether an in-home hydrotherapy unit was medically necessary for the Claimant. Dr. Weldon's prescription and his original letter of medical necessity were not offered into evidence. The evidence did include a November 14, 2004, letter from Dr. Weldon, in which he stated it was his hope that hydrotherapy would enable the Claimant to decrease the amount of medication he takes. He stated that hydrotherapy would help increase the Claimant's mobility and decrease his pain. Dr. Weldon wrote that it was medically necessary for the Claimant to have a hydrotherapy unit in his home to perform the exercises Dr. Weldon had prescribed for those purposes.

Dr. Graham testified that hydrotherapy typically offers only very temporary pain relief. He stated it has no long-term therapeutic benefit. Dr. Graham observed that it was not clear what exercises Dr. Weldon had prescribed and that it also was not clear whether a less expensive program of non-aquatic exercises had been attempted. He further pointed out that the record did not prescribe any particular type or size of spa.

In addition to Dr. Graham, three other doctors-the IRO reviewer and two carrier reviewers-found the in-home spa to be unnecessary. Also, Dr. John Stasikowski, who examined the Claimant on July 29, 2003, discussed in his written evaluation the question of whether DME was necessary for the Claimant. He did not recommend an in-home spa or any other DME.

Although Dr. Weldon's letter stated that the in-home spa was necessary, it did not address the issues discussed by Dr. Graham. It did not show what other exercises had been attempted or what exercises were being prescribed that required the hydrotherapy unit. Moreover, the ALJ found the testimony of Dr. Graham convincing that the pain-reducing effect of hydrotherapy is very temporary. Therefore, the ALJ concludes TheraSpa did not meet its burden of proving the in-home hydrotherapy spa to be medically necessary. He denies preauthorization.

III. FINDINGS OF FACT

1. Workers' compensation claimant ___ (Claimant) suffered a lower back injury on ___.

[1] Ace contended the spa is not DME because it is a stationary as opposed to a portable spa. Ace did not reject preauthorization on that basis, however, and the IRO treated it as DME. In any event, the ALJ does not reach this issue, because he concludes TheraSpa did not prove the unit was medically necessary.

2. The Claimant underwent lumbar fusion surgery, but it was unsuccessful.

3. The Claimant has had physical therapy and biofeedback, but continues to suffer from debilitating lower back pain, which has prevented him from working since his accident.

4. The Claimant is currently being treated by Bill Weldon, D.O., and is taking narcotic pain medications and muscle relaxants for his pain.

5. On April 14, 2004, Dr. Weldon recommended the purchase of a hydrotherapy spa to be installed permanently in the Claimant's home to relieve the Claimant's pain.

6. The spa was to be purchased from TheraSpa of Texas (TheraSpa).

7. TheraSpa requested preauthorization for the spa from the Claimant's workers' compensation carrier, Ace Insurance Company of Texas (Ace).

8. Ace denied the preauthorization request.

9. After its request for reconsideration was also denied, TheraSpa filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).

10. The request was assigned to an Independent Review Organization (IRO), which denied it.

11. TheraSpa filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

12. Notice of the hearing was sent September 13, 2004.

13. 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.

14. The SOAH hearing was held November 29, 2004, with Administrative Law Judge (ALJ) Henry D. Card presiding. TheraSpa was represented by its owner, Brian Schoenhofer. Ace was represented by its attorney, John Pringle. Various documents were admitted into evidence and Mr. Schoenhofer and Charles Graham, M.D. testified. The hearing was adjourned and the record closed the same day.

15. The spa would cost approximately $3,000.

16. The evidence did not show what other exercises had been attempted in treating the Claimant or what exercises were being prescribed that required the hydrotherapy unit.

17. The pain-reducing effect of hydrotherapy is very temporary.

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. TheraSpa did not prove the in-home hydrotherapy spa was medically necessary for the Claimant.

5. The request for preauthorization should be denied.

ORDER

It is, therefore, ordered that the Carrier, Ace Insurance Company, shall not be required to preauthorize an in-home hydrotherapy spa for the Claimant, ___

SIGNED December 17, 2004.

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