SOAH DOCKET NO. 453-05-4513.M5
[MDR NO. M5-05-0140-01]

TEXAS MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
V.	§	
	§	
JAMES TANNER, D.C.,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. DISCUSSION

Texas Mutual Insurance Company (Petitioner) requested a hearing to contest the January 28, 2005, Findings and Decision of the Texas Workers' Compensation Commission (Commission).[1] The Commission relied upon an October 27, 2004 decision of the Medical Review Institute of America, an Independent Review Organization (IRO), and ordered reimbursement for services provided by Petitioner to injured worker __(Claimant) from October 20, 2003, through January 30, 2004.

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that the disputed services provided by Petitioner were reasonable and medically necessary and should, therefore, be reimbursed by Petitioner.

The hearing convened on November 29, 2005, with State Office of Administrative Hearings (SOAH) ALJ Ami L. Larson presiding. Ryan T. Willett represented Petitioner, and James Tanner, D.C. (Respondent) appeared by telephone *pro se*. Both parties presented documentary evidence, all of which was admitted. Jarrod Cashion, D.C., testified by telephone for Petitioner and

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

Respondent testified on his own behalf. The hearing concluded and the record closed that day. Neither party objected to notice or jurisdiction.

On___, Claimant suffered a work-related injury to his lower back and an inguinal hernia on his left side. The compensability of Claimant's injury was contested, which caused a significant delay in Claimant's ability to receive treatment for his injuries. Claimant's left inguinal hernia was surgically repaired in August 2003, when payment for that procedure was approved by Medicaid. Following the hernia repair, Claimant began seeing Respondent for physical therapy treatment, which included manual therapy,[2] mechanical traction,[3] chiropractic manipulation,[4] therapeutic procedures,[5] office visits,[6] and electrical stimulation.[7]

Carrier argued that Claimant did not seek treatment from Respondent until three months after he was injured and, consequently, the treatment provided by Respondent, although appropriate for an acute injury, was not appropriate for Respondent by the time he sought treatment. Carrier further argued that Respondent failed to document the medical necessity of the treatment he employed.

Respondent testified that Claimant tried to see other doctors following his injury, but could not find anyone who would treat him because the compensability of his injury was being disputed. Respondent further stated that Claimant's lower back pain became so severe that he went to the emergency room the day before he first came to see Respondent for treatment.

This case is somewhat unusual in that Claimant tried, but was unable to obtain treatment for his injury for several months due to contested issues regarding compensability. Based on the

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[2] CPT Code 97140.

[3] CPT Code 97012.

[4] CPT Code 98940.

[5] CPT Code 97110.

[6] CPT Codes 99212 and 99213.

[7] CPT Codes GO283 and 97014.

evidence that Claimant began treatment with Respondent immediately following a visit to the emergency room because of his severe low back pain, it appears that the treatment provided by Respondent was medically necessary and reasonable. Respondent stated that the therapy he provided was designed to help provide Claimant with some relief from his pain while he awaited resolution of the compensability dispute. Respondent further acknowledged his awareness that Claimant would need other treatment but stated he was unable to make referrals to other doctors until the compensability issue had been resolved.

The evidence shows that after Respondent provided the initial course of treatment to Claimant, he realized that further physical therapy would not be effective due to Claimant's continued pain levels and, therefore, only saw Claimant four times over the following six week period. As soon as the compensability issue was resolved, Respondent made appropriate referrals for Claimant so that he could receive additional necessary care from other doctors.

Based on the evidence presented, the undersigned ALJ finds that Petitioner has failed to meet its burden of proof to show by a preponderance of the evidence that services provided to Claimant on the disputed dates were not reasonable and medically necessary. Therefore, Respondent is entitled to reimbursement for services provided Claimant between October 20, 2003, and January 30, 2004.

II. FINDINGS OF FACT

1. On ___(Claimant) suffered a work related lower back injury and inguinal hernia on his left side, which rendered him unable to work.

2. The compensability of Claimant's injury was contested, which caused a significant delay in Claimant's ability to receive treatment for his injuries.

3. Claimant's inguinal hernia was surgically repaired in August 2003, when Medicaid approved payment for the procedure.

4. Following the hernia repair and immediately after an emergency room visit, Claimant began seeing Respondent for physical therapy treatment, which included manual therapy, mechanical traction, chiropractic manipulation, therapeutic procedures, office visits, and electrical stimulation.

5. Claimant tried, but was unable because of the disputed compensability issue, to obtain treatment for his injury for approximately three months prior to seeing Respondent.

6. The initial course of therapy and treatment provided by James Tanner, D.C. (Respondent) was intended to provide some pain relief to Claimant while he waited for the compensability dispute to be resolved.

7. After the initial course of treatment, Respondent only saw Claimant approximately four times over a six-week period.

8. Once Claimant's compensability dispute was resolved, Respondent made referrals to other doctors so that Claimant could receive additional necessary treatment.

9. Carrier denied payment for the services provided by Respondent to Claimant from October 20, 2003, and January 30, 2004, based on its assertion that such services were not medically reasonable or necessary to treat Claimant's injury.

10. The Texas Workers' Compensation Commission (Commission) relied upon an October 27, 2004, decision of the Medical Review Institute of America, an Independent Review Organization (IRO), and ordered reimbursement for the services provided on the disputed dates.

11. Texas Mutual Insurance Company (Petitioner) timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the Commission's decision on medical necessity grounds.

12. The Commission issued a notice of hearing on March 14, 2005.

13. The notice of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.

14. The hearing was continued and notice of the continued hearing date and time was sent by SOAH to the parties on September 13, 2005.

15. The hearing convened on November 29, 2005, with SOAH Administrative Law Judge (ALJ) Ami L. Larson presiding. Ryan Willett represented Petitioner and Respondent appeared by telephone *pro se*. The hearing concluded and the record closed that day.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.

2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.

3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

5. The party requesting the contested case hearing has the burden of proof.

6. Petitioner failed to prove by a preponderance of the evidence that the services provided to Claimant by Respondent between October 20, 2003, and January 30, 2004, were not reasonable and medically necessary.

ORDER

THEREFORE IT IS ORDERED that Texas Mutual Insurance Company should reimburse James Tanner, D.C. for charges associated with services provided to injured worker __from October 20, 2003, through January 30, 2004.

SIGNED January 6, 2006.

AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS