

**SOAH DOCKET NO. 453-05-2842.M5
MR TRACKING NO. M5-04-1480-01**

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| TEXAS MUTUAL INSURANCE COMPANY, Petitioner | § § § § § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
| V. | | |
| STOLBA CHIROPRACTIC CENTER, Respondent | | |

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) ordering reimbursement for hot/cold pack therapy (CPT Code 97010), unattended electrical stimulation (CPT Code 97014), mechanical traction (CPT Code 97102), special supplies (CPT Code 99070), an initial office visit (CPT Code 99202), and office visits (CPT Code 99213) provided to Claimant from January 21 through July 9, 2003. Carrier denied reimbursement on the basis that the treatment was not reasonable or medically necessary. The Administrative Law Judge (ALJ) finds that the disputed treatment was not reasonable and medically necessary. Therefore, no reimbursement is warranted.

I. PROCEDURAL HISTORY

The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below.

ALJ Sharon Cloninger convened the hearing on February 21, 2006, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Carrier was represented by Patricia Eads, attorney. Michael D. Stolba, D.C., appeared by telephone and represented Provider.

Carrier offered two exhibits, which were admitted, and called David Alvarado, D.C., as a witness. Dr. Stolba testified on Provider's behalf and offered one exhibit, which was admitted with pages 113-119 excluded. After the presentation of evidence, the hearing concluded and the record closed that same day.

II. APPLICABLE LAW

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 employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).

III. FINDINGS OF FACT

1. Claimant sustained a compensable work-related injury to her right shoulder, lower back, and neck on____, when she fell while mopping a floor.
2. Texas Mutual Insurance Company (Carrier) was the workers' compensation insurer for Claimant's employer on July 28, 2000.
3. Claimant's compensable injury was diagnosed variously as cervical spondylosis, herniated nucleus pulposus L4 and L5, and impingement syndrome of the right shoulder, and as a sprain to the cervical and lumbar spine, with mild left C6 and mild right C7 radiculopathy and mild right S1 radiculopathy, with MRI changes at L4-5 and C5-6 and C6-7.
4. Following her compensable injury, Claimant was treated by numerous medical doctors, received outpatient physical therapy, epidural steroid injections, and pain medications, and remained off work for more than two years. Her treatment included ultrasound, electrical muscle stimulation, myofascial release, one-on-one therapy, and therapeutic activities.
5. Barry M. Green, M.D., declared Claimant to be at clinical maximum medical improvement first on September 25, 2002, then again on October 23, 2002, with a whole person impairment rating of 27 percent, based on combining a 24 percent whole person impairment for the back with a 4 percent whole person impairment for impingement syndrome of the right shoulder.
6. On October 25, 2002, Richard D. Guyer, M.D., of the Texas Back Institute in Plano, met with Claimant and noted that her approval for surgery dated July 2001 had run out in July 2002, that she was not interested in surgery to treat her compensable injury and that lumbar steroid injections had eased her pain. He recommended that Claimant enroll in a weight loss program, which she did not.
7. Sid Bernstein, D.O., of the Texas Back Institute, authorized Claimant to return to work as of January 17, 2003, with restrictions expected to last through April 17, 2003, including not lifting or carrying objects weighing more than 10 pounds for more than four hours per day.
8. As of January 17, 2003, Claimant was taking eight different prescription pain medications.
9. On January 17, 2003, Dr. Bernstein referred Claimant, at her request, for chiropractic care.

10. Stolba Chiropractic Center (Provider) began treating Claimant on January 21, 2003.
11. Provider's disputed treatment of Claimant from January 21 through July 9, 2003, included hot/cold pack therapy (CPT Code 97010), mechanical traction (CPT Code 97012), unattended electrical stimulation (CPT Code 97014), special supplies (CPT Code 99070), an initial office visit (CPT Code 99202), and office visits (CPT Code 99213).
 - a. The disputed hot/cold pack therapy was neither reasonable nor medically necessary.
 1. In the acute stage of injury, hot packs may be used to reduce muscle spasms and cold packs may be used to reduce inflammation, but these treatments did not benefit Claimant 2.5 years post-trauma.
 2. Hot/cold packs used for palliative purposes may be applied at home with a hot water bottle or ice pack and do not need to be applied in the office.
 3. Hot packs may be necessary to prepare a patient for chiropractic adjustment when muscle spasms and guarding are present, but Claimant did not exhibit muscle spasms and guarding.
 - b. The disputed mechanical traction was neither reasonable nor medically necessary.
 1. Mechanical traction can be used to increase discal width and perhaps reduce nerve root compression but did not benefit Claimant 2.5 years post-trauma.
 2. Claimant's experience of an electric shock sensation during manual traction provided on ____, indicates neurological compromise, which could traumatize the nerve and could create transient neurological insult.
 3. Claimant's ____ experience of an electric shock sensation was a "red flag" that Claimant might not tolerate manipulative procedures, and a second mechanical traction should not have been performed on July 2, 2003.
 - c. The disputed unattended electrical stimulation was neither reasonable nor medically necessary.
 1. Electrical stimulation is useful in early treatment of a soft tissue injury such as Claimant's but has no benefit 2.5 years post-trauma.
 2. Using the Alpha Stim Model 100 to treat Claimant for anxiety, depression, and/or insomnia was not medically reasonable, in that Claimant was not diagnosed with anxiety, depression, and/or insomnia.
 - d. The disputed special supplies were neither reasonable nor medically necessary.

1. On February 11, 2003, and again on February 14, 2003,¹ Provider prescribed the Alpha Stim Unit Model 100 and two pillows – for head and leg support – for Claimant’s home use, without any indication of how these products would relieve Claimant’s pain, promote her recovery, or permit her to retain employment.
 - e. The January 21, 2003, initial office visit was neither reasonable nor medically necessary.
 1. As of January 17, 2003, Claimant had been released to work with restrictions and was referred to Provider at her request, rather than out of a medical need for chiropractic care.
 - f. The disputed office visits were neither reasonable nor medically necessary.
12. Claimant began working at a video rental store at least as of February 2003.
- a. On ____, Claimant saw Provider and reported shoulder and low back pain after working the weekend.
 - b. On ____, Provider determined that it was the high stress levels rather than the work requirements at the video rental store that exacerbated Claimant’s pain, because Claimant’s condition would improve on her days off, then regress during her work week. He recommended that she find another job in which “people don’t bring their problems to work.”
 - c. It was Claimant’s perception of pain, rather than her ability to function or physical job requirements, that prevented her from retaining her job at the video rental store.
13. Claimant received emergency room treatment on January 27, 2003, for low back pain; on April 26, 2003, for a migraine headache; and on May 1, 2003, for “pain from neck to feet.”
14. Claimant’s follow-up visits with Dr. Bernstein show that Provider’s treatment did not (1) cure or relieve the effects naturally resulting from her injury; (2) promote her recovery; or (3) enhance her ability to return to or retain employment.
- a. Dr. Bernstein followed up with Claimant on April 11, 2003, when he found she was “not doing well at all,” working at a video rental store between 37 and 40 hours weekly, which had aggravated her low back and especially her right leg pain, which is radicular in nature. He found she had to go to the emergency room a couple of times for narcotic injections to control her pain and noted she continued to use eight prescribed medications. He said he believed an epidural steroid injection would help Claimant.
 - b. Dr. Bernstein followed up with Claimant again on July 9, 2003 – the last disputed date of service – and found she continued to have significant back pain; that the

¹ The TWCC-60 lists the disputed date of service as February 10, 2003.

transforaminal L-4 nerve root injection on the right (administered in June 2003) did ease her leg pain considerably; that she continued to take the eight prescribed pain medications; that she had problems sleeping; and that she had quit her video rental store job, which required standing, in favor of a job doing clerical work, which allowed her to sit part of the time.

- c. On August 11, 2003—just one month after the last disputed date of service—Dr. Bernstein found that Claimant's compensable injury prevented her from returning to work secondary to pain, due to her being totally disabled. He observed that the right L4 transforaminal nerve root injection with steroid that she received July 9, 2003, had eased her pain for several weeks.
15. Provider's treatment resulted in transient relief for Claimant's stress-related neck and arm pain but did nothing to relieve Claimant's back pain, reduce her dependence on pain medications, prevent her from making three visits to the emergency room for narcotic injections to relieve her pain, or prevent her from needing epidural steroid injections at L4 on the right on June 11, 2003, and again on July 9, 2003, for pain relief.
- a. Because Claimant's pain is psychological and non-organic in nature, she did not get better with Provider's physical care.
 - b. Claimant had a positive psychological response to Provider's caring environment, rather than responding to the physical care provided.
 - c. High stress levels, such as those Claimant endured at work, can translate into subjective reports of pain.
 - d. Claimant could have addressed her pain at home by doing yoga, exercising, and using a hot water bottle or ice pack, which would have been as effective as the treatment she received from Provider, more cost-effective, and more likely to lead to functional independence.
 - e. Except for one day, Claimant continued to use her eight pain medications throughout her treatment with Provider, and on July 9, 2003, she was prescribed an additional pain medication.
 - f. Provider's treatment provided temporary relief of Claimant's stress-driven neck pain. From January 21 to February 7, 2003, Claimant's level of neck pain dropped from 6 on a scale of 0-10, with 10 being the most severe pain, to 3, but was reported at 5 on February 10, 2003.
 - g. Claimant's low back pain remained at about 6 for the entire time of Provider's treatment. Provider did not change or stop the treatment although it was ineffective.
 - h. Claimant's left arm/right arm pain was at 6/7 on January 21, 2003; at 3/4 on February 10, 2003; at 5/6 on March 3, 2003; and at 3/3 on March 6, 2003—half the level she reported to Provider on her initial visit—with occasional flare-ups due to working.

- i. Provider did not use objective measures such as range of motion testing, palpatory findings, and/or a neurological assessment to substantiate Claimant's reported pain levels.
16. Claimant was referred for pain management on July 9, 2003.
17. Provider's treatment did not improve Claimant's functional ability or increase her strength or range of motion.
18. Carrier denied Provider's claim for the above services on the basis that the treatments were not reasonable or medically necessary.
19. On March 2, 2004, Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement for the above-described services.
20. The MRD issued a decision on October 22, 2004, stating that Provider did not prevail on the issue of medical necessity, after its review of the revised IRO decision issued March 26, 2004, in this dispute.
21. On November 12, 2004, Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD decision.
22. On December 20, 2004, TWCC mailed notice of the hearing to Carrier and Provider.
23. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
24. On February 21, 2006, SOAH Administrative Law Judge Sharon Cloninger held a hearing on the Petitioner's appeal in the William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier was represented by Patricia Eads, attorney. Michael D. Stolba, D.C., appeared by telephone and represented Provider. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §413.031(k) and TEX. GOV' T CODE ANN. ch. 2003.
2. Provider timely filed notice of appeal of the decision of TWCC's MRD, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV' T CODE ANN. § 2001.052 and 28 TAC §148.4(b).

4. As the party contesting the MRD decision, Carrier had the burden of proving the case by a preponderance of the evidence.
5. Based on the above Findings of Fact and pursuant to TEX. LABOR CODE § 408.021(a), Provider's treatment of Claimant's compensable injury was neither reasonable nor medically necessary.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier's appeal should be granted.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company is not to reimburse Stolba Chiropractic Center for treatment and services provided to Claimant from January 21 through July 9, 2003.

SIGNED April 11, 2006.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**