

**SOAH DOCKET NO. 453-05-4907.M5
MR NO. M5-05-1108-01**

PATRICK R. E. DAVIS, D.C.,
Petitioner

V.

**AMERICAN HOME
ASSURANCE COMPANY,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. STATEMENT OF CASE

Patrick R. E. Davis, D.C., (Petitioner/Provider) disputes the decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission¹ in a dispute regarding medical necessity for physical medicine procedures provided to __ (Claimant). The IRO found that American Home Assurance Company (Respondent/Carrier) properly denied reimbursement for procedures provided from December 15, 2003, through January 23, 2004.

As set out below, the Administrative Law Judge (ALJ) finds that reimbursement to Provider for the disputed services should be denied.

II. FINDINGS OF FACT

1. On __, Claimant __, a __-year-old man, injured his low back while lifting large bags of dog food. He felt a sheering, popping sensation on his left side, across his lumbar spine.
2. On the date of Claimant's compensable injury, American Home Assurance Company (Carrier) was the workers' compensation insurance carrier for his employer.
3. On November 5, 2003, Patrick R. E. Davis, D.C., (Provider), examined Claimant and diagnosed Claimant with lumbosacral radiculopathy, lumbosacral sprain, and low back pain and weakness.

¹ Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

4. On November 20, 2003, Charles E. Willis, II, M.D., examined Claimant and diagnosed him with acute lumbosacral strain, acute dorsal strain, acute cervical strain, and lumbar radiculopathy. However, the cervical spine musculoskeletal examination indicated Claimant had a good range of motion on all planes of the cervical spine.
5. On December 9, 2003, Claimant had an MRI of his lumbar spine, which indicated his lumbar spine was normal.
6. Electrodiagnostic testing performed on Claimant by R. Frank Morrison, M.D., on December 12, 2003, indicated an abnormal EMG, showing evidence of a left subacute L5 radiculopathy. However, there was no reproducible clinical evidence of a lower extremity neurologic deficit.
7. Jack Kern, M.D., performed a physical examination of Claimant on June 1, 2004, finding that Claimant's normal December 9, 2003 MRI, Dr. Morrison's December 12, 2003 diagnosis of radiculopathy, and Claimant's symptoms indicated that Claimant injured the annulus in the lumbar spine resulting in some swelling and some irritation of nerves but no true radiculopathy.
8. On January 15, 2004, Claimant had an MRI of his thoracic spine, which indicated his thoracic spine was normal.
9. Claimant received physical medicine rehabilitation with gradually higher levels of difficulty between the dates of November 11, 2003, through January 23, 2004.
10. Provider prescribed Claimant a program of comprehensive rehabilitation well beyond the first four to six weeks post-injury.
11. Carrier disputes medical services provided Claimant from December 15, 2003, through January 23, 2004.
12. Provider prescribed the following disputed medical services for Claimant:

CPT CODE	SERVICE DESCRIPTIONS	MAR (per unit)	PAYMENT IN DISPUTE	DATES
97140	manual therapy	\$34.13	\$34.13	12/15/03, 12/17/03, 12/24/03, 12/30/03, 12/31/03, 1/7/04, 1/12/04,
97140	manual therapy	\$34.13	\$68.26 (2 units)	12/19/03, 12/22/03, 12/23/03, 12/29/03, 1/5/04, 1/9/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04
97112	neuromuscular reeducation	\$37.05	\$37.05	12/15/03, 12/17/03, 12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04

99070	supply materials: cold pack	\$15.00	\$15.00	12/15/03, 12/17/03, 12/19/03, 12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04
98940	chiropractic manipulation	\$33.61	\$33.61	1/9/04
98940	chiropractic manipulation	\$46.49	\$46.49	1/14/04
98941	chiropractic manipulation	\$46.49	\$46.49	12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04
97530	therapeutic activities	\$37.58	\$225.48 (6 units)	12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04
97116	gait training	\$31.71	\$31.71	12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04
E 1399	durable medical equipment	\$16.00	\$16.00	1/7/04, 1/14/04
E 1399	Durable medical equipment	\$16.00	\$32.00 (2 units)	1/23/04
E 0745	Neuromuscular stimulator	\$111.89	\$111.89	1/23/04
99215	office visit	\$153.76	\$153.76	1/21/04

13. Provider billed Carrier \$5,850.33 for the disputed services listed in the above finding of fact.
14. Neuromuscular reeducation, Code 97112, is not necessary for Claimant, who had a negative MRI.
15. A muscle or nerve stimulator, billed by Provider under Code E 0745 on January 23, 2004, is generally used in the immediate post-injury period to provide acute pain relief and initiate soft tissue therapy and treatment.
16. Claimant did not require a nerve stimulator three months post-injury.
17. Gait training, Code 97110, is necessary only if an injured worker needs to be retrained to walk. Gait training usually follows a severe pathology, often post-surgery, that makes it difficult for a person to walk.
18. Claimant did not require gait training for his injury.
19. Code 99215, exceptional office visit, is used for severe, highly-complex situations.

20. In Provider's notes for January 23, 2004, there was no documentary support for the use of Code 99215 with Claimant, an established patient who presented with no severe or highly-complex situations.
21. Claimant had been working at a modified physical demand level before beginning treatment with Provider.
22. Provider removed Claimant from work as of November 28, 2003.
23. The Official Disability Guidelines 8th Edition suggests up to 18 chiropractic treatments with evidence of objective functional improvement over a six to eight week period for lumbar sprain/strain injury.
24. Chiropractic treatments beyond the six to eight week period referenced in the above finding of fact, such as those at issue, are excessive.
25. On January 8 and February 2, 2004, Charles E. Willis, II, M.D., examined Claimant. At the latter exam, Dr. Willis noted that: "Overall the patient is doing about the same."
26. Claimant had not significantly improved after treatment from Provider beginning November 11, 2003, through January 23, 2004.
27. Provider did not show any objective evidence of an injury that would require Claimant to undergo more than four to six weeks of supervised therapeutic services.
28. Provider sought reimbursement from the Carrier for the provided medical services at issue in this proceeding.
29. Carrier timely sent explanations of benefit (EOB) to Provider denying the requested reimbursement and claiming that Provider had not shown that the medical services were medically necessary to treat the compensable injury.
30. Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
31. An independent review organization (IRO) reviewed the medical dispute and found that the disputed services were not medically necessary to treat the compensable injury.
32. Based on the IRO's findings, TWCC's Medical Review Division (MRD) denied Provider's request to be reimbursed for the disputed services.
33. After the IRO decision and MRD order were issued, Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the above disputes.
34. TWCC referred this case to SOAH for hearing before September 1, 2005.

35. Required notice of the contested-case hearing concerning the dispute was timely mailed to Carrier and Provider.
36. On October 24, 2005, ALJ Lilo D. Pomerleau held a contested-case hearing in this matter at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The record closed that same day.
37. Provider appeared at the hearing *pro se*.
38. Carrier appeared at the hearing through its attorney, Dan Kelly.

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. §§ 402.073(b) and 413.031(k) (West 2005); TEX. GOV'T CODE ANN. 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 TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE § 155.41(b) (2004), and 28 TEX. ADMIN. CODE §§ 133.308(u) and 148.14 (2005), Provider has the burden of proof in this case.
4. The injury described in Finding of Fact No. 1 was a compensable injury under the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 401.001 *et seq.*
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. TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the above Findings of Fact and Conclusions of Law, the physical therapy, materials, equipment, neuromuscular stimulator, and office visit provided from December 15, 2003, though January 23, 2004, do not represent elements of health care medically necessary under § 408.021 of the Act.
7. Based on the above Findings of Fact and Conclusions of Law, Provider should not be reimbursed for the disputed services at issue in this case.

ORDER

IT IS ORDERED that American Home Assurance Company is not required to reimburse Patrick R. E. Davis, D.C., for the physical therapy given Claimant from December 15, 2003, through January 23, 2004.

SIGNED December 21, 2005.

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