

**SOAH DOCKET NO. 453-05-7744.M5
TWCC MR NO. M5-05-2153-01**

PAIN AND RECOVERY CLINIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
HUMBLE ISD,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Pain and Recovery Clinic (Provider) appealed the decision of an Independent Review Organization (IRO) upholding the denial of reimbursement for physical therapy services administered to claimant ___ (Claimant) from April 1, 2004 to June 11, 2004. In this decision the Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of showing that the prescribed treatment was reasonable and medically necessary for Claimant’s compensable injury. Therefore, Humble ISD (Carrier) should not be required to reimburse Provider for the treatments rendered.

After a motion for continuance, filed by Provider on February 22, 2006, was denied for lack of good cause, the hearing convened and closed on February 23, 2006, before ALJ Steven M. Rivas. Shelley Dalton, representative for Provider, appeared by telephone. Carrier appeared, represented by Robert Josey, attorney.

I. DISCUSSION

A. Background

Claimant was employed as a janitor with Humble ISD and sustained a compensable injury to her lumbar spine and left ankle when she slipped and fell while mopping a floor at school on ___, ___. Claimant was authorized to receive passive physical therapy (PT) treatments beginning on January 26, 2004, through March 23, 2004, at Nova Health Care Centers. However, due to increased pain to the left ankle, Claimant did not attend any of the authorized PT treatments after

February 1, 2004. On February 13, 2004, Claimant had an MRI of the left ankle. Despite a possible acute Achilles rupture as indicated on the MRI, Claimant resumed PT treatment at the Pain and Recovery Clinic from March 23, 2004 to June 11, 2004, for a total of 29 visits of both active and passive PT.

Claimant eventually required surgical intervention to correct the left ankle pathology. Dr. Anthony Lamarra, D.P.M., performed surgery to repair the achilles rupture on June 16, 2004. Post-operative PT treatment was recommended and administered to Claimant. However, those services are not in dispute in this matter.

B. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021(a) provides that 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. The statute further states an employee is specifically entitled to health care 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."

Under TEX. LAB. CODE ANN. § 401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

C. Evidence

Neither party presented evidence at the hearing on this matter. Therefore, the ALJ relied upon the documentation submitted prior to the hearing and the limited amount of testimony given at the hearing in order to make a decision.

The record reflects that Claimant sought treatment soon after her compensable injury on____, but stopped attending therapy due to increased pain soon after she began. Subsequently, she changed providers, and resumed therapy under Provider in March of 2004. An MRI was performed in February of 2004, and although the scan showed possible acute Achilles rupture, Claimant continued to receive physical therapy from Provider. On June 16, 2004, Claimant underwent surgery to repair a torn Achilles tendon on her left foot, and was again prescribed physical therapy as post-op instructions. The records continue to document Claimant's treatment and procedures through May 2005. However, the disputed dates of service in this case are prior to the surgery from April 1, 2004 through June 11, 2004.

D. Conclusion

The ALJ finds that Provider should not be reimbursed because there is no evidence that supports continued physical therapy for Claimant after a trial period of six to eight weeks of passive therapy.¹ After the trial period of therapy, Provider should have been able to determine that Claimant had not benefitted from continued active or passive therapy, and that it was not medically necessary or appropriate.

II. FINDINGS OF FACT

1. On____, Claimant was working as a janitor for Humble ISD and suffered a compensable injury when she slipped while mopping a restroom floor.
2. Claimant was initially treated at North East Medical Center Hospital, but soon thereafter chose Pain & Recovery Clinic as her provider.
3. On February 8, 2004, shortly after beginning treatment at Pain & Recovery Clinic, an MRI was performed on Claimant, which indicated a possible acute Achilles rupture on the left foot.
4. Despite the results of the MRI, Provider continued to administer passive and manual physical therapy to Claimant, which included office visits, one-on-one therapy, manual

¹ Official Disability Guidelines (ODG), 10th Edition.

therapy, and neuromuscular re-education.

5. Claimant underwent surgery to repair the Achilles rupture on the left foot on June 16, 2004.
6. Provider sought reimbursement for the services provided between April 1, 2004 and June 11, 2004 from Humble ISD (Carrier), which was denied as not medically necessary.
7. Provider requested Medical Dispute Resolution through the Texas Workers' Compensation Commission (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
8. On June 28, 2004, a Peer Review was performed by Roger Canard, D.C., who found that the treatments described in Finding of Fact No. 4 were not medically necessary.
9. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH), which scheduled the hearing for February 23, 2006.
10. The Commission provided proper notice of the hearing to all parties on July 27, 2005.
11. On February 22, 2006, Provider filed a motion for continuance, which was opposed by Carrier and denied by the undersigned ALJ for lack of good cause.
12. The hearing convened on February 23, 2006, and closed the same day with ALJ Steven M. Rivas presiding. Shelley Dalton, employee for Provider, appeared by phone. Carrier was represented by Robert Josey, attorney.
13. Provider, as Petitioner, had the burden of proof in this matter, but chose to present no evidence at the hearing.
14. The records submitted by Carrier prior to the hearing support Carrier's position that the services described in Finding of Fact No. 4 were not medically necessary.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over 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. Provider timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. § 2001.52 and TEX. ADMIN. CODE § 148.4.
5. Provider had the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE § 148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a)(3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
7. Based on the Findings of Fact and Conclusions of Law, Provider's request for reimbursement should be denied.

ORDER

IT IS ORDERED that the reimbursement requested by Provider for the services rendered to Claimant for the dates of service April 1, 2004, through June 11, 2004, be denied.

SIGNED March 10, 2006.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**