SOAH DOCKET NO. 453-05-1199.M5
TWCC MR NO. M5-04-3853-01

JOHANN VAN BEEST, D.C., Petitioner	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
PACIFIC EMPLOYERS INSURANCE COMPANY, Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. INTRODUCTION

Johann Van Beest, D.C. (Provider) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC) regarding medical services for __(Claimant). The IRO could not find that the disputed services were reasonably medically necessary due to the Claimant's compensable injury, and based on that determination the TWCC Medical Review Division (MRD) denied the Provider's request to be reimbursed for them.

The only issue is whether the disputed services were reasonably medically necessary due to the compensable injury. At the hearing, the Carrier conceded that the Claimant, due to his situational depression, needed three of the disputed office visits with the Provider as the Provider attempted to terminate his care. The remaining amount in dispute is $526.94.

As set out below, the Administrative Law Judge (ALJ) cannot find that the remaining disputed services were reasonably medically necessary due to the compensable injury. The request for that reimbursement is denied.

II. FINDINGS OF FACT

1. On___, the Claimant sustained a work-related injury to his lower back as a result of his work activities (Compensable Injury).

2. On the date of injury, the Claimant's employer was ___, and the Carrier was its workers' compensation insurance carrier.

3. As a result of the compensable injury, the Claimant suffered lower back pain.

4. The Provider furnished the following medical services (Disputed Services) to the Claimant, on the dates and with the Current Procedural Terminology (CPT) codes and maximum allowable reimbursements (MARs), shown below:

CPT	SERVICE DESCRIPTION	MAR	DATES (2003)	TOTAL
99212	Office visit with an established patient	$44.74	8/7, 8/14, 8/18, 9/5, 9/8, 9/16 & 10/20	$313.18
99213	Expanded office visit with an established patient	$62.81	8/29 & 10/7	$125.62
98940	Chiropractic manipulative treatment	$31.68	8/7 & 9/5	$63.36
99371	Telephone call for medical management; simple	$53.00	8/29	$53.00
99372	Telephone call for medical management; intermediate	$53.00	10/2 & 10/9	$106.00
GRAND TOTAL				$661.16

5. Between May 2002 and March 2003, a magnetic resonance image, an myelogram, a computerized axial tomography scan, and a computed tomography scan of the Claimant's lumbar spine and a nerve conduction velocity test of his lower extremities were all normal.

6. A July 17, 2003, functional capacity evaluation showed that the Claimant had high somatic

preoccupation and symptom magnification.

7. The Claimant also had developed situational depression.

8. From mid-April through mid-October 2003, the Claimant continued to report lower back pain and was being treated by the Provider but his pain level did not substantially improve.

9. The Claimant needed one 99212 office visit per month with the Provider in August, September, and October 2003 as the Provider attempted to move the Claimant out of the workers' compensation system.

10. On October 20, 2003, the Provider determined that the Claimant had reached maximum medical improvement (MMI) with a ten percent whole-person impairment rating.

11. The Provider timely sought reimbursement from the Carrier for the Disputed Services.

12. The Carrier timely sent an explanation of benefit (EOB) to the Provider denying the requested reimbursement by contending that the Disputed Services had not been shown to be medically necessary due to the Compensable Injury.

13. The Provider timely filed a request for medical dispute resolution with the TWCC.

14. An IRO reviewed the medical dispute and could not find that the Disputed Services had been shown to be medically necessary due to the compensable injury.

15. Based on the IRO's findings, the MRD denied the Provider's request to be reimbursed for the Disputed Services.

16. After the IRO decision and MRD order were issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ concerning the dispute.

17. The required notice of a contested-case hearing concerning the dispute was mailed to the Provider and the Carrier.

18. On May 18, 2005, SOAH ALJ William G. Newchurch held a contested-case hearing as noticed concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.

19. The Carrier appeared at the hearing through its representative, F. Javier Gonzalez.

20. The Provider appeared at the hearing by telephone.

III.
CONCLUSIONS OF LAW

1. The SOAH 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) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).

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) (2005), and 28 TAC §§ 133.308(v) and 148.21(h) (2005), the Provider 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. TWCC's Medical Fee Guideline (MFG) sets the maximum allowable reimbursement (MAR) for most medical services. Medical Fee Guideline 1996; adopted by reference at 28 TAC § 134.201(a).

6. For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the Medicare program reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies in effect on the date a service is provided with any additions or exceptions in this section. 28 TAC § 134.202(b).

7. The MFG also provides that an "insurance carrier will reimburse the lesser of the billed charge, or the MAR." MFG, General Instructions, VI. Reimbursement.

8. Based on the above Findings of Fact and Conclusions of Law, one 99212-office visit per month in August, September, and October 2003 was reasonably medically necessary due to the Compensable Injury.

9. The evidence does not show that the remaining Disputed Services were reasonably medically necessary due to the Compensable Injury.

10. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed $134.22 for one 99212-office visit per month in August, September, and October 2003 and his request to be reimbursed for the remaining Disputed Services should be denied.

ORDER

IT IS ORDERED THAT the Provider shall reimburse the Claimant $134.22 for one 99212 office visit per month in August, September, and October 2003 and the Provider's request to be reimbursed for the remaining Disputed Services is denied.

SIGNED June 7, 2005.

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS