

**SOAH DOCKET NO. 453-05-9076.M5
MDR NO.M5-05-2210-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
PAIN AND RECOVERY CLINIC OF HOUSTON, Respondent		

DECISION AND ORDER

I. INTRODUCTION

Texas Mutual Insurance Company (Carrier) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC)/Medical Review Division (MRD) regarding medical services for claimant, _____. The IRO/MRD found that ultrasound, manual therapy, therapeutic exercises, neuromuscular re-education, and office visits from April 7 through August 31, 2004, by the Pain and Recovery Clinic of Houston (Provider) were medically necessary.

As set out below, the Administrative Law Judge (ALJ) finds that Carrier met its burden of proving that the disputed services were not medically necessary.

II. FINDINGS OF FACT

- 1. On____, the Claimant sustained a work-related injury to the left leg, ankle, foot, lower back, and right thumb as a result of work activities (Compensable Injury).
- 2. On the date of injury, the Carrier was the worker's compensation insurance carrier for the Claimant's employer.
- 3. As a result of the compensable injury, the Claimant suffered a fracture of the right thumb, ultimately requiring surgery in _____. He also suffered soft tissue injuries to the left leg, ankle, foot, and lower back.
- 4. The Provider furnished medical services to the Claimant on the dates and with the Current Procedural Terminology (CPT) codes shown below:

CPT	SERVICE DESCRIPTION	DATES
97035	ultrasound	April 7 through October 26, 2004
97140	manual therapy	April 7 through October 26, 2004
97110	therapeutic exercises	April 7 through October 26, 2004
97112	neuromuscular re-education	April 7 through October 26, 2004
99212	office visits	April 7 through October 26, 2004

5. Dr. Gary Pamplin, a hand and orthopedic surgeon, testified that a reasonable course of medical treatment for the injury to Claimants thumb would consist of a three-week period of immobilization due to the fracture, followed by gradual therapy.
6. Dr. Pamplin testified that Provider began treating Claimant's thumb injury on ____, well after a reasonable time for immobilization had occurred. According to Dr. Pamplin, there was no explanation in the medical records for such a significant delay in treatment. According to Dr. Pamplin, this lengthy delay most likely caused the tissue to become deeply scarred, requiring surgery.
7. Dr. Pamplin testified that Provider failed to document objective findings related to the condition of the thumb throughout the period of treatment, to the extent that he was unable to ascertain the status of the patient's condition during the various stages of treatment. Further, the medical records did not sufficiently explain the treatment program itself.
8. Dr. Jarrod Cashion, a chiropractic neurologist, testified that a reasonable course of treatment for Claimant's injuries consistent with the Official Disability Guidelines would have ended by June 15, 2004.
9. According to Dr. Cashion, the medical records were inadequate to support the need for treatment after June 15, 2004.
10. Dr. Cashion testified that there was no indication from the medical records that Claimant experienced objective improvement after a trial of care of eighty-four visits. According to Dr. Cashion, if Claimant did not experience some objective improvement after the trial of care, the modality of care should have been changed or he should have been referred for additional evaluation.
11. Dr. Cashion testified that Provider failed to document objective findings related to the treatment of Claimant and the necessity for the services provided.
12. The Provider/Claimant sought reimbursement from the Carrier for the provided medical services.

13. The Carrier denied the requested reimbursement on the basis that the services provided were not medically necessary.
14. The Provider filed a request for medical dispute resolution with the TWCC.
15. The IRO reviewed the medical dispute and found that the services were medically necessary through August 31, 2004.
16. The TWCC's Medical Review Division (MRD) adopted the IRO's findings.
17. The Carrier asked for a contested-case hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
18. This case was referred by TWCC and accepted by SOAH prior to September 1, 2005, for hearing.
19. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier, the Provider, and the Claimant.
20. On January 26, 2006, SOAH ALJ Suzanne Formby Marshall held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day. The Carrier appeared at the hearing through its attorney, Ryan Willett. The Provider did not appear at the hearing.

III. CONCLUSIONS OF LAW

1. The State Officer of Administrative Hearings (SOAH) 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. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2005), TEX. GOV'T CODE ANN. (Gov't Code) 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 Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) §155.41(b) (2005), and 28 TAC § 148.14 (2005), Carrier has the burden of proof in this case.
4. 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. Labor Code § 408.021 (a).

5. The medical records do not support adequate documentation of the need for the services provided to Claimant.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier met its burden of proving that the medical services provided to Claimant from April 7 through August 31, 2004, were not medically necessary.

ORDER

IT IS ORDERED THAT Texas Mutual Insurance Company shall not reimburse the Pain and Recovery clinic of Houston for the medical services it provided to Claimant from April 7 through August 31, 2004.

SIGNED March 27, 2006.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**