

**SOAH DOCKET NO. 453-05-4991.M5
TWCC MR NO. M5-05-1167-01**

ERNIE V. FIELDS, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
V.	§	OF
	§	
SOUTH PLAINS SCHOOL WORKERS	§	
COMP PROGRAM,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

I. DISCUSSION

Ernie V. Fields, D.C. (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission (Commission) denying Petitioner reimbursement from South Plains School Worker's Compensation Program (Respondent) for work conditioning. Petitioner also disputed the decision of the independent review organization (IRO), Envoy Medical Systems, L.P., that the physical performance tests¹ performed April 20, 2004, and June 24, 2004, were not medically necessary

The Administrative Law Judge (ALJ) concludes that Petitioner should be reimbursed for neither the work conditioning program nor the physical performance tests.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY.

The hearing convened on January 4, 2006, before ALJ Stephen J. Pacey. Steven Tipton represented Respondent. Dr. Fields appeared *pro se*. There were no contested issues of notice or jurisdiction. The hearing adjourned the same day, but the parties were allowed additional time to file documents, and the record closed on January 12, 2006.

¹ CPT Code 97750.

II. Discussion

___ (claimant) was injured on___, when she slipped on a heavily waxed floor. On June 30, 2004, Respondent preauthorized a work-conditioning program to be conducted four sessions a week for five weeks. The preauthorization was for treatment of the left hip and shoulder.² At a benefit contested case hearing held on November 8, 2004, the hearing officer concluded that there was no causal relationship between the injury of ___and injuries to the left hip or shoulder.³ The hearing officer stated “The compensable injury of___, does not include injury to the left hip and left shoulder.”

Respondent denied reimbursement, and Petitioner filed a medical dispute. The Medical Dispute Division (MRD) submitted the question of medical necessity of the physical performance tests to the IRO who concluded that the physical performance tests were not medically necessary. The MRD did not refer the work conditioning to the IRO. In a decision dated February 22, 2005, the MRD decided the work-conditioning dispute. It determined that the work conditioning was preauthorized but denied reimbursement on the basis that reimbursement could not be determined because the Petitioner did not provide HCFAs⁴ for review. Petitioner then requested a hearing and attached the HCFAs.

III. ANALYSIS

Petitioner failed to prove that he should be reimbursed for the work conditioning or the physical performance testing. Petitioner relied upon his preauthorization, but the preauthorization was for an injury that was not caused by the accident. There had been a final adjudication that the injury to the left hip and shoulder was not compensable. The rule, 28 TEX. ADMIN. CODE (TAC) § 134.600(c) states in pertinent part:

(c) The carrier is not liable under subparagraphs (b)(1)(B) or (C) of this section if

² Petitioner’s Exhibit 1.

³ Respondent’s Exhibit 1 at page 30.

⁴ Health Care Financing Administration. This are the forms Providers utilize for billing.

there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

The fact that the Respondent's preauthorization did not consider compensability is appropriate by rule. 28 TAC § 134.600(f) prohibits the Carrier from considering anything but medically necessity when making a determination on preauthorization. The rule states in pertinent part:

(f) The carrier shall:

A.(1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonable and necessary medical health care required to treat the injury, regardless of:

(A) unresolved issues of compensability, extent of or relatedness to the compensable injury;

The MRD made the right decision in denying reimbursement for the work-conditioning program but for the wrong reason. The MRD ignored the Commission's own order in a contested case hearing where the hearing examiner specifically held that the hip and shoulder were not compensable. The preauthorization was for the hip and shoulder. Under the rules, Petitioner cannot be reimbursed for a injury that is not compensable. It is axiomatic that testing for an injury that is not compensable is not medically necessary. Consequently, Petitioner failed to prove that he should be paid for the tests that the IRO held were not medically necessary.

III. FINDINGS OF FACT

1. On February 11, 2005, an independent review organization (IRO), Envoy Medical Systems, LLC, determined that the physical performance tests administered by South Plains School Workers' Comp Program (Petitioner) to ____(Claimant) were not medically necessary.
2. On June 30, 2004, South Plains School Workers' Comp Program (Respondent) preauthorized a work conditioning program for treatment of the left hip and shoulder to be conducted four sessions a week for five weeks.
3. On February 22, 2005, the Medical Review Division (MRD) found that reimbursement could not be determined because Petitioner did not provide HCFAs for review.
4. On March 11, 2005, Petitioner contested the Commission and IRO decisions.

5. At a Commission benefit contested case hearing held on November 8, 2004, the hearing officer concluded that there was no causal relationship between the injury of March 16, 2004 and injuries to the left hip or shoulder and that the compensable injury did not include injury to the left hip and shoulder.
6. Respondent denied reimbursement to treatments for work conditioning and the physical performance testing on the basis that the injuries were not compensable.
7. The physical performance testing was not reimbursable because they were performed to determine the extent of an injury that was not compensable.
8. Neither the work conditioning nor the physical performance testing were reimbursable on the basis of a final adjudication that the injury was not compensable.
9. The Commission issued a notice of hearing on April 4, 2005, that included the date, time, and location of the hearing, the applicable states under which the hearing would be conducted, and a short, plain statement of matters asserted.
10. A hearing was convened by Administrative Law Judge Stephen J. Pacey on January 4, 2006, in the hearing rooms of the State Office of Administrative Hearings. The hearing adjourned that same day, and after the Respondent submitted additional documents, the record closed on January 12, 2006.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. Petitioner's treatments and testing were not medically necessary on the basis that the injury was not compensable.
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).

7. Based upon the Findings of Fact and Conclusions of Law, Respondent proved by a preponderance of the evidence that Respondent' denial of reimbursement to Petitioner for work conditioning and physical performance testing was proper because the treatments were performed on an injury that was not compensable.

ORDER

THEREFORE IT IS ORDERED that South Plains School Workers' Comp Program is not required to reimburse Ernie V. Fields, D.C., for either the work conditioning or physical performance testing.

SIGNED March 9, 2006.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**