

**MEGA REHAB,
Petitioner**

V.

**AMERICAN HOME ASSURANCE CO.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Mega Rehab (Petitioner) sought review of the Findings and Decision of the Texas Workers Compensation Commission (Commission) acting through Forte, an Independent Review Organization (IRO). The IRO denied Petitioner's request for reimbursement for \$653.54 from American Home Assurance Co. (Respondent) for four sessions of aquatic therapy rendered to S.W. (Claimant).¹

This decision denies the relief sought by Petitioner.

On February 3, 2005, a hearing on the merits was convened by the Administrative Law Judge (ALJ) Paul D. Keeper. Stephen Dudas, D.C., the owner of Mega Rehab, represented Petitioner. Stephen Tipton represented Respondent. There were no contested issues of notice or jurisdiction. The record was left open until February 4, 2005, for the parties' submission of additional exhibits. The administrative record closed on February 4, 2005.

Claimant sustained a work-related injury on or about ____, and was diagnosed with lumbrosacral strain. On October 1, 2002, Vaughn A. Brozek, D.C., evaluated Claimant and began chiropractic care. On November 21, 2002, Claimant was seen by Larry M. Kjeldgaard, D.O., who determined that Claimant had a disk herniation. Claimant continued to receive therapy through early August 2003. During this period, Claimant was evaluated through the use of MRI, EMG, and diskography studies. In addition to chiropractic care, Claimant received prescription medications for a variety of medical conditions, psychotherapy, and lumbar epidural steroid injections. Claimant also received a 30-session pain management program.

On August 5, 2003, Dr. Brozek referred Claimant to Petitioner for physical therapy, including aquatic exercises. On that same day, Petitioner, a CARF certified facility, began providing physical therapy, including aquatic therapy, through a licensed physical therapist. After Claimant completed five of the nine prescribed series of exercise treatments, Respondent terminated reimbursement for further physical therapy.

¹ The decision by the IRO is deemed to be a Commission Decision and Order.

On October 7, 2003, Benjamin T. Agana, M.D., holding diplomate status in the American Board of Physical Medicine and Rehabilitation and the American Board of American Diagnostic Medicine, provided a medical review of Claimant's medical records. Dr. Agana concluded that additional physical therapy "at a standard customary physical therapy center" would be appropriate. Dr. Agana also concluded that Claimant had had excessive chiropractic treatment and was not in need of any further such services.

Petitioner, had the burden of proof in this proceeding. Petitioner proved that Claimant's muscle strength improved from 3 to 3+ on a maximum score of 5 and that Claimant's pain levels decreased from 5 to a 4 on a maximum score of 10. Despite these objective improvements, they are not sufficiently persuasive to authorize the continuation of reimbursement for this form of therapy. The CPT Code for aquatic therapy, 97113, authorizes reimbursement for aquatic therapy upon a showing that:

the patient cannot perform land-based exercises effectively to treat his/her condition without first undergoing the aquatic therapy, or when aquatic therapy facilitates progress to land-based exercise or increased function. Documentation **must be** available in the record to support medical necessity. [Emphasis in original.]

Claimant did not meet these criteria. Claimant was not referred to aquatic therapy because he could not perform land-based exercises. Instead, Claimant was referred because the land-based exercises were providing no relief. Claimant's aquatic therapy was not provided as a facilitation to progress to land-based exercise. Instead, the aquatic therapy was provided as an alternative to land-based exercise that had been tried and had failed.

With respect to documentation in the record to support medical necessity, Mega Rehab was unable to describe the statistical significance of the slight improvement shown by Claimant during treatment. Although the medical report by Dr. Agana does suggest that aquatic might be useful, the documentation of Claimant's response to the aquatic therapy did reflect improvement after the first half of the therapy was completed.

Finally, Mega Rehab could not explain how its physical therapist's provision of muscle stabilization, trunk-strengthening, ambulatory aquatic exercises were of any greater benefit to Claimant than the same land-based exercises had been to Claimant over the previous months.

Mega Rehab did not carry its burden of proof of showing the medical necessity for these services rendered to Claimant.

II. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury on or about ____.
2. Claimant was initially diagnosed with lumbrosacral strain.
3. On October 1, 2002, Vaughn A. Brozek, D.C., evaluated Claimant and began chiropractic care.
4. On November 21, 2002, Claimant was seen by Larry M. Kjeldgaard, D.O., who determined that Claimant had a disk herniation.

5. Claimant continued to receive therapy through early August 2003.
6. During this period, Claimant was evaluated through the use of MRI, EMG, and diskography studies.
7. In addition to chiropractic care, Claimant received prescription medications for a variety of medical conditions, psychotherapy, and lumbar epidural steroid injections.
8. Claimant also received a 30-session pain management program.
9. On August 5, 2003, Dr. Brozek referred Claimant to Mega Rehab for physical therapy, including aquatic exercises.
10. Mega Rehab provided nine sessions of physical therapy through aquatic exercises.
11. American Home Assurance Company (Respondent) reimbursed Mega Rehab for five sessions and then denied payment for the remaining four, after which Mega Rehab terminated therapy.
12. During the course of physical therapy provided to Claimant by Mega Rehab, Claimant's muscle strength improved from 3 to 3+ on a maximum score of 5 and Claimant's pain levels decreased from 5 to a 4 on a maximum score of 10.
13. The CPT Code for aquatic therapy, 97113, requires: (1) a showing that a patient cannot perform land-based exercises effectively to treat his/her condition without first undergoing the aquatic therapy, or when aquatic therapy facilitates progress to land-based exercise or increased function, and (2) documentation in the record to support medical necessity.
14. Mega Rehab did not meet these criteria, nor could Mega Rehab explain how its physical therapist's provision of muscle stabilization, trunk-strengthening, ambulatory, aquatic exercises were of any greater benefit to Claimant than the same land-based exercises had been to Claimant over the previous months.
15. Mega Rehab did not carry its burden of proof of showing the medical necessity for these services rendered to Claimant.
16. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
17. Mega Rehab timely requested a hearing to contest the Commission's decision.
18. By letter dated July 23, 2004, the Commission issued a notice of hearing.
19. Administrative Law Judge Paul D. Keeper convened a hearing on February 3, 2005, in the hearing rooms of the State Office of Administrative Hearings.
20. The record closed on February 4, 2005, following the parties' submission of additional documentation.
21. Stephen Dudas, D.C., represented Mega Rehab. Stephen Tipton represented Respondent.

III. 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. Petitioner failed to prove by a preponderance of the evidence that the health care rendered by Mega Rehab was medically necessary.

ORDER

THEREFORE, IT IS ORDERED that Petitioner Mega Rehab's request for relief is **DENIED**.

SIGNED April 5, 2005.

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