

**SOAH DOCKET NO. 453-05-2079.M5
TWCC MR NO. M5-04-2662-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
WACO ORTHO REHAB, Respondent		

DECISION AND ORDER

I. DISCUSSION

On October 30, 2004, Texas Mutual Insurance Company (TMIC) requested a hearing in this docket. TMIC had received on October 8, 2004, the Findings and Decision of the Medical Review Division of the Texas Workers' Compensation Commission (Commission). The Commission's Findings and Decision relied upon a June 29, 2004, decision of Independent Review, Inc., an Independent Review Organization (IRO). The Commission found that Waco Ortho Rehab (Respondent) prevailed on its request for reimbursement from TMIC for services that Respondent provided to an injured worker, __ (Claimant). The disputed services were rendered between April 30, 2003, and August 11, 2003.

The services in dispute that the IRO found to be medically necessary were:

TABLE I				
Service	CPT Code	No. of Units	Rate	Total
Muscle testing	95851	2	\$36.00	\$72.00
One-on-one physical therapy	97110	175	\$35.00	\$6,125.00
Group physical therapy	97150	18	\$27.00	\$486.00
Myofascial release	97250	14	\$43.00	\$602.00
Joint mobilization	97265	13	\$43.00	\$559.00
Physical performance testing	97750	33	\$43.00	\$1,419.00

TABLE I				
Service	CPT Code	No. of Units	Rate	Total
Supplies	99070	2	\$8.00	\$16.00
Work status report	99080-73	2	\$15.00	\$30.00
Office visits, Level III	99213	16	\$48.00	\$768.00
Office visits, Level III	99213	1	\$18.20 ¹	\$18.20
Office visits, Level IV	99214	1	\$71.00	\$71.00
Team conference	99361	1	\$53.00	\$53.00
Copying	99080	0	\$29.00	\$29.00
SUBTOTAL				\$10,248.20
PAID BY TMIC				-\$565.00
TOTAL				\$9,683.20

By the commencement of the hearing on the merits, TMIC withdrew its request for hearing on \$262.20 in amounts that TMIC did not contest.² The amount remaining in dispute was the difference, \$9,421.00.

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that \$1,473.00 in treatments and office visits provided by Respondent are reimbursable. All other services that remain in dispute are not reimbursable.

The hearing on the merits convened on July 20, 2005, with State Office of Administrative Hearings (SOAH) ALJ Paul Keeper presiding. Attorneys Timothy Riley represented TMIC and William Maxwell represented Respondent. Timothy J. Fahey, D.C., testified for TMIC, and David

¹ This amount reflects the difference between an amount billed, \$58.99, and an amount paid, \$40.79.

² These amounts were: myofascial release (CPT Code 97250), \$43.00, 04/30/03; muscle testing (CPT Code 97750-MT), \$172.00, 05/23/03; copying fees (CPT Code 99080), \$29.00, 06/23/03; and office visit (CPT Code 99213), \$18.20, 08/26/03.

Bailey, D.C., testified for Respondent.³ Following the conclusion of the evidentiary proceeding, the parties agreed to file closing arguments by October 17, 2005, and to file responses by October 27, 2005. TMIC timely filed its closing arguments, and Respondent filed none.⁴ Neither party filed a response. The record was closed on October 27, 2005. Neither party objected to notice or jurisdiction.

On___, Claimant injured his lower back while using a rope without a pulley to hoist an air conditioning unit onto a roof. On March 18, 2003, Claimant sought medical care. He was evaluated by Concentra Medical Centers (Concentra) on March 20, 2003, as having lumbar strain. Concentra provided Claimant a series of one-on-one therapeutic exercises through April 1, 2003. On April 28, 2003, Respondent began its evaluation and treatment of Claimant. Dr. Bailey prepared Respondent's initial medical narrative report. In that report, Dr. Bailey outlined a treatment plan that included two parts: (1) a home-based program of exercises, and (2) an office-based program of chiropractic management and physical medicine treatments. Respondent provided office-based treatments to Claimant every few days between April 28 and July 9, 2003. On July 17, 2003, Victoria Curione, a licensed professional counselor, interviewed Claimant and recommended a psychological and psychiatric evaluation. Then, between July 30, 2003, and September 19, 2003, Claimant went through a work hardening program that was provided by Physician Management Services.⁵ Respondent provided a few additional office visits while Claimant was going through the work hardening program.

The issue in dispute is whether the treatments rendered to Claimant by Respondent were medically necessary. Dr. Fahey testified that a patient with a lumbar strain would benefit from the passive therapy rendered by Respondent, but only for the first four to eight weeks following the

³ Dr. Bailey is the president of Respondent.

⁴ The ALJ's office left a message with Mr. Maxwell's office to confirm that no closing arguments had been sent. No response was received.

⁵ These dates were derived from a careful review of the reams of paper documents in evidence. No chronological summary of Claimant's treatment was provided by either party. TMIC did provide a copy of an ASO 1 Query of Medical Billing for this claim. At no point on the ASO 1 printout does Respondent's name appear. Apparently in place of Respondent's name is "TWCC ILTD." Neither party described who or what that entity is, what relation TWCC ILTD has to Respondent, or why a name other than Respondent's appears on the ASO1 Query.

injury. He explained that the first four weeks constitute the acute phase of treatment. The goal during the acute phase is to provide pain relief and stabilization. This is achieved in part by deep massage and by passive movement of the patient's joints. Dr. Fahey explained that the second four weeks constitute the subacute phase of treatment. The goal during the subacute phase is to help the patient make the transition from passive treatment to active treatment in home exercises. Dr. Fahey explained that this schedule applies to simple lumbar sprains and that such physical problems typically resolve themselves in about the same eight week period.

Finally, Dr. Fahey explained that the treating therapist must periodically evaluate the patient's progress through monthly office visits. Exceptions to that frequency may exist for patients with strokes, head injuries, learning disorders, or other types of impediments.

Respondent's acute phase of treatment began during Concentra's treatment of Claimant on March 20, 2003. The eight week period of treatment would have ended around the middle of May 2003. Concentra's therapy included many of the same types of procedures that Claimant was to receive from Respondent later in the summer.

However, Concentra's therapy concluded on April 1, 2003, and not in the middle of May. Claimant's pain continued at high levels. On April 28, 2003, Claimant sought evaluation and treatment from Respondent. When Respondent performed the initial assessment of Claimant's condition, Claimant reported a pain level of eight out of a possible score of ten (with ten as the highest level pain). Respondent's treatment plan of April 28, 2003, appropriately sought to address Claimant's pain and underlying physical problems. Respondent's treatment plan comported generally with the regimen of pain relief followed by the type of physical exercise training that was described by Dr. Fahey.

However, as reflected in Table I, Respondent's program differed significantly from the schedule of care described in Dr. Fahey's acute/subacute analysis. Respondent provided Claimant with 175 units of one-on-one passive therapeutic exercises in groups of eight sets of exercises between May 5 and July 9, 2003, a period of about nine weeks. The exercises were administered on

23 separate days, or about a set of exercises during every other visit. In addition, Respondent provided Claimant with joint manipulation and massage on 13 or 14 of Claimant's visits during these same 23 treatment days. Also, Respondent billed for 17 office visits with Claimant. The duration of the passive treatments and office visits was far beyond the schedule described by Dr. Fahey. On that basis, TMIC challenged the medical necessity for Respondent's delivery of these services.

During the course of the hearing, Respondent responded to TMIC's challenges by explaining the co-existence of two models of therapy. The first is the standard or "stroke rehabilitation" model described by Dr. Fahey. The second is a "performance enhancement" model in which the therapist attempts to bring a patient back to full rehabilitation more quickly. The performance enhancement model, asserted Dr. Bailey, also offers the possibility for a better outcome. Dr. Bailey explained that Claimant's employer did not want Claimant back on the job until Claimant was 100% ready to go back to work. Based on that charge, Respondent used the performance enhancement model.

In addition, Dr. Bailey explained that it was medically necessary to perform these services in a one-to-one setting because it was appropriate for Claimant's kind of injury. Dr. Bailey testified that it was reasonable to expect that the treatment as delivered would render a positive health outcome, and "in fact it did in almost every aspect of it."

The evidence is clear that Dr. Bailey's care was effective. Claimant's pain was brought under control quickly, and Claimant's pain levels were fairly consistent following Dr. Bailey's initiation of care.⁶ The following table lists Claimant's reported levels of pain (using the 10 point scale) during the most concentrated period of Respondent's treatments, May 5 through July 9, 2003. The levels are taken from the Respondent's written Patient Office Visit Reports on the Monday treatments (where available) at the beginning and at the end of each session.

⁶ Dr. Bailey testified that although the control of pain is an important element in therapy, it is neither the only element nor the most important element to use in judging a patient's progress.

TABLE II		
Date	Pain at Beginning	Pain at End
04/28/03	8	--
05/05/03	6	5
05/12/03	5	0
05/19/03	1	0
05/27/03	2	0
06/02/03	1	1
06/09/03	1	2
06/16/03	1	1
06/23/03	1	1
06/30/03	1	0
07/07/03	1	2

During this period, many of the exercises and treatments prescribed by Respondent for Claimant were performed using one-on-one supervision. Were they necessary?

Billing for one-on-one therapy under CPT Code 97110 must be justified, and initial training is certainly one legitimate justification. However, the desires of Claimant's employer to have his employee "100% ready to return to work" is not sufficient to satisfy the requirements of the TWCC reimbursement system. A performance enhancement method of treatment may be desirable and effective, but it is not necessarily reimbursable.

From a pure medical perspective, the need for the performance enhancement approach is similarly not justified. In a September 10, 2003, radiologist's report to Dr. Bailey, Henry J. Boehm, M.D., reported that Claimant had no significant disc bulges or herniation to account for his pain. Further, Claimant's pain levels were so changeable that no particular system of treatment seemed to resolve Claimant's condition. For example, Claimant was examined by Richard E. Scott, D.O. on July 7, 2003, the same day as Respondent's last treatment in Table II. To Dr. Scott, Claimant reported that his pain was 5 out of 10 on the 10 point scale. To Dr. Bailey on the same day, Claimant reported that his pain was between 0 and 1. Dr. Scott assigned Claimant a "whole person impairment" of 0%. Dr. Bailey's determination that Claimant required a performance enhancement method of treatment is simply not borne by the evidence.

Finally, this matter is made less clear by the fact that TMIC approved a work hardening program for Claimant after it had initiated its denial of Respondent's requests for reimbursement. Apparently, TMIC believed that Claimant's ongoing but inconsistent pain problems were better addressed through a more extended, more intensive treatment program that was integrated with a psychological counseling component.

Whatever are the reasons for TMIC acceptance of one treatment approach and rejection of another, the ALJ finds that Respondent reasonably chose to reinitiate Claimant's therapy when Respondent accepted Claimant as a patient on April 28, 2003. The ALJ finds that Respondent's active treatments were effective by May 19, 2005, in controlling Claimant's symptoms to the extent that Claimant could be helped by physical medicine or chiropractic care. The ALJ finds that after May 19, 2003, Respondent's passive care of Claimant no longer provided a significant source of therapy that was no longer medically necessary. The ALJ finds that Respondent is entitled to reimbursement for four weeks of active therapy instruction until June 18, 2003, and for office visits provided on a monthly basis during that period .

In applying those conclusions to the table of disputed services, the ALJ finds that the following services are compensable as medically necessary:

TABLE III

Service	CPT Code	No. of Units	Rate	Total
Myofascial release	97250	1	\$43.00	\$43.00
One-on-one physical therapy	97110	31	\$35.00	\$1,085.00
Group physical therapy	97150	11	\$27.00	\$297.00
Office visits, Level III	99213	1	\$48.00	\$48.00
TOTAL				\$1,473.00

II. FINDINGS OF FACT

1. ___ (Claimant) suffered a work-related lumbar sprain on or about___.
2. On March 18, 2003, Claimant sought medical care and was evaluated by Concentra Medical Centers (Concentra) on March 20, 2003, as having lumbar strain.
3. Concentra provided Claimant a series of one-on-one therapeutic exercises through April 1, 2003.
4. On April 28, 2003, Waco Ortho Rehab (Respondent) began its evaluation and treatment of Claimant.
5. David Bailey, D.C., outlined a treatment plan that included two parts: (1) a home-based program of exercises, and (2) an office-based program of chiropractic management and physical medicine treatments.
6. Respondent provided office-based treatments to Claimant every few days between April 28 and July 9, 2003.
7. On July 17, 2003, Victoria Curione, a licensed professional counselor, interviewed Claimant and recommended a psychological and psychiatric evaluation.
8. By May 19, 2003, Respondent had effectively controlled Claimant's pain and no longer needed to provide Claimant exercises with one-on-one supervision.
9. Although Respondent's program of performance enhancement therapy was effective, it was not medically necessary.
10. By June 18, 2003, Respondent no longer needed to provide for Claimant group physical therapy exercises.

11. Respondent was entitled to reimbursement until June 18, 2003, for monthly office visits at CPT Code 99213 as medically necessary.
12. The following were medically necessary: one unit of myofascial release (CPT Code 97250), 31 units of one-on-one physical therapy (CPT Code 97110), 11 units of group physical therapy (CPT Code 97150), and one unit of level III office visits (CPT Code 99213).
13. TMIC agreed to reimbursement Respondent for \$262.20 in undisputed reimbursement requests for: myofascial release (CPT Code 97250), \$43.00 on 04/30/03; muscle testing (CPT Code 97750-MT, \$172.00 on 05/23/03); copying fees (CPT Code 99080), \$29.00 on 06/23/03; and office visit (CPT Code 99213), \$18.20 on 08/26/03.
14. Respondent is entitled to reimbursement for an additional \$1,473.00 in medically necessary treatments.
15. The Texas Workers' Compensation Commission (Commission), based on the findings of Independent Review, Inc., an IRO, ruled that Respondent prevailed on its request for reimbursement from TMIC for services that Respondent provided to Claimant.
16. The disputed services were rendered between April 30, 2003, and August 11, 2003, and were: muscle testing (CPT Code 95851), one-on-one physical therapy (CPT Code 97110), group physical therapy (CPT Code 97150), myofascial release (CPT Code 97250), joint mobilization (CPT Code 97265), physical performance testing (CPT Code 97750), supplies (CPT Code 99070), work status report (CPT Code 99080-73), office visits, level III (CPT Code 99213), office visits, level IV (CPT Code 99214), team conference (CPT Code 99361, and copying (CPT Code 99080).
17. The total amount of disputed services was \$9,421.00, after TMIC conceded the payment of some amounts.
18. The Commission issued a notice of hearing on August 23, 2004, in SOAH Docket No. 453-04-8367.M5.
19. The Commission issued a notice of hearing on December 8, 2004.
20. The notices of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
21. The hearing on the merits convened on July 20, 2005, with State Office of Administrative Hearings (SOAH) ALJ Paul Keeper presiding. Attorneys Timothy Riley represented TMIC and William Maxwell represented Respondent. Timothy J. Fahey, D.C., testified for TMIC, and David Bailey, D.C., testified for Respondent.
22. Following the conclusion of the evidentiary proceeding, the parties agreed to file closing arguments by October 17, 2005, and to file responses by October 27, 2005. TMIC timely

filed its closing arguments, and Respondent filed none. Neither party filed a response. The record was closed on October 27, 2005.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (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 were 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. The party requesting the contested case hearing has the burden of proof.
6. The preponderance of the evidence demonstrated some, but not all of the disputed treatment services provided by Waco Ortho Rehab (Respondent) to Claimant were reasonable and medically necessary.
7. The preponderance of the evidence demonstrated Respondent is entitled to reimbursement from TMIC for the following disputed treatment services provided to Claimant: one unit of myofascial release (CPT Code 97250), 31 units of one-on-one physical therapy (CPT Code 97110), 11 units of group physical therapy (CPT Code 97150), and one unit of level III office visits (CPT Code 99213).
8. With respect to all other remaining disputed treatment services, the preponderance of the evidence demonstrated they were neither medically necessary nor reasonable and that Respondent is not entitled to reimbursement from TMIC.

ORDER

THEREFORE IT IS ORDERED that Texas Mutual Insurance Company reimburse Waco Ortho Rehab for the following chiropractic treatment services, including any applicable interest, provided to injured worker__ dates of service beginning April 30, 2003, and ending August 11, 2003: one unit of myofascial release (CPT Code 97250), 31 units of one-on-one physical therapy (CPT Code 97110), 11 units of group physical therapy (CPT Code 97150), and one unit of level III office visits (CPT Code 99213). All relief not expressly granted herein is DENIED.

SIGNED December 26, 2005.

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