

**SOAH DOCKET NOS. 453-05-0078.M5 AND 453-05-4165.M5
MDR NOS. M5-04-2322-01 AND M5-04-3271-01**

TEXAS MUTUAL INSURANCE COMPANY,	‘	BEFORE THE STATE OFFICE
	‘	
Petitioner	‘	
	‘	
V.	‘	OF
	‘	
KAYCE A. FRYE, D.C.	‘	ADMINISTRATIVE HEARINGS
Respondent	‘	

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) requested a hearing on a decision of an independent review organization (IRO) on behalf of the Texas Workers= Compensation Commission (Commission) in a dispute regarding medical necessity for physical therapy. The IRO found that the insurer, Liberty Mutual Fire Insurance Company (Carrier), improperly denied reimbursement for physical therapy given Claimant by Kayce A. Frye, D.C. (Provider) from December 23, 2003, through January 9, 2004. Carrier challenged the decision on the basis that the services at issue were not medically necessary, within the meaning of ' ' 408.021 and 401.011(19) of the Texas Workers= Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.*

The hearing was held on March 24, 2005. Carrier, represented by Timothy Riley, entered an appearance. Provider did not appear. At the hearing, Carrier conceded some services provided on December 23, 29, 31, 2003, and January 5, 7, and 9, 2004, excluding therapy provided under CPT Code 97712, were reasonable: for these, Carrier agrees to reimburse Provider \$481.16. In dispute are the remaining services challenged by Carrier.

This decision finds that Provider should not be reimbursed for the disputed physical therapy sessions given to Claimant from December 23, 2003, through January 9, 2004. In support of this determination, and further explaining it, the ALJ makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On ____, Claimant was injured at work when she tripped and fell. The injury was a compensable injury under the Texas Worker=s Compensation Act (the Act), TEX. LABOR CODE ANN. ' 401.001 *et seq.*
2. Claimant=s injury caused multiple contusions, and Claimant subsequently complained of bilateral shoulder pain, left parascapular pain, and bilateral knee pain. She had no fractures or dislocations.
3. Claimant=s treating doctor was Dennis D. Cantu, M.D.
4. Claimant began physical therapy on December 23, 2003, approximately nine months after the date of injury.
5. Claimant received physical therapy from Kayce A. Frye, D.C. (Provider) from December 23, 2003, through January 9, 2004.
6. In visits from December 23, 2003, through January 9, 2004, Provider furnished the following services to Claimant: office visits, spinal chiropractic treatments, ultrasound therapy, electrical stimulation, massage therapy, and neuromuscular reeducation.
7. Claimant had ongoing pain during the dates at issue. She improved initially in the first eight to ten sessions but then the pain oscillated. Claimant had no steady progression in terms of pain relief.
8. By December 23, 2003, when Claimant began the physical therapy in question, Claimant had chronic pain.
9. Passive care to reduce soft tissue inflammation and reduce muscle spasms is usually provided in the acute phase of treatment, generally from the date of injury to four weeks post-injury.
10. Daily visits of passive care did not benefit Claimant, a chronic care patient.
11. Passive care provided by Provider to alleviate pain provided only transient relief.
12. Provider did not have a treatment plan or stated function goals for Claimant.
13. For each date of service that Provider billed under CPT Code 97712 (neuromuscular reeducation), Provider did not document what treatment, if any, was provided.
14. Certain services (excluding therapy billed under CPT Code 97712) provided on December 23, 29, 31, 2003, and January 5, 7, and 9, 2004, were stipulated by Carrier as being reasonable and necessary.
15. Excluding the physical therapy listed in the above finding of fact, the disputed services were not reasonable.

16. Provider sought reimbursement for the physical therapy provided from December 23, 2003, through January 9, 2004, from Texas Mutual Insurance Company (Carrier), the insurer for Claimant=s employer.
17. Carrier denied the requested reimbursement.
18. Provider made timely requests to the Texas Workers= Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.
19. The independent review organization (IRO) to which the Commission referred the disputes issued two decisions. The first decision, issued on July 9, 2004, concluded the services provided by Provider were medically necessary.
20. The Commission=s Medical Review Division reviewed and concurred with the IRO=s decision referenced in the above finding of fact in a decision dated August 3, 2004, in dispute resolution Docket No. M5-04-2322-01.
21. The IRO issued a second decision on January 5, 2005, and concluded the services provided by Provider were medically necessary.
22. The Commission=s Medical Review Division reviewed and concurred with the IRO=s decision referenced in the above finding of fact in a decision dated January 7, 2005, in dispute resolution Docket No. M5-04-3271-01.
23. Carrier requested in a timely manner hearings with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decisions regarding reimbursement.
24. The Commission mailed notice of the hearing date in M5-04-2322-01 to the parties at their addresses on September 14, 2004.
25. The Commission mailed notice of the hearing date in M5-04-3271-01 to the parties at their addresses on February 16, 2005.
26. By SOAH order dated March 18, 2005, the two cases were consolidated and set for hearing March 24, 2005.
27. On March 24, 2005, SOAH ALJ Lilo D. Pomerleau held a contested-case hearing concerning the dispute at the William P. Clements Building, 300 W. 15th Street, Austin, Texas. Carrier was represented by Timothy Riley. Provider did not enter an appearance. The record closed April 28, 2005.
28. Carrier agrees to reimburse Provider \$481.16 for physical therapy provided on December 23, 29, 31, 2003, and January 5, 7, and 9, 2004, excluding therapy provided and billed under CPT Code 97712 on those dates.

II. 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 ' 413.031(k) of the Act 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 the Commission=s rules, 28 TEX. ADMIN. CODE (TAC) ' ' 148.001-148.028.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV=T CODE ANN. ' ' 2001.051 and 2001.052.
4. Carrier, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC ' 148.21(h).
5. Provider failed to show by a preponderance of the evidence that the disputed treatments were reasonable and necessary for Claimant=s compensable injury.
6. Based upon the foregoing findings of fact, Provider is not entitled to reimbursement for physical therapy given Claimant from December 23, 2003, through January 9, 2004, with the exception of those services not disputed by Carrier.

ORDER

IT IS THEREFORE, ORDERED that Texas Mutual Insurance Company is not required to reimburse Kayce A. Frye, D.C. for the physical therapy given Claimant from December 23, 2003, through January 9, 2004, with the exception of those services Texas Mutual Insurance Company concedes are reasonable.

SIGNED May 12, 2005.

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**