

**SOAH DOCKET NO. 453-05-9151.M5
MR NO. M5-05-2544-01**

**CARL M. NAEHRITZ, D.C.,
Petitioner**

V.

**LIBERTY MUTUAL FIRE INSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Carl M. Naehritz, D.C. (Petitioner) seeks reimbursement of \$2,342.22 for a type of spinal decompression therapy and associated office visits provided to a workers' compensation claimant from August 16, 2004, through September 7, 2004. The Texas Workers' Compensation Commission (Commission), acting through an independent review organization (IRO), denied reimbursement. This decision orders reimbursement of \$1,748.22 for the therapy but denies reimbursement of \$594 separately billed for nine of ten office visits over this period.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed in the Findings of Fact and Conclusions of Law. The hearing convened on February 1, 2006, before Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner appeared by telephone and represented himself. Respondent, Liberty Mutual Fire Insurance Company, was represented by Kevin J. Franta. The record closed on February 3, 2006, with the filing of additional documentation referenced during the hearing.

II. BASIS FOR DECISION

On____, the Claimant, a _____ male, suffered a compensable injury to his lumbar spine while lifting and turning with a package. The Claimant was employed by _____ at the time. An MRI conducted on October 20, 2003, showed a one millimeter bulging annulus at L4 - L5 and a two millimeter bulging annulus at L5 - S1. An EMG conducted on March 10, 2004, revealed a bilateral L4 radiculopathy and a right S1 radiculopathy. Prior to the treatments in dispute, the Claimant received "a lot of conservative treatment without benefit,"¹ including trigger point injections, lumbar epidural steroid injections, physical therapy, passive therapy, and oral pain medications.

The Claimant continued to experience chronic pain. His consulting neurosurgeon, George Crisp, M.D., referred him for the treatment in dispute on July 15, 2004. The treatment was then performed by the Petitioner from August 16, 2004, through September 7, 2004.

¹ Carrier Ex. 1, p. 49.

The evidence at hearing consisted of 240 pages of medical records pertaining to the Claimant. In addition, the Petitioner testified on his own behalf and presented the testimony of Scott Wallace, also a chiropractor, in support of the medical necessity of the disputed services. Chiropractor Kevin Tomsic testified on behalf of the Carrier.

The testimony of these witnesses indicated that VAX-D spinal decompression therapy has been found in some peer-reviewed studies to be efficacious most of the time for disc herniation. It has not been accepted, however, by the American College of Occupational and Environmental medicine consensus guideline, which Dr. Tomsic recommends as authoritative. Dr. Tomsic also stated that the MRI studies show degenerative disc disease rather than an acute injury, and that VAX-D has not been shown to be effective under such circumstances. Finally, Dr. Tomsic testified there was no basis for the multiple office visits separately billed by the Petitioner under billing code 99213.

The ALJ, however, finds reliable the testimony of Dr. Wallace and Dr. Naehritz that the services provided have been shown to be effective for treating chronic pain. Because the peer reviewed literature goes both ways on this issue, the ALJ relies primarily on the testimony of Dr. Naehritz, who had more first hand knowledge than Dr. Tomsic of the treatment at issue, and Dr. Naehritz testified from experience that the treatment can be effective and, in fact, was somewhat effective in reducing the Claimant's pain in this case.

The ALJ also declines to accept the Carrier's argument that, since previous treatments of other types of passive therapy had been unsuccessful, the proposed treatment was also destined to fail. Decompression therapy had not previously been performed on this Claimant and a trial of it was a reasonable progression in the Claimant's treatment program after having exhausted other types of conservative care.

The ALJ's finding is also consistent with the substantive finding of the IRO, which stated:

Although still an emerging technology, the mechanism of spinal decompression, coupled with the available research (albeit scant and not without its critics) does hold some promise for certain patients. A trial using this technology is justified.²

The IRO went on, however, to deny reimbursement on the basis that the treatment was provided under the wrong billing code. The Carrier, however, had denied payment on the basis that no further treatment was necessary, and not because of an incorrect billing code. Under these circumstances, the Carrier is restricted to the basis for denial provided to the service provider.³

Even so, the billing codes used by the service provider included ten office visits billed under Code 99213 in addition to separate billings for the therapy provided. The ALJ concurs with the testimony of Dr. Tomsic that, except for the first one, these office visits have not been justified. Accordingly, reimbursement will not be required for the other nine office visits billed at \$66 each for a total of \$594.

Based on the foregoing, the ALJ finds the Petitioner is entitled to total reimbursement of \$1,748.22 for the disputed services.

III. FINDINGS OF FACT

1. The Claimant sustained a compensable injury on____, while employed by _____.
2. Liberty Mutual Fire Insurance Company (the Carrier) was the workers' compensation carrier for the Claimant's employer.
3. The Petitioner provided a type of spinal decompression therapy known as "VAX-D" from August 16, 2004, through September 7, 2004.
4. The Carrier denied reimbursement for the services described in Finding of Fact 3 as medically unnecessary.

² Carrier Ex. 1, p. 4.

³ See SOAH Docket No. 453-01-3456.M5 (May 7, 2003)

5. The Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Carrier.
7. The Petitioner timely requested a hearing based on the IRO decision.
8. Notice of the hearing was sent on November 2, 2005.
9. 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.
10. The hearing was held February 1, 2006, with representatives of the Petitioner and the Carrier participating.
11. As a result of his compensable injury, the Claimant suffered from a bulging annulus at L4-L5 and at L5-S1 and experienced bilateral L4 radiculopathy and a right S1 radiculopathy.
12. Prior to the treatments in dispute, the Claimant received extensive conservative treatment, including trigger point injections, lumbar epidural steroid injections, physical therapy, passive therapy, and oral pain medications.
13. The Claimant continued to experience chronic pain and was referred for the treatment in dispute by George Crisp, M.D., on July 15, 2004.
14. A trial of VAX-D spinal decompression therapy was medically necessary for the Claimant. This treatment, while still an emerging technology, has been shown to provide relief for chronic pain for most patients. It was appropriate as a last resort in providing conservative care to the Claimant.
15. The Petitioner failed to establish that more than one office visit billed under CPT Code 99213 was required for the Claimant during the period in dispute.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.14(a).
5. The Petitioner established that one office visit and the disputed services pertaining to the VAX-D spinal decompression therapy were medically necessary to treat the Claimant's compensable injury.
6. The Petitioner did not establish that nine office visits billed under CPT Code 99213 between August 16, 2004, and September 7, 2004 were medically necessary to treat the Claimant's compensable injury.
7. The Petitioner's request for reimbursement should be granted for the services described in Conclusion of Law 5, and denied for the services described in Conclusion of Law 6.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company shall reimburse Carl M. Naehritz, D.C., \$1,748.22 for the disputed services provided to the Claimant between August 16, 2004, and September 7, 2004.

Signed April 4, 2006.

Kerry D. Sullivan
Administrative Law Judge
STATE OFFICE OF ADMINISTRATIVE HEARINGS