

**DOCKET NO. 453-05-7365.M5
MDR NO. M5-05-1639-01**

**JAIRO A. PUENTES, MD,
Petitioner**

VS.

**AMERICAN HOME ASSURANCE CO.
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jairo A. Puentes, M.D. (Provider) challenges an Independent Review Organization (IRO) decision concluding that medical services he provided to an injured worker (Claimant) were not medically necessary. Based on the evidence presented at hearing, the Administrative Law Judge (ALJ) concludes the disputed services were not shown to be medically necessary for the treatment of Claimant's injury. Consequently, Provider is not entitled to reimbursement from American Home Assurance Co. (Carrier).

I. PROCEDURAL HISTORY

ALJ Gary Elkins convened and closed the hearing in this case on February 9, 2006. Provider appeared *pro se*. Attorney Tracey Tobin appeared on behalf of Carrier. Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background.

Claimant suffered a compensable injury to his spine on _____. He saw Provider in an initial consultation on _____. Based on an evaluation performed during that visit, Provider diagnosed Claimant with a strain, a contusion, and myofascitis of the cervical and thoracic spine. An x-ray performed on Claimant's cervical spine the same day indicated it was within normal limits.

Provider proceeded with a physical therapy treatment plan for Claimant that included hot packs, ultrasound, massage, electrical stimulation, and therapeutic exercises. Claimant was also placed on prescription medications. An MRI was performed on October 19, 2004. Carrier denied reimbursement for the MRI and for the physical therapy services provided from October 29, 2004 through November 24, 2004. In response, Provider sought medical dispute resolution. In denying Provider's reimbursement claim, the IRO expressed the following conclusions:

- The MRI was performed after approximately two weeks of service, even though no neurological deficits were noted by Provider in his physical examination of Claimant.
- A motor and sensory examination the day before the MRI was normal.
- An MRI would not be indicated until after a reasonable trial of conservative management, lasting at least four weeks, without response.
- The vast majority of patients with back and neck pain improve after four to six weeks.
- Even though Claimant had completed 16 physical therapy sessions by October 29, 2004, there was no indication he had received any significant, lasting benefit from the therapy. There was no documentation of improvement in Claimant's range of motion, strength, or function.
- Claimant continued to report pain levels of 4-5 out of 10, which would decrease by the end of each therapy session but would return by the following visit.

- After 16 physical therapy sessions Claimant should have been placed on a home exercise program.
- Provider failed to document the need for further monitored therapy as of October 29, 2005.

In response to the IRO decision, Provider requested a hearing before the State Office of Administrative Hearings, which culminated in a hearing and this Decision and Order.

B. Summary of Evidence and Argument

Provider asserted the following in support of his position that the disputed services were medically necessary:

- Negative results on a study such as the MRI does not mean it should not be performed.
- Carrier's witness agrees that an acute injury can support the need for immediate testing.
- The use of preventative medicine may be necessary to prevent the injury from getting worse.
- The failure of a doctor to conduct testing can subject him to a greater risk of liability.

As reflected in the testimony of its expert witness, Michael Hamby, D.C., Carrier's case presentation focused on the following assertions:

- Radiographs are called for first, and those performed on Claimant by Provider produced normal results.
- The MRI revealed a normal cervical and thoracic spine.
- There was no evidence of urgency for the MRI, such as suspected spinal cord compression.
- Any suggestion by Provider that the MRI was performed to determine whether Claimant had suffered a catastrophic injury is not persuasive because it was not performed until more than two weeks after his injury.
- Provider's own findings three days after Claimant's accident did not support an MRI.
- A strain normally heals in four-to-six weeks.

- Even though Provider diagnosed Claimant on October 22, 2004 with lumbar radiculopathy, the diagnosis was not supported with such findings as leg pain or numbness.
- The care administered by Provider provided no long-term, lasting benefit.
- Even though Claimant expressed subjective complaints of pain, his symptomatology was minimal.
- Several medical doctors who reviewed Claimant's medical records came to the same conclusion that the disputed services were not medically necessary.

C. Analysis and Conclusion

Provider failed to demonstrate by a preponderance of the evidence that the disputed services were reasonable and necessary based on the seriousness of Claimant's injury. The ALJ was persuaded by Claimant's medical records in the two weeks preceding the MRI and by the testimony of Carrier witness Michael Hamby, D.C. that there was no evidence of an urgent need for an MRI so soon after the injury. In fact, as noted by Dr. Hamby, the ___ x-ray indicated Claimant's cervical spine was normal. The MRI of the cervical and lumbar spine served to confirm the health of Claimant's spine. The doctor reviewing the MRI concluded Claimant's cervical MRI was normal, and the lumbar MRI revealed either normal observations or mild changes not supportive of any urgency for performing the MRI so soon after the injury.

The ALJ was equally unpersuaded by Provider's testimony about the need for continued physical therapy beyond the 16 physical therapy sessions administered to Claimant prior to the disputed therapy. The benefits enjoyed by Claimant from the 16 sessions were minor at best. Likewise, Claimant's subjective estimates of pain upon arriving at each of the disputed treatment sessions reflected little improvement in his condition. Also, Provider's Daily Physical Therapy Notes failed to note any objective observations. Instead, the "Objective" portion of his SOAP notes was limited to a description of the type of therapy administered: "One on one therapy of Mechanical Traction, Kinetic Activity X 2, (moist heat), and IFES."

Because Provider failed to demonstrate a need for an MRI less than three weeks following

Claimant's injury, and because he failed to demonstrate either the need for monitored physical therapy or any significant benefits derived from the therapy during the disputed dates of service, his reimbursement claim should be denied.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury to his spine on ____.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage with American Home Assurance Co. (Carrier).
3. Claimant saw Jairo A. Puentes, D.C. (Provider) in an initial consultation on _____. Based on an evaluation performed during that visit, Provider diagnosed Claimant with a strain, a contusion, and myofascitis of the cervical and thoracic spine.
4. Provider proceeded with a physical therapy treatment plan for Claimant that included hot packs, ultrasound, massage, electrical stimulation, and therapeutic exercises. Provider also placed Claimant on prescription medications.
5. An MRI was performed on Claimant on October 19, 2004.
6. Carrier denied reimbursement for the MRI and for physical therapy services provided from October 29, 2004 through November 24, 2004.
7. In response to Carrier's denial of reimbursement, Provider sought medical dispute resolution.
8. The reviewing Independent Review Organization (IRO) concluded the disputed services were not medically necessary.
9. In response to the IRO decision, Provider requested a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to the parties on June 28, 2005. The notice informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
11. The hearing convened and closed on February 9, 2006 before SOAH Administrative Law

Judge Gary Elkins.

12. An x-ray performed on Claimant's cervical spine on ___ indicated it was within normal limits.
13. An MRI was performed on October, 2004, after approximately two weeks of service by Provider, even though no neurological deficits were noted by Provider in his physical examination of Claimant.
14. A motor and sensory examination the day before the MRI was normal. It found no protrusions or evidence of neural compromise.
15. An MRI would not be indicated until after a reasonable trial of conservative management, lasting at least four weeks, without response.
16. The vast majority of patients with back and neck pain improve after four to six weeks.
17. Claimant received no significant benefits from the 16 sessions of physical therapy completed by October 29, 2004.
18. There is no evidence of improvement in Claimant's range of motion, strength, or function as a result of the physical therapy services provided from October 29, 2004 through November 24, 2004.
19. Claimant's reported pain levels ranged from 3 to 5 out of 10 upon arrival at the disputed physical therapy sessions.
20. Claimant's reported pain would disappear at the end of each physical therapy session but would return by the following visit.
21. After 16 visits to Provider, Claimant should have been placed on a home exercise program.
22. There was no need for monitored physical therapy during the disputed dates of service.
23. There is no evidence of improvement in Claimant's range of motion, strength, or function.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The disputed services were not shown to be reasonably required by the nature of Claimant's injury. TEX. LAB. CODE ANN. §408.021.
4. Provider failed to prove the disputed services either promoted Claimant's recovery or enhanced his ability to return to employment. TEX. LAB. CODE ANN. §408.021.
5. The disputed services were not medically necessary.
6. Provider is not entitled to reimbursement for any of the disputed services.

ORDER

IT IS ORDERED that the reimbursement claim of Jairo A. Puentes, M.D., for a cervical and lumbar MRI performed on October 19, 2004 and for physical therapy services provided from October 29, 2004 through November 24, 2004 is denied.

SIGNED April 10, 2006.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**