

SOAH DOCKET NO. 453-05-5860.M5
TWCC MR. NO. M5-04-3813-01

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
DFW PAIN CENTER, INC., Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Texas Mutual Insurance Company (Carrier) appealed the Texas Workers' Compensation Commission's Medical Review Division (MRD) decision regarding services provided by DFW Pain Center, Inc., to a workers' compensation claimant from December 4, 2003, through April 23, 2004. MRD accepted the Independent Review Organization's (IRO's) decision regarding medical necessity and also ordered payment for other charges the Carrier had denied but which the IRO did not address.

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing for this case convened on October 6, 2006, at the State Office of Administrative Hearings, 300 W. 15th St., 4th Floor, Austin, Texas, before the undersigned Administrative Law Judge (ALJ). Attorney Ryan Willett represented the Carrier. By telephone, Sheryl Tollenaar, D.C., the Provider's representative of record, informed the ALJ and the Carrier that neither she nor another Provider representative would be able to participate in the hearing. She asked to be allowed to submit a written closing argument, and the ALJ granted her request. The record closed on November 6, 2006, after both parties had an opportunity to file briefs and reply briefs.

The Provider asserted that its physical medicine care alleviated the claimant's pain and increased his strength. The Carrier argued that the care was not needed to treat the compensable shoulder injury. The IRO determined that somatosensory testing and more than two units of therapeutic activities on any one day of service were not medically necessary, but two units of therapeutic activities on any one day of service were medically necessary. (Neither the IRO nor MRD specified which two therapeutic activities were medically necessary or the reimbursement amounts for them.) In addition, MRD ordered the Carrier to reimburse the Provider for:

physical performance tests, CPT code 97550, performed on five dates of service; range-of-motion tests, CPT code 95851, performed on four dates of service, office visits, CPT code 99213, performed on March 17, 19, 24, and 26, 2004; and nerve conduction tests, performed on March 30, 2004, CPT codes 95900-TC and 95904-TC.

As reflected in the Findings of Fact and Conclusions of Law, this decision finds that the Carrier met its burden of proof as to services provided from January 19, 2004, through February 27, 2004, the last service date before the claimant underwent surgery to repair his rotator cuff. However, in all other respects, MRD's decision is upheld.

II. FINDINGS OF FACT

Procedural History and Notice

1. Texas Mutual Insurance Company (Carrier) appealed the Texas Workers' Compensation Commission's Medical Review Division (MRD's) decision issued on March 23, 2005, regarding services provided by DFW Pain Center, Inc., (Provider) to a workers' compensation claimant.
2. Based on the Independent Review Organization's decision, MRD determined two units of therapeutic activities on any one day of service were medically necessary.
3. MRD also ordered payment for other charges the Carrier had denied by asserting they were unbundled.

4. The Carrier timely requested a contested case hearing.
5. Notice of the hearing was sent to the parties on May 24, 2005.
6. 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.
7. Upon the Provider's request, continuances were granted, and by order issued August 25, 2006, the parties were provided notice of the hearing date.
8. The hearing for this case convened on October 6, 2006, at the State Office of Administrative Hearings, 300 W. 15th St., 4th Floor, Austin, Texas. Attorney Ryan Willett represented the Carrier, but no representative entered an appearance for the Provider.

Background

9. On _____, the claimant was at his job and carrying a box when he tripped and fell to the floor, slamming his left upper extremity into the floor as he fell forward.
10. On the date of the compensable injury, the claimant's employer had workers' compensation insurance with the Carrier.
11. The Provider first treated the claimant on December 3, 2003, and found he had a torn rotator cuff and the following symptoms:

severely restricted neck and left arm motion; significant, bilateral muscle spasms in the neck and shoulders; tenderness to palpation of the neck, shoulders, arms, and upper thoracic region; debilitating neck and left arm pain; significant upper back, right shoulder, and arm pain; and constant headaches.
12. The Provider rendered the disputed services from December 4, 2003, through April 23, 2004.
13. The services at issue included office visits, manual therapy, electrical stimulation, hot and cold packs, therapeutic activities, therapeutic procedures, somatosensory testing, physical performance tests, and range-of-motion (ROM) measurements.

14. The claimant had a prior cervical fusion of C5-6 with vertebral body screws and an anterior fixation plate in place. The MRI further revealed that the claimant had:

posterior osteophytic spurring with an associated disc bulge and foraminal narrowing at C3-4, C4-5, and C6-7 with artifact on the axial images that gave the appearance of osteophytic spurring; however, on the sagittal images, no osteophytic spurring was identified. There was also mild bilateral foraminal narrowing, primarily due to facet hypertrophy at C5-6.

Pre-Surgery Treatment

15. The Carrier paid for two units of physical performance testing, CPT code 97550, on six treatment dates: December 3, 4, 15, and 29, 2003, and January 12 and 26, 2004.
16. The Carrier has withdrawn its appeal as to office visits on December 5, 17, 30, 2003, and January 14 and 28, 2004.
17. Through the service date of January 16, 2004, the Carrier paid for 27 units of one-on-one therapeutic activities, CPT code 97530, that were provided on nine dates of service.
18. One-on-one supervision of activities is necessary to train a patient how to safely use a machine or to perform a specific exercise.
19. The Provider's notes do not explain why the claimant needed continued one-on-one therapy after January 16, 2004.
20. After this month-and-a-half of treatment, the claimant should have been transitioned to a group setting or home exercise program to perform active exercises.
21. On December 4, 2003, the Provider treated the claimant with myofascial release to reduce pain and spasms and to stop adhesion formation in the injured muscles. The Provider also used electrical stimulation to the upper back to reduce pain and provide a healing affect.
22. On December 5, 2003, the Provider treated the claimant with the same treatments and the claimant also began light, one-on-one therapeutic and ROM activities.
23. On December 15, 17, 19, 2003, the Provider treated the claimant with the same treatments and used the same treatment notes as for the December 5, 2003, date of service.

24. The Provider treated the claimant with the same treatments and wrote very similar or identical treatment notes on the following dates: December 22, 23, 26, and 30, 2003, and January 2, 5, 9, 12, 14, 16, 19, and 21, 2004.
25. The Provider treated the claimant with the same treatments and wrote very similar or identical treatment notes on the following dates: January 23, 26, 27, 28, and February 2, 4, 6, 9, 11, 13, 16, 18, 20, 25, 26, 27, 2004.
26. Although one stated goal of the Provider's care was to control pain, the claimant continued to have significant left shoulder and arm pain and weakness.
27. The Provider did not list what therapeutic activities the claimant was performing.
28. Without a clear description of particular activities, it is unclear whether those treatments were medically necessary.
29. The claimant's muscle strength and flexibility increased from December 4, 2003, through January 26, 2004, but the results were not significant and could have been achieved with unaided, normal healing.
30. On January 23, 2004, the claimant's surgeon recommended continued therapy with the Provider to help stop adhesive capsulitis and to improve the claimant's ROM.
31. Passive modalities are not indicated to stop adhesive capsulitis from forming.
32. On the last treatment date before the claimant's surgery, the Provider was treating him with the passive modality of myofascial release.

The Claimant's Surgery

33. On March 2, 2004, the claimant underwent surgery for a torn rotator cuff on his left shoulder.
34. On March 17, 2004, the claimant's surgeon released him to begin post-operative therapy.

Post-Surgical Treatments

35. After the claimant's surgery, he needed physical therapy to increase active and passive ROM and to regain muscle strength.

36. On March 17, 2004, the Provider treated the claimant with myofascial release and passive ROM activities and stretching.
37. On March 19 and 22, 2004, the Provider treated the claimant with the same modalities as on March 17, 2004.
38. On March 26, the Provider added upper body cycle and active ROM exercises to the claimant's treatment regimen.
39. As of March 30, 2004, as indicated by a nerve conduction study, the claimant had severe median nerve dysfunction in both hands and left C7 nerve root dysfunction.
40. As of April 20, 2004, the claimant needed to continue physical therapy to increase ROM and gradually regain muscle strength in his left shoulder. He also needed to continue home exercises.

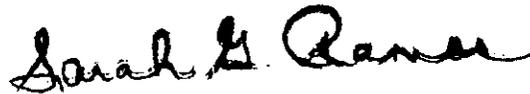
III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031 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 Carrier had the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
5. Pursuant to TEX. LAB. CODE ANN. § 408.021, therapeutic activities the Provider's treatment rendered to the claimant after January 16, 2004, and before March 17, 2004, were not medically necessary.
6. The Carrier did not meet its burden as to other services for which MRD ordered the Carrier to reimburse the Provider.

ORDER

IT IS, THEREFORE, ORDERED that the Carrier is not required to reimburse the Provider for therapeutic activities rendered to the claimant after January 16, 2004, and before March 17, 2004. In all other respects, MRD's decision is upheld.

SIGNED January 5, 2007.



**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**