

**SOAH DOCKET NO. 453-05-1630.M5
TWCC MR NO. M5-04-3851-01**

ACE AMERICAN INSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
FIRST RIO VALLEY MEDICAL, P.A., Respondent		

DECISION AND ORDER

I. INTRODUCTION

Ace American Insurance Company (Petitioner) requested a hearing to contest the October 7, 2004, Findings and Decision of the Texas Workers' Compensation Commission (Commission) authorizing reimbursement to First Rio Valley Medical, P.A. (Respondent) for chiropractic treatments provided to ___ (Claimant) on January 9, 12, 14, 15, 19, 21, and 23, 2004 (Disputed Services). This decision grants the relief sought by Petitioner and denies reimbursement for the Disputed Services.

II. BACKGROUND

Claimant is a 38-year old male who injured his lower back on ___, while lifting a tool box that weighed approximately 60 pounds. He initially was treated by the company doctor, but then presented to Dr. Robert Howell on October 15, 1999, who diagnosed him with a lumbar sprain, possible discopathy, thoracic or lumbosacral neuritis and myalgia. Dr. Howell treated Claimant for a little over four years with numerous treatments of aquatic therapy, therapeutic exercise, joint mobilization, and electrical stimulation. In addition, over the next two and a half years, Claimant underwent NCV studies, two MRIs, an SSEP test, and an IME. Claimant reached maximum medical improvement on February 20, 2000.

III. HEARING AND EVIDENCE

The hearing convened on February 17, 2005, before Administrative Law Judge (ALJ) Tommy L. Broyles. John Pringle, attorney, represented Petitioner. Dr. Robert Howell represented Respondent and appeared by telephone. There were no contested issues of notice or jurisdiction. The hearing adjourned and the record closed on February 18, 2005.

This hearing was joined, for hearing purposes only, with three other dockets: Docket Nos. 453-04-3594.M5; 453-04-4233.M4; and 453-04-2827.M5.¹ During the hearing, both parties

¹ Docket No. 453-04-4233.M4 involved one disputed date of service—October 3, 2002. Docket No. 453-04-3594.M5 involved disputed dates of service from September 18, 2002, through October 18, 2002. Docket No. 453-04-2827.M5 involved disputed dates of service on June 10, 11, 12, and 23, 2003. All of these dockets concern treatments provided to Claimant for over a four-year period.

submitted documentary evidence for all four cases which was admitted into the record.

Petitioner's first witness was Linda Moeller, a claims representative for Petitioner, who is licensed to adjust workers' compensation claims in the state of Texas. Ms. Moeller had reviewed the medical records submitted to her by Respondent at the time he was requesting reimbursement. Petitioner asked her to compare certain medical records that Respondent had originally submitted to her with the purportedly same medical records that Respondent had entered into evidence at the hearing. It became apparent during the questioning that the medical records were different. Specifically, Claimant was treated by at least three doctors other than Dr. Howell. Those names were missing on the records originally submitted to Ms. Moeller, yet they appeared on the documents Dr. Howell entered into evidence at the hearing. Those doctors had not been designated the treating doctor for workers' compensation claim purposes.

When the discrepancy in the documents became apparent to Dr. Howell, he asked to withdraw these cases. As the party requesting the hearings, Petitioner objected. Dr. Howell ended his telephonic participation in the hearing.

Petitioner continued presenting his case and called Dr. Kenneth Fain, D.C. to testify by telephone. Dr. Fain is a licensed chiropractor who is a sole practitioner. Dr. Fain stated that in his opinion, Claimant had reached maximum medical improvement by 2000, and that any treatment rendered after this date for a ___ injury was not medically necessary.

IV. CONCLUSION

Petitioner met its burden of proving that the Disputed Services were not medically necessary. Accordingly, Respondent is not entitled to reimbursement for the Disputed Services provided to Claimant.

V. FINDINGS OF FACT

1. ___ (Claimant) is a 38-year old male who injured his lower back on ___, while lifting a tool box that weighed approximately 60 pounds.
2. Claimant was initially treated by the company doctor, but then presented to Dr. Robert Howell (Respondent) on October 15, 1999, who diagnosed him with a lumbar sprain, possible discopathy, thoracic or lumbosacral neuritis and myalgia.
3. Dr. Howell treated Claimant with aquatic therapy, therapeutic exercises, spray and stretch electrical stimulation, and joint mobilization (Disputed Services) for a period of over four years.
4. Respondent requested reimbursement for the Disputed Services.
5. Ace American Insurance Company (Petitioner) denied reimbursement for the Disputed Services.

6. By decision dated October 7, 2004, the Texas Workers' Compensation Commission (Commission) granted Respondent reimbursement for the Disputed Services.
7. Petitioner timely requested a hearing to contest the Commission's decision.
8. 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.
9. A hearing was convened by Administrative Law Judge Tommy C. Broyles on February 17, 2005, in the hearing rooms of the State Office of Administrative Hearings. The record closed February 18, 2005.
10. During the hearing, Respondent withdrew his participation in the case.
11. Claimant reached maximum medical improvement in 2000 and any treatment after that time was not medically necessary.
12. The Disputed Services were not medically necessary

VI. 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. 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).
6. Petitioner demonstrated that the Disputed Services were not medically necessary for the treatment of Claimant's injury.
7. Based upon the Findings of Fact and Conclusions of Law, Respondent is not entitled to reimbursement for the Disputed Services.

ORDER

THEREFORE IT IS ORDERED that Respondent First Rio Valley Medical, P.A., is not entitled to reimbursement from Petitioner Ace American Insurance Company for the Disputed Services provided to Claimant. Furthermore, Respondent is ordered to pay \$99.70 to Petitioner for copying and delivery costs for duplicate records previously sent to Respondent.

SIGNED March 16, 2005.

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