

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Petitioner**

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BEFORE THE STATE OFFICE

OF

V.

**KRIS WILSON, D.C.,
Respondent**

**ADMINISTRATIVE HEARINGS
DECISION AND ORDER**

I. STATEMENT OF CASE

Liberty Mutual Fire Insurance Company (Petitioner/Carrier) disputes the decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission¹ in a dispute regarding medical necessity for physical medicine procedures provided to ____. (Claimant). The IRO found that the services and procedures provided by Kris Wilson, D.C. (Respondent/Provider)² to__ from December 15, 2003, through January 23, 2004, were medically necessary.

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

II. FINDINGS OF FACT

1. On ____, Claimant ____, a _____ woman, injured her left foot, knee, and ankle when her left foot caught in the bottom shelf of a bookshelf, causing her to fall, twisting her left knee and ankle and impacting that same knee.
2. On the date of Claimant's compensable injury, Liberty Mutual Fire Insurance Company, (Carrier) was the workers' compensation insurance carrier for her employer.
3. On ____, Claimant was evaluated by her employer's doctor, Mark Godfrey, M.D. Dr. Godfrey diagnosed ankle and foot strain, wrapped her ankle, and placed Claimant on crutches. He further restricted Claimant to "minimal ambulation."

¹ Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

² Dr. Wilson is no longer at the Fort Worth Injury Rehabilitation Clinic, where the disputed services were provided.

4. On July 29, 2003, Claimant presented herself to Kris Wilson, D.C. at the Fort Worth Injury Rehabilitation Clinic (Provider), and designated Dr. Wilson as her treating doctor. Dr. Wilson worked at the Fort Worth Injury Rehabilitation Clinic.
5. That same day, Dr. Wilson diagnosed her injury as an internal derangement of the left ankle, internal derangement of the left knee, pain, weakness, and muscle spasms. Dr. Wilson indicated that Claimant qualified for participation in a course of active physical medicine rehabilitation to address her physical and functional deficits and improve her work capacity.
6. On July 29, 2003, Claimant began conservative therapy, with joint mobilization, neuromuscular reeducation, myofascial release, therapeutic procedures with one on one training, and ice and deep heat analgesic.
7. Based on an August 8, 2003 MRI report of Claimant's left knee, she had intrameniscal changes within the posterior horn, but no meniscal tear.
8. On August 29, 2003, Claimant underwent an independent medical evaluation, which was conducted by Charles F. Xeller, M.D. He found that Claimant's ankle and foot were healed but she was experiencing knee problems. Claimant had no instability and full range of motion in both knees, with the left knee tender over the medial joint line. Claimant had no real swelling in the left ankle, full range of motion, no instability, and a slight pain to palpation over the medial anterior aspect of her left ankle joint. Dr. Xeller indicated the possibility that Claimant had some torn cartilage in the left knee.
9. Cartilage is the structure between the bones and is different than ligament, which provides stability.
10. Provider continued providing therapy to Claimant from September 2 through September 26, 2003.
11. On September 29, 2003, Claimant was examined by Joseph Daniels, D.O., and diagnosed with an internal derangement of knee with meniscus tear. He recommended arthroscopic surgery.
12. Provider continued providing therapy to Claimant from October 1 through 17, 2003.
13. From July 29 through October 17, 2003, Claimant received approximately two hours of physical therapy from Provider on each date of service.
14. On October 20, 2003, Claimant underwent outpatient surgery. Her postoperative diagnoses was internal derangement of the left knee with patellofemoral subluxation and tear of the medial meniscus, anterior horn medial, posterior horn of lateral meniscus, and chronic diffuse synovitis. Dr. Daniels removed part of her cartilage and cut the ligament attached to her knee.
15. There were no complications from the October 20, 2003 surgery.
16. On September 29, 2003, before Claimant's surgery, Dr. Daniels recommended Claimant be provided post-operative physical therapy daily for one week in addition to therapy for four more weeks, three times per week.

17. For the type of surgery performed on Claimant, it is reasonable to prescribe six to twelve physical therapy sessions.
18. Carrier disputes medical services provided Claimant from November 10, 2003, through February 12, 2004.
19. Provider prescribed and provided the following disputed medical services for Claimant:

CPT CODE	SERVICE DESCRIPTIONS	MAR (per unit)	PAYMENT IN DISPUTE	DATES
97140	manual therapy	\$32.55	\$32.55	11/10/03, 11/11/03, 11/19/03, 11/21/03, 12/5/03, 12/10/03, 12/19/03, 12/24/03, 12/29/03, 1/7/04, 1/16/04, 1/19/04, 1/26/04, 1/30/04
97140	manual therapy	\$32.55	\$65.10 (2 units)	11/12/03, 11/13/03, 11/14/03, 11/17/03, 11/18/03, 11/20/03, 11/24/03, 11/25/03, 11/26/03, 12/1/03, 12/3/03, 12/8/03, 12/15/03, 12/17/03, 12/22/03, 12/23/03, 12/30/03, 12/31/03, 1/5/04, 1/9/04, 1/14/04, 1/21/04, 1/23/04, 1/28/04
97110	one on one therapy	\$34.34	\$206.04 (6 units)	11/10/03, 11/11/03, 11/12/03, 11/13/03, 11/14/03, 11/15/03, 11/17/03, 11/18/03, 11/19/03, 11/20/03, 11/21/03, 11/24/03, 11/25/03, 11/26/03, 12/1/03, 12/3/03, 12/5/03, 12/8/03, 12/10/03, 12/15/03, 12/17/03, 12/19/03, 12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03
97035	ultrasound therapy	\$14.93	\$14.93	11/10/03

CPT CODE	SERVICE DESCRIPTIONS	MAR (per unit)	PAYMENT IN DISPUTE	DATES
97112	neuromuscular reeducation	\$35.26	\$35.26	11/10/03, 11/11/03, 11/12/03, 11/14/03, 11/17/03, 11/18/03, 11/19/03, 11/21/03, 11/24/03, 11/25/03, 11/26/03, 12/1/03, 12/3/03, 12/5/03, 12/10/03, 12/17/03, 12/19/03, 12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04, 1/26/04, 1/28/04, 1/30/04

99070	supply materials	\$15.00	\$15.00	11/10/03, 11/11/03, 11/12/03, 11/13/03, 11/14/03, 11/17/03, 11/18/03, 11/19/03, 11/20/03, 11/21/03, 11/24/03, 11/25/03, 11/26/03, 12/1/03, 12/3/03, 12/5/03, 12/8/03, 12/10/03, 12/15/03, 12/17/03, 12/19/03, 12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04, 1/26/04, 1/28/04, 1/30/04
98943	chiropractic manipulation	\$29.41	\$29.41	11/10/03, 11/11/03, 11/12/03, 11/13/03, 11/14/03, 11/17/03, 11/18/03, 11/19/03, 11/20/03, 11/21/03, 11/24/03, 11/25/03, 11/26/03, 12/1/03, 12/3/03, 12/5/03, 12/8/03, 12/10/03, 12/12/03, 12/15/03, 12/17/03, 12/19/03,
98940	chiropractic manipulation	\$32.45	\$32.45	12/22/03, 12/23/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/9/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04, 1/26/04, 1/28/04, 1/30/04
97116	gait training	\$30.29	\$30.29	11/11/03, 11/13/03, 11/14/03, 11/17/03, 11/18/03, 11/19/03, 11/20/03, 11/21/03, 11/25/03, 12/1/03, 12/3/03, 12/5/03, 12/8/03, 12/10/03, 12/15/03, 12/19/03, 12/22/03, 12/24/03, 12/29/03, 12/30/03, 12/31/03, 1/5/04, 1/7/04, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04, 1/26/04, 1/28/04, 1/30/04
97530	kinetic activities	\$37.58	\$225.48 (6 units)	1/5/04, 1/7/04, 1/9/03, 1/12/04, 1/14/04, 1/16/04, 1/19/04, 1/21/04, 1/23/04, 1/26/04, 1/28/04, 1/30/04
CPT CODE	SERVICE DESCRIPTIONS	MAR (per unit)	PAYMENT IN DISPUTE	DATES
E 1399	durable medical equipment	\$16.00	\$16.00	11/20/03, 12/12/03, 12/22/03, 12/31/03, 1/12/03, 1/21/03
E 0745	neuromuscular stimulator	\$111.89	\$111.89	12/31/03, 1/30/04
99455	impairment rating/MMI exam	\$443.78	\$443.78	2/12/04
99080	special report	\$15.00	\$15.00	1/19/04, 2/2/04
99215	office visit	\$143.78	\$143.78	11/10/03, 12/5/03
99215	office visit	\$147.68	\$147.68	12/31/04, 1/30/04

20. Provider billed Carrier \$14,347.66 for the disputed services listed in the above finding of fact. Carrier's table of disputed charges contained double entries for services rendered on December 22, 2003, and January 5 and 7, 2004. The chart in the above finding of fact uses Carrier's billing records, which were more accurate.
21. In general, and except for the kinetic activities (CPT code 97530) performed in January 2004, the modalities performed by Provider on Claimant post-surgery were the same as the modalities provided pre-surgery.
22. There was no credible basis for Claimant receiving more than six to twelve visits after her surgery. Given the extensive pre-surgical treatment Claimant received from Provider, after six to twelve visits, Claimant could have performed home exercises.
23. Provider's program of rehabilitation exceeded that prescribed by Claimant's surgeon, Dr. Daniels.
24. There were no objective measurements of Claimant's range of motion improvements when services were provided to Claimant from November 10, 2003, through February 12, 2004.
25. The use of ultrasound, CPT code 97035, on the soft tissues of the knee is reasonable for a period of six to twelve visits after surgery.
26. With neuromuscular reeducation, CPT code 97112, a patient is trained on how to perform physical exercises.
27. On each date of service that Claimant received neuromuscular reeducation, she also received six units of one-on-one therapy.
28. There was no demonstrated need for Claimant to receive both one-on-one therapy, where Claimant received one-on-one medical supervision and neuromuscular reeducation on the same date of service.
29. Because Claimant had received extensive pre-surgical therapy, there was no objective showing of Claimant's need for neuromuscular reeducation.
30. Gait training, CPT code 97116, was performed to correct station and gait alterations.
31. As Claimant had no instability and no complications from surgery, there was no objective reason for providing Claimant with gait training.
32. On November 4, 2003, George Sage, D.C., reviewed Claimant's records and case information summaries, medical reports, radiology reports, and therapy notes, finding that Claimant had received over 40 sessions of therapy from July 28 to October 17, 2003, with treatment sessions lasting approximately two hours per date of service; however, Claimant had made no significant progress. Dr. Sage recommended no further treatment.
33. Claimant did not significantly improve after treatment from Provider beginning November 10, 2003, through February 12, 2004, or, after 12 visits where she received physical therapy.

34. There was no persuasive evidence that Claimant would require more than 12 visits of supervised therapeutic services after the surgery performed on October 20, 2003.
35. During the 12 visits for which supervised therapeutic services were reasonable, there was no showing that Claimant needed neuromuscular reeducation and gait training.
36. From November 10-25, 2003, Claimant visited Provider 12 times and received manipulations, physical therapy, chiropractic manipulations, and supplies. Chiropractic and physical treatments beyond these dates of service, such as those at issue, are excessive.
37. From November 10-25, 2003, excluding neuromuscular reeducation and gait training, Provider billed Carrier \$3,831.11.
38. On February 12, 2003, Dr. Wilson performed a full medical evaluation (TWCC 69 Report of Medical Evaluation) on Claimant, qualifying her with an 8 % whole person impairment rating with a designated MMI date on that same date.
39. Provider sought reimbursement from the Carrier for the provided medical services at issue in this proceeding.
40. Carrier timely sent explanations of benefit 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.
41. Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
42. An independent review organization (IRO) reviewed the medical dispute and found that the disputed services were medically necessary to treat the compensable injury.
43. Based on the IRO's findings, TWCC's Medical Review Division (MRD) granted Provider's request to be reimbursed for the disputed services.
44. After the IRO decision and MRD order were issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the above disputes.
45. TWCC referred this case to SOAH for hearing before September 1, 2005.
46. Required notice of the contested-case hearing concerning the dispute was timely mailed to Carrier and Provider.
47. On March 21, 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. The record closed that same day.
48. Provider appeared at the hearing represented by Patrick R. E. Davis, D.C.
49. Carrier appeared at the hearing through its attorney, Kevin J. Franta.

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, 79th 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), Carrier 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, materials, equipment, and office visits (excluding gait training and neuromuscular reeducation) provided from November 10 through 24, 2003, and the medical evaluation performed on February 12, 2004, represent elements of health care medically necessary under § 408.021 of the Act.
7. Based on the above Findings of Fact and Conclusions of Law, the gait training and neuromuscular reeducation provided from November 10, 2003, through February 12, 2004, do not represent elements of health care medically necessary under § 408.021 of the Act.
8. Based on the above Findings of Fact and Conclusions of Law, the physical therapy, materials, equipment, and office visits provided from November 25, 2003, through February 12, 2004, (excluding the February 12, 2004 examination) do not represent elements of health care medically necessary under § 408.021 of the Act.
9. Based on the above Findings of Fact and Conclusions of Law, Provider should only be reimbursed for the disputed services provided from November 10-24, 2003, excluding gait training and neuromuscular reeducation provided on those dates of service, and for the examination performed on February 12, 2004.

ORDER

IT IS ORDERED that Liberty Mutual Fire Insurance Company shall reimburse the Fort Worth Injury Rehabilitation Clinic for the physical therapy given Claimant from November 10-24, 2003, excluding gait training and neuromuscular reeducation provided on those dates of service. Liberty Mutual Fire Insurance Company is not required to reimburse Provider for services equipment, and supplies provided from November 25, 2003, through February 12, 2004, and is not required to reimburse Provider for gait training and neuromuscular reeducation provided on any of the disputed dates of service.

SIGNED May 18, 2006.

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