

**SOAH DOCKET NO. 453-05-9255.M5
TDI DWC MR NO. M5-05-2426-01**

TEXAS MUTUAL INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
Petitioner	§	OF
	§	
V.	§	
	§	ADMINISTRATIVE HEARINGS
JACK P. MITCHELL, JR., D.C.,	§	
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 disagreed with the Carrier and found that the services were reasonably medically necessary to treat the Claimant's compensable injury.

The MRD also disagreed with the Carrier concerning certain non-medical-necessity issues, but the Carrier does not dispute those other determinations. Additionally, the Carrier has now conceded that some of the services that it once disputed were medically necessary, and it has agreed to reimburse the Provider for those services. The only issue is whether the remaining services were medically necessary to treat the compensable injury.

As set out below, the Administrative Law Judge (ALJ) finds that the remaining services were not reasonably medically necessary to treat the compensable injury and denies the Provider's request to be reimbursed for them.

II. FINDINGS OF FACT

1. On____, the Claimant sustained a work-related sprain or strain injury to his back as a result of work activities (compensable injury).
2. On the date of injury, the Carrier was the workers' compensation insurance carrier for the Claimant's employer.
3. As a result of the compensable injury, the Claimant suffered back pain.
4. On May 5, 2004, the Claimant reported back pain at an eight-out-of-ten level.
5. Four to six weeks of conservative care is reasonable and necessary to treat a back sprain or strain.
6. From May 5 through June 28, 2004, approximately nine weeks after the injury, the Provider furnished the following medical services on a regular basis to treat the Claimant's back pain resulting from the Compensable Injury:

Current Procedural Terminology (CPT) Code	Description
97012	Mechanical Traction Therapy
97110	Therapeutic Exercises
97530	Therapeutic Activities
98941	Chiropractic Manipulations
99214	Outpatient Office Visit
G0283	Electrical Stimulation other than Wound

7. The Carrier either has reimbursed or has now agreed to reimburse the Provider the maximum allowable reimbursement (MAR) for the above services.
8. By May 20, 2004, approximately three weeks after the injury, Claimant reported back pain at the two-out-of-ten level, where it generally remained, occasionally falling to one-out-of-ten, except when he re-injured himself.
9. A July 28, 2004, magnetic resonance image (MRI) of the Claimant's spine showed that the Claimant has extensive degenerative disc disease throughout his entire spine.

10. The Claimant's degenerative disc disease is a product of his age and heredity and was not caused by the compensable injury.
11. The Claimant's degenerative disc disease will likely cause him to have one- or two-out-of-ten back pain for the rest of his life and occasionally greater pain.
12. The Provider furnished other medical services (disputed services) to the Claimant on the dates and with the CPT Codes and MARs shown below:

CPT	SERVICE DESCRIPTION	DATES	MAR	Units	TOTAL
97012	Mechanical Traction Therapy	Aug. 2, 4, 6, 9, 11, 13, 16, 18, 20, 23, 25, 27, & 30, 2004 Sep. 1, 3, & 8, 2004	\$17.91	16	\$286.56
97110	Therapeutic Exercises	Jun. 24, 25, & 28, 2004 Aug. 6, 9, 11, 13, 16, & 20, 2004	\$34.46	9	\$310.14
97110	Therapeutic Exercises	Jun. 30, 2004 Jul. 2, 6, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, & 30, 2004	\$103.38	14	\$1,447.32
97112	Neuromuscular Reeducation	May 27, & 28, 2004 Jun. 1, 2, 7, 10, 11, 14, 16, 18, & 21, 2004	\$34.65	11	\$381.15
97530	Therapeutic Activities	Jun. 30, 2004 Jul. 2, 6, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, & 30, 2004 Aug. 18, & 27, 2004	\$34.65	16	\$554.40
98941	Chiropractic Manipulations	Jun. 30, 2004 Jul. 2, 7, 9, 14, 21, 23, 26, 28, & 30, 2004 Aug. 2, 4, 6, 9, 11, 13, 16, 18, 20, 23, 25, 27, & 30, 2004 Sep. 1, & 8, 2004	\$43.00	25	\$1,075.00
	Outpatient Office				

CPT	SERVICE DESCRIPTION	DATES	MAR	Units	TOTAL
99214	Visit	Jun. 11, 2004	\$89.00	1	\$89.00
G0283	Electrical Stimulation other than Wound	Aug. 2, 6, 9, 11, 13, 16, 18, 20, 23, 25, 30, 2004 Sep. 1, & 3, 2004 Feb. 7, 2005	\$13.41	14	\$187.74
TOTAL					\$4,331.31

13. Neuromuscular reeducation is used to retrain a patient to use muscles after an extensive injury to those muscles and is not reasonable and necessary to treat a back sprain or strain.
14. The services that the Provider described as neuromuscular reeducation consisted of walking on a treadmill.
15. Walking on a treadmill is a therapeutic exercise and not neuromuscular reeducation.
16. The other disputed services were conservative care not reasonably medically necessary to treat a back sprain or strain more than eight weeks after the compensable injury and when the Claimant's pain had fallen to the level that is associated with his non-compensable degenerative disc disease.
17. The Provider sought reimbursement from the Carrier for the disputed services.
18. The Carrier sent explanations of benefits (EOBs) to the Provider denying the requested reimbursement and contending that the disputed services were not medically necessary to treat the compensable injury.
19. The Provider filed a request for medical dispute resolution with MRD concerning the disputed services.
20. The IRO reviewed the medical dispute, agreed with the Provider, and found that the disputed services were medically necessary to treat the compensable injury.
21. Based on the IRO's findings, MRD ordered the Carrier to pay for the services.
22. The Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ.
23. This case was referred by TWCC and accepted by SOAH prior to September 1, 2005, for

hearing.

24. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier and the Provider.
25. On February 21, 2006, SOAH ALJ William G. Newchurch 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.
26. The Carrier appeared at the hearing through its attorney, Katie Kidd.
27. The Provider appeared at the hearing.
28. The Provider furnished other services not discussed above to the Claimant during the general time period discussed above. The Carrier initially denied reimbursement for those other services. On July 26, 2005, MRD ordered that reimbursement, and at the hearing, the Carrier withdrew those denials and agreed to reimburse the Provider for those other services as ordered by MRD.

III. CONCLUSIONS OF LAW

1. 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), the 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. Based on the above Findings of Fact and Conclusions of Law, the disputed services were not reasonably medically necessary to treat the Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, the Provider's request to be reimbursed for the disputed services should be denied.

ORDER

IT IS ORDERED THAT the Provider's request to be reimbursed for the disputed services is denied.

Signed March 20, 2006.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**