

LAURENCE N. SMITH, D.C., § BEFORE THE STATE OFFICE  
Petitioner §  
V. § OF  
TEXAS MUTUAL INSURANCE §  
COMPANY, § ADMINISTRATIVE HEARINGS  
Respondent §

**DECISION AND ORDER**

**I. STATEMENT OF CASE**

Laurence N. Smith, D.C., (Respondent/Provider) disputes the decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission<sup>1</sup> regarding medical necessity for physical medicine procedures provided to \_\_ (Claimant). Texas Mutual Insurance Company (Respondent/Carrier) denied these services. The IRO found that only two office visits, two units of passive care, and two units of active care provided to \_\_ from January 29 through February 19, 2004, were necessary. The IRO further found that services and procedures provided to \_\_ after February 29, 2004, were not medically necessary. Such services provided from January 30 to July 16, 2004, are in dispute.

As set out below, the Administrative Law Judge (ALJ) finds that reimbursement to Provider for the disputed services should be denied.

**II. FINDINGS OF FACT**

1. On \_\_, Claimant \_\_, was directing traffic in an underground parking garage when a two-ton truck passed too close to her and ran over her right foot. The truck stopped briefly on the middle of her foot before backing off.
2. On the date of Claimant's compensable injury, Texas Mutual Insurance Company, (Carrier) was the workers' compensation insurance carrier for her employer.
3. Claimant was immediately examined in the Parkland Hospital Emergency Department. X-rays indicated no fracture. Claimant was diagnosed with a sprained ankle and instructed to stay off her ankle for two weeks. She was excused from work during that time period.

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission have been transferred to the Division of Workers' Compensation at the Texas Department of Insurance.

4. On December 12, 2003, Claimant began treatment with Mehdi Jalali, D.C. At the time, Claimant presented with guarded movement, swelling, and muscle hypertonicity in her right lower leg and ankle. Claimant was still off work and on crutches.
5. Based on the December 12, 2003 exam, Dr. Jalali's recommended care included adjustments three to five times a week for two to four weeks, ultrasound, interferential therapy, massage therapy, and a rehabilitative exercise program.
6. Claimant received passive chiropractic treatments from December 17, 2003, through January 22, 2004, from Dr. Jalali. He evaluated her again on January 22, 2004, and found her range of motion improving. He anticipated her returning to work on February 10, 2004.
7. On January 13, 2004, Claimant presented to Cornerstone Clinic, Inc. and Laurence N. Smith, D.C. (Provider). Claimant indicated on the Cornerstone Clinic, Inc. form that she had received treatment from Dr. Jalali.
8. From January 13 through 22, 2004, Claimant was receiving chiropractic care or at least consultation from two different providers.
9. Carrier disputes medical services provided Claimant from January 30 through July 16, 2004.
10. Carrier stipulated that it will pay for special reports (CPT code 99080) billed on March 26, June 24, and July 16, 2004.
11. Provider prescribed and provided the following disputed medical services for Claimant:

<b>CPT CODE</b>	<b>SERVICE DESCRIPTIONS</b>	<b>MAR (per unit)</b>	<b>PAYMENT IN DISPUTE</b>	<b>DATES</b>
97035	ultrasound therapy	\$15.56	\$15.56	1/30/04, 2/11/04, 2/19/04, 2/24/04, 2/25/04, 2/27/04, 3/2/04
97032	electric stimulation	\$20.85	\$20.85	1/30/04, 2/24/04
97112	neuromuscular reeducation	\$37.05	\$74.10 (2 units)	2/13/04, 3/4/04, 3/10/04
97112	neuromuscular reeducation	\$37.05	\$111.15 (3 units)	3/8/04, 3/9/04, 3/11/04, 3/15/04, 3/17/04, 3/19/04, 3/22/04, 3/26/04, 4/1/04, 4/2/04, 4/7/04, 4/14/04, 4/21/04, 4/23/04, 4/30/04, 5/10/04, 5/17/04, 5/19/04, 5/21/04, 5/28/04
97110	therapeutic exercises (one on one therapy)	\$36.99	\$36.99 (1 unit)	2/4/04, 2/5/04, 2/11/04, 2/12/04, 2/18/04, 2/19/04
97110	therapeutic exercises (one on one therapy)	\$36.99	\$73.98 (2 units)	2/24/04, 2/25/04, 2/27/04, 3/2/04

97110	therapeutic exercises (one on one therapy)	\$36.99	\$110.97 (3 units)	2/13/04, 3/4/04, 3/5/04, 3/8/04, 3/9/04, 3/10/04, , 3/11/04, 3/15/04, 3/17/04, 3/19/04, 3/22/04, 3/26/04, 4/1/04, 4/2/04, 4/7/04, 4/14/04, 4/21/04, 4/23/04, 4/30/04, 5/10/04, 5/17/04, 5/19/04, 5/21/04, 5/28/04
97140-59	manual therapy	\$34.12	\$68.24 (2 units)	3/5/04, 3/10/04, 3/11/04, 3/15/04, 3/17/04, 3/19/04, 3/22/04, 3/26/04, 4/1/04, 4/2/04, 4/7/04, 4/14/04, 4/23/04, 4/30/04, 5/28/04
97530	therapeutic activities	\$36.48	\$36.48	3/9/04, 3/10/04, 3/11/04, 3/15/04, 4/7/04, 4/21/04, 5/10/04, 5/17/04, 5/19/04, 5/21/04
97530	therapeutic activities	\$36.48	\$72.96 (2 units)	2/13/04, 3/4/04, 3/8/04

<b>CPT CODE</b>	<b>SERVICE DESCRIPTIONS</b>	<b>MAR (per unit)</b>	<b>PAYMENT IN DISPUTE</b>	<b>DATES</b>
97116	gait training	\$31.71	\$31.71	2/14/04
97116	gait training	\$33.68	\$33.68	2/12/04, 2/18/04, 2/24/04, 2/25/04, 2/27/04, 3/2/04, 3/4/04, 3/5/04, 3/8/04,
97116	gait training	\$36.48	\$36.48	3/19/04, 3/22/04, 3/26/04, 4/21/04, 4/23/04, 4/30/04, 5/10/04, 5/17/04, 5/19/04, 5/21/04, 5/28/04
95900	nerve conduction	\$64.89	\$389.34 (6 units)	3/4/04
93923	vascular studies	\$183.13	\$183.13	3/8/04
99213	subsequent office visit	\$66.19	\$66.19	2/24/04, 2/25/04, 2/27/04, 3/2/04, 3/4/04, 3/5/04, 3/8/04, 3/9/04, 3/11/04, 3/15/04, 3/17/04, 3/19/04, 3/22/04, 3/26/04, 4/1/04, 4/2/04, 4/7/04, 4/21/04, 4/23/04, 4/30/04, 5/17/04, 5/19/04, 5/21/04, 5/28/04
99213	subsequent office visit	\$45.38	\$45.38	3/10/04

12. Provider billed Carrier \$9,962.06 for the disputed services listed in the above finding of fact.
13. The acute phase of Claimant's injury lasted for approximately one week to ten days. For the acute phase of her injury, it was appropriate for Claimant to receive passive therapy.
14. Passive therapy was not appropriate treatment for Claimant during the time period in dispute.

15. Ultrasound (CPT code 97035) is passive therapy.
16. Ultrasound is used in the acute stage of injury to reduce swelling.
17. Claimant's swelling could have been treated with ice packs and anti-inflammatory medication.
18. Electric stimulation (CPT code 97032) is not useful for muscular or skeletal pain.
19. Electric stimulation is usually used in the acute stage of the injury for pain management and to reduce inflammation and swelling. By January 29, 2004, the acute phase of Claimant's injury had ended.
20. From the beginning of her treatment with Provider, Claimant was able to perform plantar flexion, dorsal flexion, inversion, eversion; she could move her toes; her foot and ankle were neurologically intact; and she had no head injury.
21. Some units of therapeutic exercises, one on one therapy, (CPT code 97110) were reasonable and necessary in January and February 2004.
22. One on one therapy is necessary for a few office visits to supervise a novice, unless the patient has a mental incapacity or some documented need for supervision.
23. Eleven units of manual therapy (CPT code 97140-59) was reimbursed during the time period in dispute. These units are not in dispute.
24. There was insufficient documentation to support the need for continued manual therapy after February 19, 2004.
25. Carrier reimbursed Provider for 14 units of therapeutic exercises during the course of treatment from February 4 through March 2, 2004. Reimbursed units are not in dispute.
26. Therapeutic activities (CPT code 97530) are used to restore functionality of daily living.
27. The daily treatment notes and records failed to indicate that Claimant was unable to function in daily living activities.
28. In occasional daily treatment notes, Provider stated that Claimant was walking with an abnormal gait. The notes contain no explanation as to why Claimant was walking with an abnormal gait on some days and not on others.
29. There is no correlation between the dates that Claimant was given gait training (CPT code 97116) and the occasional statements in the daily treatment notes that Claimant was walking with an abnormal gait.
30. Provider's daily treatment notes do not describe Claimant's gait dysfunction and fail to indicate the amount of weight-bearing action.
31. There is no documentation indicating significant gait alteration or the need for gait training.
32. Claimant had no nerve damage, lack of functionality, or compromise of her neuromuscular

system, which would have required neuromuscular reeducation (CPT code 97112).

33. There is no documentation in the daily treatment notes to support the need for nerve conduction or that nerve conduction was provided on March 4, 2004.
34. Provider billed Carrier for 25 subsequent office visits (CPT code 99213).
35. CPT code 99213 is a more complex office visit than CPT code 99212 and requires documentation of a specific or recurring problem, patient history, and more than a localized physical exam. There was no documentation in the record to support the 25 office visits billed under this code.
36. Office visits under CPT codes 99212 and 99213 should not be billed on the same day of physical therapy unless there is a documented need.
37. The course of care in dispute, as documented, was not consistent with standards of care and practice within the chiropractic profession and general medical community.
38. The course of case was not consistent with the injury, extent of injury, or nature of lingering symptomatology found in the documentation.
39. There was no documentation to support the level of care give to Claimant during the time period in dispute, which began more than two months after her injury and continued through eight months of care.
40. Although Claimant continued to have pain throughout the course of treatment, it is probable that her pain would have healed simply with the passage of time.
41. On March 29, 2004, Kyle E. Jones, M.D., evaluated Claimant as a designated doctor. At the time of this evaluation, Claimant indicated she had moderate pain (five on a scale of one to ten), especially with weight-bearing activities such as standing or walking, prolonged driving, and weather changes. She indicated that she felt relief from heat, rest, massage, and chiropractic treatments.
42. On March 29, 2004, Dr. Jones reviewed an X-ray and MRI of Claimant's right ankle. The X-ray indicated no fracture; the MRI was normal. He examined her ankle and found no apparent asymmetry or deformity, a scar from the wound, no obvious atrophy or significant differences in the midfoot circumferences, moderate tenderness, and no swelling or edema. She had no limping and walked normally.
43. On March 29, 2004, Dr. Jones found that Claimant had not reached MMI but was capable of restricted duty, beginning with four hours on her feet in an eight-hour work day with gradual advancement to full duty in two weeks.
44. A release to light duty may have assisted Claimant's rehabilitation.
45. Many of the exercises, such as treadmill walking, could have been performed at home.
46. Claimant received 12 more sessions of treatment from Provider after Dr. Jones' examination, from April 1 through May 28, 2004.

47. On July 20, 2004, Dr. Jones again examined Claimant and found her to have reached MMI with a 0 % impairment rating. At the time of this examination, Claimant had not returned to work.
48. Provider sought reimbursement from the Carrier for the provided medical services at issue in this proceeding.
49. Carrier timely sent explanations of benefits to Provider denying the requested reimbursement and claiming that Provider had not shown that the medical services were medically necessary to treat the compensable injury.
50. Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
51. An independent review organization (IRO) reviewed the medical dispute and found that the disputed services were medically necessary to treat the compensable injury.
52. Based on the IRO's findings, TWCC's Medical Review Division (MRD) granted reimbursement of only a few units of the disputed services.
53. After the IRO decision and MRD order were issued, Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the disputed services.
54. TWCC referred this case to SOAH for hearing before September 1, 2005.
55. Required notice of the contested-case hearing concerning the dispute was timely mailed to Carrier and Provider.
56. On February 23, 2006, ALJ Lilo D. Pomerleau held a contested-case hearing in this matter at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.
57. Provider appeared at the hearing represented by Laurence N. Smith, D.C.
58. Carrier appeared at the hearing through its attorney, Katie Kidd.
59. The record was held open until June 12, 2006, to allow the parties to file a table of disputed issues.

### **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. § 402.073(b) and 413.031(k) (West 2005); TEX. GOV'T CODE ANN. ch. 2003 (West 2005); and Acts 2005, 79<sup>th</sup> Leg., ch. 265 §8.013, eff. Sept. 1, 2005.
- 2 Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE § 155.41(b) (2004), and 28 TEX. ADMIN. CODE §§ 133.308(u) and 148.14 (2005), Provider has the burden of proof in this case.
4. The injury described in Finding of Fact No. 1 was a compensable injury under the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 401.001 *et seq.*
5. 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. The Act § 408.021(a).
6. Based on the above Findings of Fact and Conclusions of Law, the physical therapy and services provided from January 30 through July 16, 2004, do not represent elements of health care medically necessary under §408.021 of the Act.

### **ORDER**

**IT IS ORDERED** that Texas Mutual Insurance Company is not required to reimburse Provider for services provided from January 30 through July 16, 2004.

**SIGNED August 9, 2006.**

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**LILO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**