

**SOAH DOCKET NO. 453-05-0855.M5
TWCC MR NO. M5-04-3194-01**

**COTTON D. MERRITT, D.C.,
Petitioner**

V.

**AMERICAN HOME ASSURANCE
COMPANY,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Cotton D. Merritt, D.C. (Petitioner) disputes a decision of an independent review organization (IRO) issued on behalf of the Texas Workers' Compensation Commission (TWCC)/Medical Review Division (MRD) in which American Home Assurance Company (Carrier) denied payment for various services provided by Petitioner to Claimant including one-on-one physical therapy, kinetic activities, office visits, joint mobilization, and myofascial release from May 27, 2003, through June 5, 2003¹ (collectively, referred to as medical services). The IRO/MRD found these medical services were not medically necessary to treat Claimant's compensable injury. As set out below, the Administrative Law Judge (ALJ) finds that the medical services provided on May 27, June 2, and June 3, 2003, were medically necessary, but the medical services provided on June 5, 2003, were not medically necessary.

¹ Initially, the period of disputed services included physical therapy sessions with Petitioner on May 21, 2003 and May 22, 2003, however the dispute as to those dates was not timely filed with Texas Workers Compensation Commission and, therefore, is not included in this decision. Pursuant to stipulation of the parties.

II. DISCUSSION

Claimant sustained a compensable injury to his right ankle on ____, when he fell backwards from a beam approximately ten feet above the ground and landed with his right foot underneath his body. Two days after the injury, Claimant was seen by Gaylon B. Seay, M.D., an orthopedic surgeon, who diagnosed him with a severe ankle sprain and gave him a 3-D ankle walker to wear. An MRI of Claimant's ankle was performed on April 4, 2003, which revealed evidence of peroneus longus tendinosis with fluid accumulation and a partial ligament tear with normal attachment, both laterally and medially. Claimant was referred to a physical therapist for care and he received treatment consisting of ultrasound, heat, and active exercises with a theraband. It is unclear for how long Claimant underwent this physical therapy, however he reported an increase in his swelling, pain, and numbness after these treatments. Claimant then began seeing Petitioner for further treatment on April 24, 2003. Petitioner evaluated Claimant and opined that the heat treatments previously administered as part of Claimant's physical therapy inflamed the partial tear to his ankle, thereby exacerbating his pain and disability. Petitioner indicated that a structured physical therapy and rehabilitation program, in conjunction with a home exercise program, was necessary to treat Claimant's compensable injury.

The medical records admitted into evidence indicate that Claimant's rehabilitation therapy with Petitioner began on April 28, 2003, and that Claimant had fifteen rehabilitation therapy sessions with Petitioner from April 28, 2003, through May 22, 2003, prior to the period of disputed services. Petitioner billed Carrier for four additional sessions from May 27 through June 5, 2003, but Carrier denied coverage for these medical services based on a determination that they were not medically necessary to treat Claimant's compensable injury.

Melissa Tonn, M.D., conducted a retrospective review of Claimant's medical records and found that the medical services provided by Petitioner to Claimant from May 27, 2003, through June

5, 2003, were not medically necessary, in part because there was no documentation to support the need for additional instruction in exercises that could be performed at home by Claimant. Dr. Tonn cited the TrailBlazer Health Enterprises guidelines for the proposition that standard treatment for office visits and one-on-one therapy would include up to 18 sessions within a six-week period.²

III. ANALYSIS

Petitioner had the burden of proof in this matter. It was not disputed that the physical therapy administered to Claimant prior to his treatment with Petitioner did not help, but rather exacerbated his injury. Therefore, the ALJ finds that Petitioner was essentially starting over when she began providing therapy to Claimant on April 28, 2003. According to the TrailBlazer guidelines used by Petitioner and cited by Dr. Tonn, it would be standard for Claimant to have up to 18 one-on-one physical therapy sessions with Petitioner over a six week period. The disputed services administered on May 27, June 2, and June 3, 2003, were the sixteenth, seventeenth and eighteenth sessions, respectively, within the six-week period during which Claimant had been receiving treatment by Petitioner. There is no documentation or evidence in the record, however, to support the need for the continued medical services provided on June 5, 2003. Therefore, the ALJ finds that the disputed medical services provided by Petitioner to Claimant from May 27 through June 3, 2003, were medically necessary, but the disputed medical services provided by Petitioner to Claimant on June 5, 2003, were not medically necessary.

IV. FINDINGS OF FACT

1. On ____, Claimant sustained a work-related injury to his right ankle as a result of his work activities (compensable injury).

² Respondent's Exhibit 1, page 6.

2. At the time of Claimant's compensable injury, Claimant's employer's workers' compensation insurance carrier was American Home Assurance Company (Carrier).
3. As a result of the compensable injury, the Claimant suffered a severe ankle sprain and partial ligament tear.
4. Claimant underwent physical therapy that exacerbated his compensable injury prior to receiving treatment from Cotton D. Merritt, D.C. (Petitioner).
5. On April 28, 2003, Claimant began receiving physical therapy rehabilitative treatment with Petitioner.
6. From April 28, 2003, through June 5, 2003, Petitioner treated Claimant with one-on-one physical therapy, kinetic activities, office visits, joint mobilization, and myofascial release.
7. A reasonable and standard course of treatment for office visits and one-on-one therapy includes up to 18 sessions within a six-week period.
8. Because Claimant's prior physical therapy had exacerbated his injury, Petitioner was starting over with his treatment when she began providing rehabilitative treatment to Claimant on April 28, 2003.
9. Claimant's therapy sessions on May 27, June 2, and June 3, 2003, were his sixteenth, seventeenth, and eighteenth sessions, respectively, with Petitioner during a six-week period.
10. There is no documentation or evidence in the record to support the need for the continued medical services provided by Petitioner on June 5, 2003.
11. On May 24, 2004, Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
12. On August 23, 2004, an independent review organization (IRO) reviewed the medical dispute and found that the disputed services were not medically necessary.
13. Based on the IRO's findings, TWCC's Medical Review Division (MRD) declined to order reimbursement to Petitioner for the disputed services provided to Claimant from May 27 to June 5, 2003.
14. After the MRD order was issued, the Petitioner asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

15. On June 16, 2005, SOAH ALJ Ami L. Larson held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Petitioner appeared *pro se*. Attorney Dan Kelley appeared for Respondent. The hearing concluded and the record closed the same day.

III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code §2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), Petitioner has the burden of proof in this case.
4. 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 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. Labor Code § 408.021 (a).
5. Based on the above Findings of Fact and Conclusions of Law, the disputed services provided by Petitioner to Claimant from May 27 through June 3, 2003, were medically necessary to treat Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, the disputed services provided by Petitioner to Claimant on June 5, 2003, were not medically necessary to treat Claimant's compensable injury.

ORDER

IT IS ORDERED THAT American Home Assurance Company pay Cotton D. Merritt, D. C., for the medical services provided to Claimant from May 27, 13, 2003, through June 5, 2003, plus applicable interest.

IT IS FURTHER ORDERED THAT the claim by Cotton D. Merritt, D.C., for reimbursement from American Home Assurance Company for the medical services provided to Claimant on June 5, 2003, be, and the same is hereby, denied.

SIGNED August 15, 2005.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**