

**SOAH DOCKET NO. 453-04-5766.M5  
[TWCC MDR NO. M5-04-1456-01]**

**SOAH DOCKET NO. 453-04-5344.M5  
[TWCC MDR NO. M5-04-2227-01]**

<b>TEXAS MUTUAL INSURANCE COMPANY, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
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	§	
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	§	<b>OF</b>
	§	
	§	
<b>V.</b>		
<b>MAIN REHAB &amp; DIAGNOSTIC, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	<b>and</b>	

**SOAH DOCKET NO. 453-04-6345.M5  
[TWCC MDR NO. M5-04-0595-01]**

<b>MAIN REHAB &amp; DIAGNOSTIC, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
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	§	
	§	<b>OF</b>
	§	
	§	
<b>V.</b>		
<b>TEXAS MUTUAL INSURANCE COMPANY, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. DISCUSSION**

In SOAH Docket No. 453-04-5766.M5, Texas Mutual Insurance Company (TMIC) requested a hearing following an April 5, 2004 Amended Findings and Decision of the Texas Workers' Compensation Commission (Commission). The Commission's April 5, 2004 Amended Findings and Decision (April Decision), relied upon a decision of an Independent Review Organization (IRO), and ordered reimbursement for chiropractic services provided by Main Rehab

& Diagnostic (MR&D) to injured worker.\_\_\_\_ (Claimant) for various dates of service ranging from January 28, 2003, through April 7, 2003. The Commission also reviewed fee dispute issues for dates of service between January 27, 2003, and April 2, 2003. The Commission ordered reimbursement for specific treatment services and denied reimbursement for other treatment services. MR&D did not request a hearing on the treatment services for which the Commission denied reimbursement.<sup>1</sup> This Decision and Order will address only the treatment services for which the Commission ordered reimbursement.

In SOAH Docket No. 453-04-5344.M5, MR&D requested a hearing following a March 18, 2004 Amended Findings and Decision of the Commission (March Decision). The Commission's March Decision for dates of service ranging from April 23, 2003, through June 10, 2003, relied in part upon a decision of Envoy Medical Systems, an IRO. Based upon the IRO decision, the Commission denied all treatment services from May 21 through June 10, with the exception of an office visit on June 10, 2003.<sup>2</sup> The Commission also ordered reimbursement for three additional units of therapeutic exercise, CPT Code 97110, provided on May 20, 2003.<sup>3</sup> The March IRO Decision is premised upon treatment for a post-surgical meniscus tear.<sup>4</sup> The Commission's March Order denied reimbursement for treatment services except as previously noted. This Decision and Order will address only those treatment services for which the Commission denied reimbursement.

In SOAH Docket No. 453-04-6345.M5, MR&D requested a hearing following a May 4, 2004 Findings and Decision of the Commission (May Decision). The Commission's May Decision, relied upon a December 31, 2003 decision of Envoy Medical Systems, an IRO, and denied

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<sup>1</sup> The Commission denied reimbursement for the following: (1) CPT Code 97110 on eight dates of service; and (2) CPT Code L1906-AFO on one date of service.

<sup>2</sup> The ALJ can find no reference in the IRO Decision as amended on March 5, 2004 (March IRO Decision), to a June 10, 2003 office visit.

<sup>3</sup> The March IRO appears to find medically necessary through May 20, 2003, four units per session of therapeutic exercise, together with any associated office visits. The frequency stated is three times per week.

<sup>4</sup> As noted in this Decision and Order, even as of April 15, 2004, there is no evidence of a meniscus tear. The March IRO Decision that treatment after May 20, 2003, was medically unnecessary was premised upon incorrect facts.

reimbursement for chiropractic services provided by MR&D to Claimant for treatment services between June 4, 2003 and June 30, 2003.<sup>5</sup> The Commission also reviewed fee dispute issues for dates of service of June 4, 17 and 18, 2003. The Commission ordered reimbursement for specific treatment services and denied reimbursement for other treatment services.<sup>6</sup> MR&D requested a hearing on the treatment services for which reimbursement was denied. This Decision and Order will address only the treatment services for which reimbursement was denied.

The amount in dispute is \$14,348.30.<sup>7</sup> After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that all of the disputed treatment services provided by MR&D through June 30, 2003, were reasonable, medically necessary and properly documented with the exception of CPT Code 97139 on February 12.

The parties prefiled all exhibits and testimony. The hearing convened on November 22, 2004, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Scott Hilliard represented MR&D and Ryan Willett represented TMIC. Following conclusion of

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<sup>5</sup> The IRO determined that the post-operative program was reasonable through May 20, 2003, but was not medically necessary after that date.

<sup>6</sup> The Commission denied reimbursement for six units of therapeutic exercise, CPT Code 97110, on June 17 and for six units of therapeutic exercise on June 18, 2003.

<sup>7</sup> The parties filed an Agreed Table of Disputed Services on December 15, 2004.

closing arguments, the parties agreed to file a stipulation of the amount in dispute. The parties filed additional documents on February 11, 2005, and the record closed that day. Neither party objected to notice or jurisdiction.

Claimant suffered a work-related injury to her left knee and ankle on \_\_\_\_\_, when she slipped and fell on ice in a freezer while working as a medical assistant. A primary care physician initially prescribed anti-inflammatory medications and subsequently prescribed physical therapy. Claimant presented herself to Robert L. Bedford, D.C., of MR&D, on January 27, 2003. She was diagnosed with internal derangement of the knee and initially prescribed active and passive therapy for two weeks at a frequency of five visits per week. Crawford Sloan, M.D., examined Claimant the following day. He recommended diagnostic imaging of the knee, an MRI and several medications for pain and muscle spasm. A February 12, 2003 MRI revealed no tears of the menisci or the cruciate ligaments.

A March 5, 2003 Designated Doctor Evaluation by Cornelius Matwijecky, M.D., concluded that Claimant had not reached MMI, that Claimant should continue with therapy and that Claimant should seek an orthopedic consult as Claimant is a surgical candidate.

Charles T. Whittenburg, D.O., examined Claimant on March 7, 2003, concluded she had “reached a plateau in her improvement with conservative treatment” and recommended a diagnostic arthroscopy. Dr. Whittenburg performed the diagnostic arthroscopy on April 8, 2003, and found significant chondromalacia.<sup>8</sup> A series of Hyalgan injections followed. On June 6, 2003, Dr. Whittenburg suggested a total knee replacement. On August 7, 2003, Dr. Whittenburg requested reconsideration of TMIC’s denial of the knee replacement surgery. On August 29, 2003, Dr. Whittenburg noted that Claimant had required extensive physical therapy to “maintain an acceptable level of function.”

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<sup>8</sup> A Grade 4 chondromalacia of the patella and the medial femoral condyle.

On December 15, 2003, Howard Hood, III, M.D., conducted a designated doctor evaluation. Dr. Hood determined Claimant had not reached MMI, suffered from severe chondromalacia of the left knee, exacerbated by her fall, had not made any significant progress in pain control and would probably benefit from a total left knee replacement. He recommended Claimant be re-evaluated after post-operative treatment and rehabilitation.

TMIC referred Claimant to Patrick W. Donovan, M.D., for an RME. Dr. Donovan examined Claimant on April 15, 2004. Dr. Donovan concluded that the treatment provided to Claimant “has been reasonable and necessary in regards to her specific injury.” He also concluded that the “frequency and duration of treatment appears reasonable and appropriate for this specific injury.” Dr. Donovan recommended additional workup for her left knee joint including a postoperative MRI scan and an additional x-ray study to determine whether a meniscal tear exists and to determine the extent of postoperative arthritis prior to determining whether a knee replacement is warranted. He noted disuse atrophy and weakness in her left knee and recommended an electrical muscle stimulator to facilitate muscle strengthening and her ability to tolerate a progressive resistive exercise program.

John Pearce, M.D., a respected orthopedic surgeon, testified on behalf of TMIC. Dr. Pearce conducted only a document review and did not physically examine Claimant. Although he acknowledged that Claimant needed physical therapy, he questioned the need for one-on-one therapy. Although he contends that one-on-one therapy is required only when the patient requires instruction on performing the exercise or for patient safety, Dr. Pearce admitted that neither the American Medical Association CPT Codebook nor the Commission’s medical fee guidelines contained any such limitations. Dr. Pearce did not identify any specific guideline to support the proposed restrictions.

For reasons unknown to Dr. Pearce, TMIC never showed him the reports of Drs. Hood and Donovan. The opinions of Drs. Hood and Donovan are persuasive that the services provided by MR&D to Claimant were medically necessary. While Claimant’s progress was minimized due to the condition of her knee, therapy was needed to minimize degradation in her condition due to disuse

atrophy. Further, absent TMIC's approval of additional surgery, Claimant was presented with no option other than to attempt to maintain the status quo through the therapy provided by MR&D. TMIC denied Claimant knee replacement surgery. TMIC's argument, that no other service should be provided to Claimant because only surgery will resolve the medical condition, rings hollow.

The severity of Claimant's injury was sufficiently documented to warrant one-on-one therapy. The restriction TMIC seeks to impose on one-on-one therapy is not supported by the evidence. MR&D did not document the provision of CPT Code 97139 on February 12, 2003.

With the exception of CPT Code 97139 on February 12, 2003, in the amount of \$60.25, the preponderance of the evidence demonstrated that the disputed treatment services provided to Claimant from January 27, 2003, through June 30, 2003, were reasonable and medically necessary.<sup>9</sup>

## **II. FINDINGS OF FACT**

1. \_\_\_ (Claimant) suffered a work-related injury to her left knee and ankle on\_\_\_, when she slipped and fell on ice in a freezer while working as a medical assistant.
2. A primary care physician initially prescribed anti-inflammatory medications and subsequently prescribed physical therapy.
3. Claimant began treating with Main Rehab & Diagnostic (MR&D) on January 27, 2003, with Robert L. Bedford, D.C., as the treating professional. She was diagnosed with internal derangement of the knee and initially prescribed active and passive therapy for two weeks at a frequency of five visits per week.

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<sup>9</sup> MR&D did not request a hearing on the Commission's denial of one unit of CPT Code 97110 for the following dates of service: January 30; February 4, 6, 7, 11, 12 and 18; and March 4. Each unit has a \$35.00 value.

4. Crawford Sloan, M.D., examined Claimant on January 28, 2003. He recommended diagnostic imaging of the knee, an MRI and several medications for pain and muscle spasm.
5. A February 12, 2003 MRI revealed no tears of the menisci or the cruciate ligaments.
6. A March 5, 2003 Designated Doctor Evaluation (DDE) by Cornelius Matwijecky, M.D., concluded that Claimant had not reached Maximum Medical Improvement (MMI) and needed to continue with therapy.
7. Dr. Matwijecky diagnosed Claimant as a surgical candidate and recommended an orthopedic consult.
8. Charles T. Whittenburg, D.O., examined Claimant on March 7, 2003, and recommended a diagnostic arthroscopy.
9. Dr. Whittenburg performed the diagnostic arthroscopy on April 8, 2003, and found a Grade 4 chondromalacia of the patella and the medial femoral condyle.
10. Dr. Whittenburg subsequently administered a series of Hyalgan injections.
11. On June 6, 2003, Dr. Whittenburg suggested a total knee replacement.
12. Texas Mutual Insurance Company (TMIC) denied Claimant a left knee replacement.
13. On August 7, 2003, Dr. Whittenburg requested reconsideration of TMIC's denial of the knee replacement surgery.
14. On December 15, 2003, Howard Hood, III, M.D., conducted a DDE. He determined Claimant suffered from severe chondromalacia of the left knee, exacerbated by her fall, and had not reached MMI.
15. Dr. Hood also determined that Claimant had not made any significant progress in pain control and would probably benefit from a total left knee replacement. He recommended Claimant be re-evaluated after post-operative treatment and rehabilitation.
16. TMIC referred Claimant to Patrick W. Donovan, M.D., for an Required Medical Evaluation (RME).
17. Dr. Donovan examined Claimant on April 15, 2004.
18. Dr. Donovan's RME concluded that the treatment provided to Claimant was reasonable and medically necessary and that the frequency and duration of treatment appeared reasonable and appropriate.

19. Dr. Donovan recommended additional therapy to address disuse atrophy and weakness in Claimant's left knee.
20. TMIC's expert witness, John Pearce, M.D., an orthopedic surgeon, acknowledged the medical necessity of Claimant's physical therapy and probable need for a knee replacement.
21. The documents provided by TMIC to Dr. Pearce for his review excluded the DDE by Dr. Hood and the RME by Dr. Donovan.
22. Claimant has a Grade 4 chondromalacia of the patella and the medial femoral condyle.
23. Claimant does not have a torn meniscus.
24. Claimant suffers from disuse atrophy and weakness in Claimant's left knee.
25. Physical therapy, unlike knee replacement surgery, will not cure Claimant's condition.
26. Claimant's request for knee replacement surgery was denied.
27. Absent surgery, Claimant is entitled to treatment that of her work-related injury.
28. The treatment services provided by MR&D to Claimant were needed to relieve the effects of her work-related injury.
29. The treatment services provided by MR&D relieved, to the extent possible, the effects of Claimant's work-related injury.
30. Claimant required extensive physical therapy to maintain an acceptable level of function.
31. MR&D did not properly document the provision of CPT Code 97139 on February 12, 2003.
32. The treatment dates in issue are January 27, 2003, through June 30, 2003.
33. TMIC denied MR&D reimbursement for certain treatment services provided Claimant between January 27, 2003, and June 30, 2003.
34. The Texas Workers' Compensation Commission (Commission), acting through Independent Review Organizations (IROs), found that certain treatment services provided by MR&D between January 27, 2003, and June 10, 2003, were medically necessary for the treatment of Claimant and that the certain treatment services provided by MR&D between January 27, 2003, and June 30, 2003, were not medically necessary for the treatment of Claimant.



35. The Commission also resolved fee dispute issues between MR&D and TMIC by deciding that MR&D was entitled to reimbursement for some, but not all, of the disputed services between January 27, 2003, and June 18, 2003.
36. TMIC timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Commission's April 5, 2004 Decision regarding treatment services provided to Claimant between January 27, 2003, and April 7, 2003. MR&D timely requested a hearing before SOAH to contest the Commission's March 18, 2004 Decision regarding treatment services provided to Claimant between April 23, 2003, and June 10, 2003. MR&D timely requested a hearing before the SOAH to contest the Commission's May 4, 2004 Decision regarding treatment services provided to Claimant between June 4, 2003, and June 30, 2003 (collectively "Disputed Services").
37. MR&D did not request a hearing before SOAH regarding the following fee dispute services for which the Commission denied reimbursement: (1) one unit of CPT Code 97110 on January 30; February 4, 6, 7, 11, 12 and 18; and March 4; and (2) CPT Code L1906-AFO on January 28, 2003.
38. TMIC did not request a hearing before SOAH regarding treatment services for which the Commission ordered reimbursement between April 23, 2003, and June 10, 2003.
39. The Commission issued a notice of hearing on May 4, 2004, in SOAH Docket No. 453-04-5344.M5.
40. The Commission issued a notice of hearing on June 4, 2004, in SOAH Docket No. 453-04-5766.M5.
41. The Commission issued a notice of hearing on June 17, 2004, in SOAH Docket No. 453-04-6345.M5.
42. The dockets were joined for hearing and decision and the parties prefiled all exhibits and testimony.
43. The hearing convened on November 22, 2004, with SOAH Administrative Law Judge Howard S. Seitzman presiding. Ryan Willett represented TMIC and Scott Hilliard represented MR&D. The record closed on February 14, following the filing of certain materials relating to the IRO decisions and the Agreed Table of Disputed Services.

### **III. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically 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 parties' requests for a hearing were 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. The party requesting the contested case hearing has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. With the exception of the CPT Code 97139 with a date of service of February 12, 2003, the preponderance of the evidence demonstrated that the Disputed Services provided to Claimant from January 27, 2003, through June 30, 2003, were reasonable and medically necessary.

**ORDER**

**THEREFORE IT IS ORDERED** that Main Rehab & Diagnostic is entitled to reimbursement from Texas Mutual Insurance Company for charges, plus any applicable interest, associated with Disputed Services, except CPT Code 97139 with a date of service of February 12, 2003, provided to injured worker \_\_\_\_\_ from January 27, 2003, through June 30, 2003.

**SIGNED April 11, 2005.**

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