

FIRST RIO VALLEY MEDICAL, P.A.	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
UNIVERSITY OF TEXAS SYSTEM	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

First Rio Valley Medical, P.A. (First Rio) appeals a decision by the Texas Workers' Compensation Commission's (TWCC) Medical Review Division (MRD) regarding the medical necessity and documentation of services provided to a workers' compensation claimant (Claimant) during November and December 2003 for an injury that occurred on \_\_\_\_\_. The University of Texas System (Respondent) denied reimbursement for the services as not medically necessary to treat Claimant's 2001 injury. MRD referred the medical necessity issue to an independent review organization (IRO), which also found the services were not medically necessary to treat Claimant's compensable injury. Concerning the documentation issues, MRD allowed reimbursement of \$30.00 and denied \$32.00. The total amount in dispute is \$1,912.61. This decision finds that the disputed services were not medically necessary to treat the Claimant's compensable injury; therefore, it denies First Rio's request for reimbursement.

I. JURISDICTION AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE § 413.031(k) and TEX. GOV'T CODE Ch. 2003. No party challenged jurisdiction or notice.

Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this matter on June 14, 2005, at the SOAH hearing facilities in Austin, Texas. Robert S. Howell, D.C., appeared for First Rio and Assistant Attorney General Bradley McClellan represented the University of Texas System. The hearing concluded and the record closed the same day.

## II. DISCUSSION

### A. Introduction

Claimant is a 27-year-old female who injured her low back on \_\_\_\_, when she lifted a heavy box of lab equipment while working for the University of Texas System in Brownsville. An MRI performed on August 18, 2001, showed Claimant had disc desiccation, hypolordosis of the lumbar spine, and a broad disc bulge at L5-S1. She continued working, received a course of conservative care, and reached maximum medical improvement (MMI) on January 2, 2002. Prior to the disputed services, Claimant's last treatment by Dr. Howell (First Rio) occurred on July 2, 2002.

On November 5, 2003, Claimant returned to Dr. Howell complaining of low back pain, which she related to a change in the weather. Dr. Howell considered Claimant's pain to be a flare-up of her compensable injury, so he provided a course of six treatments and therapy. These services were provided on November 10, 12, 13, 17, 19, and 20, 2003, and included office visits, aquatic exercises, massage therapy, manual therapy, therapeutic exercises, and electrical stimulation. In addition, Dr. Howell saw Claimant for office visits without providing treatments on November 5 and 21 and December 19, 2003. Dr. Howell also charged for a lumbar support cushion and two TWCC 73 Reports (November 5 and 21, 2003) and for reading Claimant's MRI on December 6, 2003. First Rio billed Respondent for all of these services in the total amount of \$1,912.61. Respondent denied reimbursement for all of the services based on lack of medical necessity for treatment of the 2001 compensable injury.

First Rio appealed the denial of payment to the TWCC MRD, which referred the medical necessity issues to the IRO. The IRO issued a decision on October 19, 2004, that upheld Respondent's denial of payment. The IRO reviewing chiropractor stated his rationale as follows: ". . . [T]here was never established a causal link between the 06/29/01 accident and the exacerbation to warrant treatment. Pain due to weather changes does not constitute an exacerbation." In a decision issued October 22, 2004, the MRD concurred with the IRO decision on lack of medical necessity. The MRD also considered three bills for documentation issues. These were for the two TWCC 73 Reports and the lumbar support cushion. MRD allowed reimbursement for the two TWCC 73 Reports (total \$30.00) but denied payment for lumbar support cushion (\$32.00). First Rio timely requested a contested case hearing at SOAH to challenge the MRD and IRO decisions.

#### B. Parties' Evidence and Arguments

Both First Rio and Respondent introduced various records into evidence. Dr. Howell testified for First Rio; Respondent did not call a witness.

Records: The records show that Claimant is a 27-year-old female who went to Dr. Howell on November 5, 2003, complaining of moderate, constant low back pain, which she believed was caused by cold weather. Dr. Howell noted that Claimant had injured her low back on the job on \_\_\_\_, while lifting a heavy box of lab equipment. His examination showed that Claimant's reflexes in her lower extremities were normal, but she had reduced range of motion, moderate tenderness on palpation at L5/S1, and positive straight leg raising (SLR) at 45 degrees on the left and 40 degrees on the right. Dr. Howell thought Claimant had a herniated disc and he recommended six sessions of physical therapy. He also prescribed a lumbar support cushion and referred Claimant to Donald Kramer, M.D., for pain medication.

Dr. Howell saw Claimant again on November 21, 2003. He noted that the six sessions of physical therapy did not provide much relief and her range of motion remained restricted.

Dr. Howell suspected that Claimant's disc lesion may have worsened since 2001, so he requested a new MRI to confirm or rule out the clinical impression of herniated disc. In addition, Claimant did not want additional therapy until further investigation of her condition by MRI. This record also noted that Claimant gave birth by C-section surgery on July 23, 2003.

Claimant obtained an MRI on December 6, 2003. Dr. Marc Berger read the MRI as showing severe straightening of the lumbar spine with complete loss of lordosis and a 4 mm central to marginally right protrusion or early herniation, with indications of a small right posterior annular tear. Dr. Berger also interpreted the MRI as showing a marginal impression on the thecal sac but no impression on the right S1 nerve root. Dr. Howell questioned Dr. Berger's interpretation of the size of the herniation, so he also requested Dr. Stanton Kremsky to review the MRI. Dr. Kremsky thought the MRI showed a 5 mm disc protrusion with contact with the thecal sac and S1 nerve root. Dr. Howell agreed with this reading by Dr. Kremsky.

Jorge Tijmes, M.D., saw Claimant on January 9, 2004, upon referral from Dr. Howell. He noted that Claimant's pain decreased after her original on-the-job injury, but "she experienced a sudden increase in pain when she became pregnant and the pain increased with her pregnancy." Claimant gave birth by C-section surgery on July 23, 2003, but the pain continued in her low back. At the time of her visit in January 2004, Claimant reported intermittent pain at a level of 5 on a 1-10 scale, with an increase in pain while sitting or bending. Dr. Tijmes reviewed Claimant's MRI and x-rays, performed a physical examination, and concluded that Claimant had a herniated nucleus pulposus. He recommended an epidural steroid injection and a discogram if her pain persisted. He also stated that Claimant should continue her rehab program with Dr. Howell.

First Rio: First Rio argues that Claimant's back pain in November 2003 was related to her June 2001 compensable injury and that the treatment provided was appropriate. Dr. Howell testified for First Rio. He reviewed Claimant's records and noted that she had disc thinning in 2001, which was abnormal for a person of her young age (22 at the time). Dr. Howell pointed out that in November 2003 he initially provided Claimant only six days of therapy, which was reasonable for

her condition, and that he did not provide any therapy after the MRI showed the herniated disc. In Dr. Howell's view, there should be no dispute that Claimant's pain in November 2003 was not a new injury but an exacerbation of the 2001 injury due to a change in weather. He also stated that he did not take Claimant off work in November 2003, so his treatment helped Claimant maintain her employment. Dr. Howell testified that the services he provided were medically reasonable and necessary to relieve or cure the effects of her injury.

On cross-examination, Dr. Howell stated that he did not treat Claimant between July 2002 and November 2003, and he did not know Claimant's activities during that time. He agreed that during 2003 Claimant had a small child to care for and was pregnant with her second child, both of which could cause a strain on her back. Dr. Howell acknowledged that in 2002 he did not diagnose Claimant with a herniated disc, which she did have in November 2003. He added that Claimant did have a lumbar bulge in 2002, but conceded that she did not have radiculopathy or radiculitis at that time. Dr. Howell also agreed that in 2002 he assessed Claimant with a 6% impairment based on loss of range of motion but not on a disc lesion. However, Dr. Howell pointed out that Claimant did not see him in 2003 until four months after her C-section surgery and after she had already returned to work. Therefore, he believed that Claimant's back pain in November 2003 was an exacerbation of her 2001 injury caused by a change in weather and not by her pregnancy and surgery.

In argument, Dr. Howell stated that the treatment provided to Claimant was reasonable and necessary for an exacerbation of her 2001 compensable injury. He did not believe that Claimant's pregnancy alone was enough to cause a herniated disc but was likely an aggravation of her compensable injury. Dr. Howell emphasized that he acted conservatively and provided a trial run of only six treatments. He added that Claimant was credible, clearly had pain, and needed care.

University of Texas System: Respondent did not offer testimony but relied on the records admitted into evidence. Respondent argued that when Claimant reached MMI in 2002, she was diagnosed with only a strain and sprain, and not a herniated disc. In 2003, Claimant's condition

changed and she had a herniated disc. Respondent argued that there was insufficient evidence to find that Claimant's pain in November 2003 was caused by her compensable injury in 2001, and that it was more likely that Claimant's change of condition resulted from her pregnancy and surgery.

### C. ALJ's Analysis and Decision

The ALJ finds that First Rio did not prove by a preponderance of the evidence that Claimant's back pain in November 2003 was caused by her June 2001 compensable injury. Therefore, the ALJ upholds the IRO decision and finds that the treatment provided to Claimant by First Rio in 2003 was not medically reasonable or necessary to treat Claimant's 2001 compensable injury. The evidence established that in 2001, Claimant was diagnosed with a lumbar strain/sprain, not a herniated disc. In addition, Claimant's problems from her 2001 injury resolved and she did not see Dr. Howell from July 2002 through November 2003. When Claimant returned to Dr. Howell in November 2003, she suspected that her back pain was caused by a change in weather, so Dr. Howell assumed Claimant had experienced an exacerbation of her 2001 injury. However, between July 2002 and November 2003, Claimant became pregnant and gave birth by C-section surgery. And she reported to Dr. Tijmes that she experienced a sudden increase in back pain when she became pregnant and the pain increased with her pregnancy. Further, the MRI performed on Claimant on December 6, 2003, showed that she had a 5 mm disc protrusion that did not exist in 2002. Under this record, the ALJ finds that First Rio did not establish by a preponderance of the evidence that Claimant's back pain in November 2003 was caused by her June 2001 compensable injury. Rather, the evidence established that it was equally plausible that Claimant's 2003 back pain and disc herniation were caused by Claimant's intervening pregnancy and C-section surgery. Consequently, the ALJ upholds the IRO decision and the University of Texas System is not liable to reimburse First Rio for the services provided to Claimant in November 2003. The \$32.00 charged for a lumbar support on November 5, 2003, was denied for both lack of medical necessity and lack of documentation. First Rio did establish that adequate documentation was provided. However, even with adequate documentation for billing, the device was not medically necessary to treat Claimant's 2001 compensable injury. Therefore, reimbursement is also denied for this claim.<sup>1</sup>

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<sup>1</sup> The University of Texas System did not appeal the \$30.00 awarded by MRD. Therefore, that item is not at issue in this case.

### III. FINDINGS OF FACT

1. Claimant is a 27-year-old female who injured her low back on \_\_\_\_, when she lifted a heavy box of lab equipment while working for the University of Texas System (Respondent) in Brownsville.
2. The University of Texas System is responsible for workers' compensation coverage for Claimant's injury.
3. Between August 2001 and January 2002, First Rio Valley Medical (First Rio) provided chiropractic treatments and therapy for Claimant. On January 2, 2002, Claimant reached maximum medical improvement. Dr. Howell of First Rio last saw Claimant for her June 2001 injury on July 2, 2002.
4. An MRI performed on August 18, 2001, showed Claimant had disc desiccation hypolordosis of the lumbar spine and a broad disc bulge at L5-S1.
5. After July 2002, Claimant became pregnant and gave birth by C-section surgery on July 23, 2003.
6. Claimant experienced a sudden increase in low back pain when she became pregnant and the pain increased with her pregnancy.
7. On November 5, 2003, Claimant returned to Dr. Howell at First Rio, complaining of low back pain, which she related to a change in the weather.
8. Dr. Howell considered Claimant's back pain to be a flare-up of her compensable injury, so he provided a course of chiropractic treatments and therapy. These services were provided on November 10, 12, 13, 17, 19, and 20, 2003, and included office visits, aquatic exercises, massage therapy, manual therapy, therapeutic exercises, and electrical stimulation. In addition, Claimant saw Dr. Howell for office visits without treatments on November 5 and 21 and December 19, 2003. Dr. Howell also charged for a lumbar support cushion and two TWCC 73 Reports (November 5 and 21, 2003) and for reading Claimant's MRI on December 6, 2003.
9. First Rio billed Respondent in the total amount of \$1,912.61. Respondent denied reimbursement for all of the services based on lack of medical necessity for treatment of the 2001 compensable injury and for lack of billing documentation for the lumbar support cushion.

10. An MRI performed on Claimant on December 6, 2003, showed severe straightening of the lumbar spine with complete loss of lordosis and a 4-5 mm central to marginally right protrusion with indications of a small right posterior annular tear at L5-S1. This was a change in Claimant's L5-S1 disc compared to her August 2001 MRI.
11. Respondent denied reimbursement for the services Dr. Howell provided Claimant in November 2003 based on lack of medical necessity for treatment of the 2001 compensable injury.
12. First Rio appealed the denial of payment to the TWCC MRD, which referred the medical necessity issues to the IRO. The IRO issued a decision on October 19, 2004, that upheld Respondent's denial of payment, finding that there was no causal link between the 2003 pain and the 2001 compensable injury to warrant treatment.
13. In a decision issued October 22, 2004, the MRD concurred with the IRO decision on lack of medical necessity. The MRD also considered three bills for documentation issues, allowing reimbursement for two items totaling \$30.00 for TWCC 73 reports and denying reimbursement for a \$32.00 charge for a lumbar support cushion.
14. The decisions of the IRO and MRD resulted in an award to First Rio of \$30.00.
15. First Rio timely requested a contested case hearing at the State Office of Administrative Hearings to challenge the MRD decision.
16. A contested case hearing was held at SOAH on June 14, 2005, and the record closed the same day.
17. First Rio and the University of Texas System attended the hearing.
18. 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; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
19. All parties were allowed to respond and present evidence and argument on each issue involved in the case.
20. The disputed services provided by First Rio to Claimant between November 5 and December 19, 2003, were not medically reasonable and necessary for the treatment of Claimant's 2001 compensable injury.

#### IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. First Rio, as the party seeking relief, bore the burden of proof in this case pursuant to 28 TAC § 148.21(h).
6. First Rio did not establish by a preponderance of the evidence that the services it provided to Claimant between November 5 and December 19, 2003, were medically reasonable and necessary to treat Claimant's 2001 compensable injury.
7. Based on the above Findings of Facts and Conclusions of Law, the University of Texas System should not be required to reimburse First Rio for the services First Rio provided to Claimant between November 5 and December 19, 2003.

#### ORDER

IT IS THEREFORE, ORDERED that the claim made by First Rio Medical, P.A., is DENIED, and the University of Texas System is not liable to reimburse First Rio Valley Medical, P.A., for the disputed services provided to Claimant between November 5 and December 19, 2003.

Signed August 1, 2005.

THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS