

**SOAH DOCKET NO. 453-05-3209.M5
TWCC MR NO. M5-04-2891-01**

**AMERICAN ZURICH INSURANCE
COMPANY,
Petitioner**

V.

**PAIN & RECOVERY CLINIC OF
NORTH HOUSTON AND NESTOR
MARTINEZ, D.C.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

American Zurich Insurance Company (Carrier) challenges a decision of the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD) regarding medical services that Pain & Recovery Clinic of North Houston and Nestor Martinez, D.C. (Provider or Dr. Martinez) provided _____ (Claimant) from October 20, 2003, through November 14, 2003. MRD, relying on a determination of an independent review organization (IRO), found that Dr. Martinez did not prevail on the issue of medical necessity for services he provided Claimant from May 27, 2003, through October 17, 2003. However, MRD also determined that the IRO failed to address reimbursement for medical services Dr. Martinez provided Claimant from October 20, 2003, through November 14, 2003, and ordered Carrier to reimburse Provider \$2,422.86 for those services.

As set out below, the Administrative Law Judge (ALJ) finds that the medical services provided Claimant by Dr. Martinez from October 20, 2003, to November 14, 2003, were medically necessary and grants Provider's request for reimbursement for those services.

II. FINDINGS OF FACT

1. On ____, ____ (Claimant) sustained a work-related injury to his lower back as a result of his work activities (compensable injury).
2. On the date of injury, Claimant's employer was ____, and its workers' compensation insurance carrier was American Zurich Insurance Company (Carrier).
3. As a result of the compensable injury, Claimant suffered lumbar radiculitis.
4. Claimant's treating physician, Nestor Martinez, D.C., furnished the following medical services to Claimant on the dates and with the Current Procedural Terminology (CPT) codes shown below:

CPT CODES	SERVICE DESCRIPTION	DATES	TOTAL AMOUNTS NOT REIMBURSED
99212	Office/outpatient visit, est.	10/20, 21, 22/2003; 11/10, 12, 14/2003	\$ 272.46 (\$45.41 x 6)
97545-WH	Work hardening, initial two hours	10/20, 21, 22/2003; 11/10, 12, 14/2003	\$ 614.40 (\$51.20 x 12 units)
97146-WH	Work hardening, additional hours	10/20, 21, 22/2003; 11/10, 12, 14/2003	\$1,536.00 (\$51.20 x 30 units)

5. On January 9, 2004, Provider sought reimbursement from Carrier for the provided medical services.
6. Carrier neither sent payment nor explanations of benefits (EOBs) regarding the requested reimbursement.
7. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).

8. An independent review organization (IRO) reviewed the medical dispute and found that the medical services Dr. Martinez provided Claimant from May 27, 2003, to October 17, 2003, were not medically necessary.
9. Based on the IRO's findings, TWCC's Medical Review Division (MRD) found that the medical services provided by Dr. Martinez and considered by the IRO were medically unnecessary. However, MRD determined that the IRO had not considered the medical services set out in Finding of Fact No. 4 and ordered Carrier to reimburse Provider \$2,422.86 for those services.
10. Carrier received Provider's request for EOBs regarding services provided by Dr. Martinez under CPT code 99212 on the dates of service set out in Finding of Fact No. 4.
11. Carrier received Provider's request for EOBs regarding services provided by Dr. Martinez under CPT code 97545-WH on the dates of service set out in Finding of Fact No. 4.
12. Carrier received Provider's request for EOBs regarding services provided by Dr. Martinez under CPT code 97546-WH on the dates of service set out in Finding of Fact No. 4.
13. Prior to Provider's request for medical dispute resolution and MRD's decision, Carrier did not supply Provider with EOBs regarding services provided by Dr. Martinez under CPT code 99212 on the dates of service set out in Finding of Fact No. 4.
14. Prior to Provider's request for medical dispute resolution and MRD's decision, Carrier did not supply Provider with EOBs regarding services provided by Dr. Martinez under CPT code 97545-WH on the dates of service set out in Finding of Fact No. 4.
15. Prior to Provider's request for medical dispute resolution and MRD's decision, Carrier did not supply Provider with EOBs regarding services provided by Dr. Martinez under CPT code 97546-WH on the dates of service set out in Finding of Fact No. 4.
16. After the MRD decision was issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
17. On June 15, 2005, Carol Wood, a SOAH ALJ, 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 that same day.
18. Provider, through its attorney of record, informed SOAH that it had decided not to participate in the hearing. No one representing Provider appeared at the hearing .
19. Carrier appeared at the hearing through its attorney, Jack W. Latson.

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) (Vernon Supp 2004-2005) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (Vernon 2000).
2. There is no evidence that adequate and timely notice of the hearing was provided to Carrier and Provider in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. By appearing at the hearing on June 15, 2005, Carrier waived any objection to lack of adequate and timely notice of hearing.
4. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC §§ 133.308(v) and 148.14(a) (2005), Carrier has the burden of proof in this case.
5. 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) (Vernon 1996).
6. Based on the above Findings of Fact and Conclusions of Law, Carrier has waived its right to dispute the services to which it failed to timely provide EOBs. Therefore, Carrier cannot show that the medical services Dr. Martinez provided Claimant under CPT codes 99212, 97545-WH, and 97546-WH on the dates of service set forth in Finding of Fact No. 4 were medically unnecessary.
8. Based on the above Findings of Fact and Conclusions of Law, Carrier is required to reimburse Provider for the services Dr. Martinez provided Claimant from October 20, 2003, to November 14, 2003.

ORDER

THEREFORE, IT IS ORDERED that the request of Pain & Recovery Clinic of North Houston for reimbursement for medical services Dr. Martinez provided Claimant from October 20, 2003, to November 14, 2003, is GRANTED. American Zurich Insurance Company is ORDERED to reimburse Pain & Recovery Clinic of North Houston the amount of \$2,422.86.

SIGNED August 15, 2005.

**CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**