

**DOCKET NO. 453-05-1609.M5
TWCC MRD NO. M5-04-3844-01**

FIRST RIO VALLEY MEDICAL, P. A.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
VF CORPORATION,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

First Rio Valley Medical, P.A., (Provider) appealed the decision of the Independent Review Organization (IRO) denying reimbursement for services provided to an injured worker (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Provider failed to show by a preponderance of the evidence that the services in issue were medically necessary. Therefore, Provider is not entitled to reimbursement for the amounts in controversy.

I. BACKGROUND

Claimant suffered compensable, work-related injuries to her right shoulder, elbow, wrist and hand on ____, when she tripped and fell. She had surgery on her right shoulder on September 29, 2003. Thereafter, Claimant underwent numerous treatments or services, including the therapeutic exercises and office visits from January 29, 2004, to February 24, 2004, which are presently in dispute (disputed services).

VF Corporation (Carrier), as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse these treatments and services, contending they were not medically necessary. Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the disputed services were not medically necessary treatment for Claimant's compensable injury. Provider then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on February 23, 2005, with ALJ Tommy Broyles presiding. Provider and Carrier appeared, either represented by an attorney or on their own behalf. The hearing concluded and the record closed on that same day. No party objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

Provider maintains that the disputed treatments were medically necessary. Robert S. Howell, D.C., testified that the therapeutic exercises and office visits were medically necessary to improve Claimant's strength and to perfect her range of motion (ROM), after she had the September 2003 surgery. According to Dr. Howell, subsequent testing indicated that Claimant's condition improved as a result of the disputed services, thus proving that the disputed services were reasonable medical care.

After reviewing the records, John Kirkwood, D.C., testified on behalf of Carrier that the disputed services were not medically necessary. While admitting that some post-surgical rehabilitation was reasonable, he found the disputed services were beyond the point of maximum medical improvement and thus failed to provide any medical benefit. Dr. Kirkwood stated that the chief subjective complaint from Claimant was soreness and he does not find this significant enough to justify the disputed services. He added that by the time the disputed services were provided, ROM was normal and actually declined slightly after the therapy.

After considering the arguments and evidence presented, the ALJ concludes that the disputed services provided to Claimant were not medically necessary for treatment of Claimant's compensable injury. Therefore, the ALJ finds that Provider is not entitled to reimbursement. In reaching this decision, the ALJ gives great weight to the prescription provided by Jorge E. Tijmes, M.D., who performed the September 2003 shoulder surgery. To rehabilitate her shoulder, Dr. Tijmes prescribed Claimant a pulley, a theraband, and recommended a home therapy program. Given the limited nature of Claimant's complaints and objective findings, the ALJ finds that a home program was the appropriate form of continued care, if any was needed.

In considering the totality of the record, the ALJ concludes that the preponderance of the evidence shows that the treatments in issue were not medically necessary. Therefore, Provider has not met its burden of showing that the treatments were medically necessary. As such, Provider is not entitled to reimbursement for the treatments. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Claimant suffered a compensable, work-related injury on ____.
2. VF Corporation (Carrier) is the provider of workers' compensation insurance covering Claimant for her compensable injury.
3. Claimant underwent numerous treatments and services for her injuries, including those presently in dispute: therapeutic exercises and office visits from January 29, 2004 to February 24, 2004 (disputed services).
4. Claimant had surgery on her shoulder on September 29, 2003, and received therapy for rehabilitation after this surgery.
5. After providing months of rehabilitation, Carrier denied reimbursement for the disputed services, contending they were not medically necessary.
6. First Rio Valley Medical, P.A., (Provider) requested medical dispute resolution by the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
7. MRD declined to order reimbursement on September 22, 2004, based on the IRO physician reviewer's determination that the services in issue were not medically necessary.

8. On October 12, 2004, Provider requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent by the Commission to all parties on November 4, 2004.
10. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. On February 23, 2005, Administrative Law Judge Tommy Broyles convened a hearing in this case. Provider appeared through Robert S. Howell, D.C. Carrier appeared through its attorney, Rhett Robinson. The hearing concluded and the record closed on that same day.
12. Jorge E. Tijmes performed shoulder surgery on Claimant on September 29, 2003.
13. To rehabilitate her shoulder after the surgery, Dr. Tijmes prescribed Claimant a pulley, a theraband, and recommended a home based therapy program.
14. At the time of the disputed services, Claimant's subjective complaints were limited to soreness.
15. At the time of the disputed services, range of motion testing did not suggest continued therapy was medically necessary.
16. By the time the disputed services began, four months after Claimant's shoulder surgery, therapeutic exercises and office visits were no longer medically necessary.

IV. 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 request for a hearing was 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. Provider has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Provider has not shown, by a preponderance of the evidence, that the services in issue provided to Claimant between January 29, 2004 to February 24, 2004, were medically necessary for treatment of Claimant's compensable injury.

7. Carrier is not liable to reimburse Provider for the treatments and services provided to Claimant between January 29, 2004, to February 24, 2004.

ORDER

IT IS, THEREFORE, ORDERED that First Rio Valley Medical, P.A. take nothing from VF Corporation for the treatments provided to Claimant between January 29, 2004 to February 24, 2004.

SIGNED April 6, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**