

**SOAH DOCKET NO. 453-05-2886.M5  
TDI DWC MR NO. M5-04-2171-01**

<b>SAN ANTONIO ACCIDENT INJURY CARE</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>TEXAS MUTUAL INSURANCE COMPANY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. INTRODUCTION**

San Antonio Accident Injury Care (Provider) and Texas Mutual Insurance Company (Carrier) each dispute portions of a decision by the former Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) regarding medical services that the Provider furnished to \_\_\_ (Claimant).

An independent review organization (IRO) agreed with the Carrier that services provided from August 1 through September 5, 2003, were not medically necessary to treat the Claimant's compensable injury. Based on that IRO determination, the MRD had denied the Provider's request to be reimbursed for those services. The Provider asked for a hearing on that medical-necessity denial. However, the Carrier argues that the Provider's hearing request was not timely filed and should be dismissed. The Administrative Law Judge (ALJ) agrees and dismisses the Provider's hearing request.

The Provider also furnished the same types of services to the Claimant from September 9 through October 23, 2003, and sought reimbursement from the Carrier for them. The Carrier did not reimburse the Provider for them or send explanations of benefits (EOBs) to the Provider explaining its failure to reimburse. The MRD ordered the Carrier to reimburse the Provider for those services. The Carrier asked for a hearing concerning that reimbursement order and argued at the hearing that those services were also unnecessary. However, the Carrier concedes that it never timely furnished EOBs to the Provider, as required by rule. The Provider argues that a medical-necessity objection

may not be raised now and the Carrier should be ordered to reimburse it for the September 9 through October 23, 2003, services. The ALJ agrees and orders that reimbursement.

## II. FINDINGS OF FACT

1. On\_\_\_\_, the Claimant sustained a work-related injury to his back as a result of his work activities (Compensable Injury).
2. On the date of injury, the Carrier was the workers' compensation insurance carrier for Claimant's employer.
3. From August 1 through October 23, 2003, the Provider furnished medical services with the following Current Procedural Terminology (CPT) codes and descriptions to the Claimant: 99213, office visits; 97032, electrical stimulation; 97035, ultrasound; 97010, hot or cold pack therapy; 97150, therapeutic procedures; 97112, neuromuscular reeducation; 97116, gait training therapy; and 97124, massage therapy.
4. The Provider sought reimbursement from the Carrier for the above services.
5. The Carrier sent explanations of benefits (EOBs) to the Provider denying the requested reimbursement for services provided from August 1 through September 5, 2003, and claiming that they were not necessary to treat the compensable injury.
6. The Carrier never reimbursed the Provider for the services provided from September 9 through October 23, 2003, nor did it send EOBs to the Provider explaining why it had not furnished reimbursement.
7. The September 9 through October 23, 2003, medical services had the maximum allowable reimbursements (MARs) shown below:

CPT	MAR	DATES OF SERVICE	TOTAL
99213	\$59.00	4	\$236.00
97150	\$21.38	21	\$448.98
97112	\$33.41	21	\$701.61
97116	\$28.76	18	\$517.68
97124	\$25.70	4	\$102.80
TOTAL			\$2,007.07

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

9. An IRO reviewed the medical dispute and found that the services provided from August 1 through September 5, 2003, were not medically necessary to treat the compensable injury.
10. On October 27, 2004, based on the IRO's findings, MRD denied the Provider's request for reimbursement for the August 1 through September 5, 2003, services.
11. Additionally, on October 27, 2004, MRD ordered the Carrier to reimburse the Provider for the September 9 through October 23, 2003, services. MRD found that the Provider submitted requests to the Carrier to be reimbursed for them but the Carrier never sent EOBs to the Provider to explain why it was not reimbursed for them.
12. The Provider received the MRD decision on or before November 8, 2004.
13. On November 15, 2004, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ concerning the above services.
14. On November 30, 2004, the Provider also asked for a contested-case hearing concerning the above services.
15. This case was referred by TWCC and accepted by SOAH prior to September 1, 2005, for hearing.
16. Required notice of a contested-case hearing concerning the dispute was timely delivered to the Carrier and the Provider.
17. On January 23, 2006, SOAH ALJ William G. Newchurch held a contested-case hearing 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.
18. The Carrier appeared at the hearing through its attorney, Timothy Riley.
19. The Provider appeared at the hearing through its attorney, William Maxwell.

### **III. CONCLUSIONS OF LAW**

1. 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 2005), TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, §8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§2001.051 and 2001.052.

3. 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).
4. A person requesting a hearing must file a written request addressed to the TWCC Chief Clerk not later than 20 days after receipt of a findings and decision from MRD on a review of a medical service or a medical fee under Labor Code ' 413.031. 28 TAC §148.3(a).
5. Based on the above Findings of Fact and Conclusions of Law, the Provider failed to timely request a hearing concerning the denial of the medical services it provided to the Claimant from August 1 through September 5, 2003.
6. Based on the above Findings of Fact and Conclusions of Law, the Provider's request to be reimbursed for the medical services it provided to the Claimant from August 1 through September 5, 2003, should be denied.
7. With exceptions not applicable to this case, an insurance carrier must take final action on a medical bill not later than the 45th day after the date the insurance carrier received a complete medical bill. Final action on a medical bill includes sending payment, denying a charge, or requesting reimbursement for an overpayment. If the carrier denies payment, it must send an EOB to the provider that includes the correct payment exception codes and provides sufficient explanation to allow the sender to understand the reason for the denial. 28 TAC § 133.304(a), (b), and (c).
8. Based on the above Findings of Fact and Conclusions of Law, the Carrier failed to timely deny the Provider's request to be reimbursed for the services provided from September 9 through October 23, 2003.
9. Based on the above Findings of Fact and Conclusions of Law, the Carrier should be ordered to reimburse the Provider \$2,007.07 for the services it provided to the Claimant from September 9, through October 23, 2003.

## **ORDER**

### **IT IS ORDERED THAT:**

1. The Provider's request to be reimbursed for services that it provided to the Claimant from August 1 through September 5, 2003, is denied; and
2. The Carrier shall reimburse the Provider \$2,007.07 for the services it provided to the Claimant from September 9, through October 23, 2003.

**Signed February 15, 2006.**

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