

**SOAH DOCKET NO. 453-05-9358.M5
TWCC MDR NO. M5-05-2412-01**

SOUTH COAST SPINE & REHAB, P.A.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
BROWNSVILLE ISD,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

South Coast Spine and Rehab, P.A. (South Coast) requested a hearing to contest the denial for reimbursement of services including office visits, therapeutic exercises, ultrasound, and a functional capacity evaluation from December 21, 2004, through January 26, 2005. This decision denies the relief sought by South Coast.

The hearing convened on March 27, 2006, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) Wendy K. L. Harvel. Robert S. Howell, D.C. represented South Coast. Dean Pappas represented Brownsville Independent School District (BISD). There were no contested issues of notice or jurisdiction. The hearing adjourned the same day. The record closed on April 10, 2006, with the filing of written closing arguments.

II. BACKGROUND

Claimant sustained a work-related injury on____, when she fell. She went to South Coast for treatment on November 4, 2004. She was diagnosed with bursitis and a torn tendon.

BISD reimbursed South Coast for the therapy Claimant received from November 4, 2004, through December 21, 2004. After December 21, 2004, BISD denied payment. The disputed issues in this case involve BISD's denial of charges from December 22, 2004, through January 26, 2005.

III. ANALYSIS

Dr. Howell argues that the therapy he provided for the Claimant allowed the Claimant's range of motion to improve. He also argues that the office visits, which occurred after each therapy session, were medically necessary in that he was monitoring the Claimant to ensure that she did not aggravate her injuries.

BISD argues that after December 21, 2004, the Claimant's condition did not improve and there was no significant reduction in her pain. Furthermore, BISD asserts that there was no need for the Claimant to see Dr. Howell three to four times per week for office visits.

Employees have a right to necessary health treatment under §§ 408.021 and 401.011. Section 408.021(a) provides 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 compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment. Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

The ALJ agrees with BISD that Dr. Howell's treatment after December 21, 2004, did not improve the Claimant's condition. Timothy Fahey, D.C. testified that as of December 21, 2004, Claimant rated her pain as a 2/10 on the pain scale. He further testified that at that time, her range of motion was normal. He testified that treatment was not necessary after December 21, 2004. The ALJ finds Dr. Fahey's testimony to be credible. Therefore, the ALJ finds that care provided to the Claimant after December 21, 2004, was not medically necessary.

IV. FINDINGS OF FACT

1. Claimant sustained a work-related injury on____, when she fell.
2. Claimant received an initial medical examination on November 4, 2004 at South Coast Spine and Rehab, P.A. (South Coast).
3. Claimant received physical therapy, ultrasound, and office visits from November 2004

through December 21, 2004, which Brownsville Independent School District (BISD) reimbursed to South Coast.

4. As of December 21, 2004, Claimant had a normal range of motion in her area of injury and minor pain.
5. As of December 21, 2004, Claimant did not need additional treatment given her normal range of motion and minor pain.
6. After December 21, 2004, BISD denied the claims for additional ultrasounds, office visits, therapeutic exercises, and a functional capacity evaluation.
7. South Coast sought reimbursement from BISD for services including office visits, ultrasound, therapeutic exercises, and a functional capacity evaluation from December 22, 2004, through January 26, 2005.
8. BISD denied reimbursement. South Coast timely appealed Carrier's denial. The Independent Review Organization found that the treatments between December 22, 2004, and January 26, 2005, were not medically necessary. The Medical Review Division of the Texas Workers Compensation Commission determined that South Coast did not prevail on the issue of medical necessity.
9. South Coast properly appealed the decision of the Texas Workers' Compensation Commission.
10. The treatment provided to Claimant did not relieve the effects naturally resulting from Claimant's compensable injury, promote her recovery, nor enable her to return to work because she already had a normal range of motion.
11. The treatment provided to Claimant was not medically necessary.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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. South Coast timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV' T. CODE

ANN. ch. 2001.

5. South Coast had the burden of proof, which was the preponderance of evidence standard. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i).
6. South Coast failed to demonstrate that Claimant's treatment was reasonable and medically necessary for the treatment of Claimant's injury, pursuant to TEX. LABOR CODE § 408.021(a).
7. Based upon the Findings of Fact and Conclusions of Law, South Coast is not entitled to additional reimbursement.

ORDER

THEREFORE IT IS ORDERED that South Coast Spine and Rehab, P.A. is not entitled to reimbursement in this matter.

SIGNED April 26, 2006.

**WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**