

**SOAH DOCKET NO. 453-05-3728.M5
TWCC MR NO. M5-05-0583-01**

**SAN ANTONIO ACCIDENT INJURY
CARE,
Petitioner**

V.

**TEXAS MUTUAL INSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

San Antonio Accident Injury Care (Provider) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC) concerning medical services that it provided to ___ (Claimant). The IRO agreed with Texas Mutual Insurance Company (Carrier) that the Provider had failed to show that the medical services were reasonably medically necessary to treat the Claimant's compensable injury.

The only dispute is whether the services were medically necessary, and the amount in dispute is \$3,122.62. As set out below, the Administrative Law Judge (ALJ) finds most of the services were reasonably medically necessary to treat the Claimant's compensable injury. He finds that the Carrier should reimburse the Provider \$2,533.72 for those services. He finds that the remaining services were not necessary or were not provided and the Provider's request to be reimbursed for them should be denied.

II. FINDINGS OF FACT

1. On ____, the Claimant sustained a work-related injury to his lower back as a result of his work activities (compensable injury).
2. On the date of the compensable injury, the Claimant's employer was ____, and the Carrier was its workers' compensation insurance carrier.
3. As a result of his compensable injury, the Claimant suffered pain in his lower back.
4. The Claimant's job required him to perform at a very high physical demand level. He was required to lift 50-pound bundles of bricks, cinder blocks, and wooden boards, mix concrete and mortar, and install bricks and stones all day long.
5. On June 1, 2004, the Claimant exerted maximum effort without pain magnification during a functional capacity evaluation (FCE) but was only able to perform at the sedentary-light physical demand level.
6. As of June 1, 2004, the Claimant reasonably needed active therapeutic exercise to improve his physical demand level so that he could return to work.
7. The Provider furnished the following medical services to the Claimant on the dates and with the Current Procedural Terminology (CPT) codes and maximum allowable reimbursements (MARs) shown below:

CPT	SERVICE DESCRIPTIONS	MAR (per unit)	CLAIM (per visit)	DATES (2004)
97113	Aquatic therapy; eight units per visit	\$34.63	\$277.04	6/9, 6/11, 6/14, 6/16 & 6/18
99212	Established patient office visit; one unit per visit	\$41.91	\$32.00	6/21
97116	Gait training; five units per visit	\$28.76	\$59.00	6/21, 6/23, 6/25, 6/28, 6/30, 7/2, 7/7, 7/9, 7/12 & 7/14
97150	Group therapeutic procedures; one unit per visit	\$21.38	\$21.38	6/21, 6/25, 6/28, 6/30, 7/2, 7/7, 7/9, 7/12 & 7/14

8. On July 28, 2004, after receiving the above services, the Claimant exerted maximum effort without pain magnification during an FCE and was able to perform at the light-medium physical demand level.

9. The Claimant's physical condition level improved as a result of receiving the above services.
10. The 97113 aquatic therapy services that the Claimant received from the Provider included warm-up, stretch, strengthening, and flexibility exercises.
11. On ____, the Claimant sustained a non-compensable hernia injury to his right inguinal region.
12. On April 30, 2004, the Claimant had surgery on his right inguinal region to repair his non-compensable hernia injury.
13. Because he was still recovering from hernia surgery in June and July 2004, the Claimant reasonably needed to avoid significant impact and strain on his body when engaging in conditioning exercises.
14. The aquatic therapy services that the Claimant received from the Provider provided positive resistance exercise in a gentle environment that put little strain on his abdomen, where he had hernia surgery.
15. The Claimant reasonably needed the 97113 aquatic therapy services to treat his compensable injury.
16. The Carrier subsequently withdrew its dispute of the 99212 office visit service.
17. The 99212 office visit service was reasonably medically necessary to treat the compensable injury.
18. The 97116 gait training services consisted of work on a treadmill, stationary bike, and stair climber.
19. The 97116 gait training services were reasonably medically necessary to treat the compensable injury by improving the Claimant's physical demand level.
20. The 97150 group therapeutic exercise services consisted of leg curls, leg extensions, leg press, and lat pull downs.
21. The 97150 group therapeutic exercise services were reasonably medically necessary to treat the compensable injury by improving the Claimant's physical demand level.
22. The Provider also sought reimbursement from the Carrier for the following services for the Claimant:

CPT	SERVICE DESCRIPTION	CLAIM	DATES (2004)
97112	Neuromuscular re-education	\$68.60 per visit	6/21, 6/23, 6/25, 6/28, 6/30, 7/2, 7/7, 7/9, 7/12, 7/14
97124	Massage therapy	\$25.70 per visit	6/21, 6/23, 6/28, 6/25, 6/30, 7/2, 7/7, 7/9, 7/12, 7/14

23. The 97112 neuromuscular re-education services consisted of passive stretching to relieve muscle and low back tightness.
24. The 97112 services were reasonably medically necessary to treat the Claimant's compensable injury by improving his physical demand level.
25. The MAR for 97112 services is \$33.41 per 15-minute unit of service.
26. The Provider only furnished one unit of 97112 service to the Provider on each of the ten dates of service in dispute in this case.
27. Ten of the billed units of 97112 service were not medically necessary.
28. The Provider furnished no 97124 massage therapy services after May 25, 2004.
29. The evidence does not show that the Provider furnished the 97124 services for which it seeks reimbursement in this case.
30. None of the billed 97124 services in dispute in this case were medically necessary.
31. The Provider timely sought reimbursement from the Carrier for all of the services discussed above.
32. The Carrier timely sent an explanation of benefit (EOB) to the Provider denying the requested reimbursement and claiming that the Provider had not shown that the medical services were medically necessary to treat the compensable injury.
33. The Provider timely filed a request for medical dispute resolution with the TWCC.
34. An IRO reviewed the medical dispute and found that the disputed services were not medically necessary to treat the compensable injury.

35. Based on the IRO's findings, TWCC's Medical Review Division (MRD) denied the Provider's request to be reimbursed for the disputed services.
36. After the IRO decision and MRD order were issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the above dispute.
37. Required notice of a contested-case hearing concerning the dispute was timely mailed to the Carrier and the Provider.
38. On August 18, 2005, 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.
39. The Carrier appeared at the hearing through its attorney, Ryan Willette.
40. The Provider appeared at the hearing through its attorney, William Maxwell.

III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code §2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(u) and 148.14 (2005), the Provider has the burden of proof in this case.
4. 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).
5. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed \$1,385.20 for the 97113 aquatic therapy services at issue in this case.

6. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed \$32.00 for the 99212 office visit at issue in this case.
7. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed \$590 for the 97116 gait training services at issue in this case.
8. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed \$192.42 for the 97150 group therapeutic exercise services at issue in this case.
9. Based on the above Findings of Fact and Conclusions of Law, the Provider should be reimbursed \$334.10 for the 97112 neuromuscular re-education services at issue in this case.
10. Based on the above Findings of Fact and Conclusions of Law, the Claimant should not be reimbursed for the 97124 massage therapy services at issue in this case.
11. Based on the above Findings of Fact and Conclusions of Law, the Carrier should reimburse the Provider \$2,533.72 for the services at issue in this case as set out above and the Provider's request to be reimbursed more than that amount should be denied.

ORDER

IT IS ORDERED THAT the Carrier shall reimburse the Provider \$2,533.72 for the services at issue in this case as set out above and the Provider's request to be reimbursed more than that amount is denied.

SIGNED August 25, 2005.

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