

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Ste. 502
Austin, TX 78701

SOAH DOCKET NO. 453-02-3898.M5
[MDR TRACKING NO. M5-02-2411-01]

JESUS E. GARCIA, D.C.,
Petitioner

V.

FACILITY INSURANCE COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Facility Insurance Company (Carrier) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD), based on an independent review organization (IRO) review, regarding reimbursement for chiropractic services Jesus E. Garcia, D.C. (Provider) furnished to____ (Claimant). Disagreeing with the Carrier, which had denied reimbursement, the IRO found the services were medically necessary to treat the Claimant's compensable injury. The Carrier now appeals, claiming the services are not related to the compensable injury and are not medically necessary.

II. Procedural History

The State Office of Administrative Hearings (SOAH) has authority to issue a decision and order under TEX. LAB. CODE ANN. (the Act) § 413.031(d) and TEX. GOV'T CODE ANN. ch 2003.

A hearing convened on January 9, 2003, with Administrative Law Judge (ALJ) Wendy Harvel presiding. Attorney Steven Tipton represented the Carrier. The Provider did not appear and was not represented. Notice of the hearing was sent to the provider at its fax number of record.¹ This case was subsequently transferred to ALJ Melissa M. Ricard who reviewed the record and issues this decision.

¹ On January 10, 2003 (the day after the hearing date), the Petitioner faxed a letter to the State Office of Administrative Hearings (SOAH) explaining that the Provider was waiting on the date of the hearing to be called in order to participate by telephone. By SOAH Order dated November 5, 2002, the parties were informed that in order to participate in the hearing by telephone, approval in advance of the hearing was required. The record does not show that the Petitioner sought and gained such prior approval.

As set out below, the ALJ finds that the chiropractic services were not related to the compensable injury and not reasonably medically necessary to relieve the Claimant's pain, hence she denies the Provider's request for reimbursement.

III. Right to Health Care

Employees have a right to necessary health treatment under the Act. Section 408.021, Entitlement to Medical Benefits of the Act provides:

- (a) 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 Act provides that health care includes "all reasonably and necessary medical...services."

IV. Discussion

On _____, the Claimant was working for _____ when he sustained a work-related injury to his lumbar spine and right wrist. The Carrier is the employer's worker's compensation insurance Carrier. As a result of the compensable injury, the Claimant suffered pain in his back. On October 25, 1993, the Claimant began to receive chiropractic manipulations from the Provider for his back pain. The Claimant was seen by the Provider in 1993, 1994 and 1995.

On April 14, 1994, the Claimant reached maximum medical improvement with a permanent impairment rating of 9%. On May 20, 1995, the Claimant was released back to work. At the time the Provider stated that the Claimant "will have therapy if required in the future." The record shows that the Provider continued to see the Claimant in 1998, 1999, 2000, 2001 and 2002.

For the purposes of this appeal, the requested services are 14 chiropractic care sessions from April 28, 2001 to November 27, 2001 (the "14 sessions"). The 14 sessions were performed eight years after the compensable injury was sustained. The MRD Findings and Decision determined that the sole issue presented by the Carrier for review was the medical necessity for the treatments. The Carrier argues that the services are not be related to the compensable injury.

While possible, it is not obvious that back pain that much later was still caused by the compensable injury. The record includes letters from the Provider that argue that since the Claimant suffered permanent damage to his back, he is entitled to all medical care related to his compensable injury. However, the SOAP notes documenting the 14 sessions, which were the basis for the Extensive Peer Review and the IRO, reveal that the Claimant suffers from mild to moderate back pain, but attribute no source to the pain. Neither the SOAP notes, nor the rest of the record shows how these 14 sessions are related to the compensable injury other than general statements from the

Provider regarding the Claimant's permanent injury.

The parties also disagree regarding the medical necessity of the disputed treatments. The Carrier relies upon three Extensive Peer Reviews dated February 29, 2000, December 12, 2000 and May 6, 2002. The two reviews done prior to the dates of the 14 sessions state that “[n]o further chiropractic care would be reasonable, medically necessary or related to the traumatic event of 10/21/93.” (Carrier Ex. 1, pg.120 (*sic*)). The reviews indicate that the Claimant “...reached a static and stable end treatment point no later than 03/23/94 and subsequent treatment cannot be related to this occupational injury of 10/21/93.” (Carrier Ex.1, pg. 129).

The 14 sessions which are the subject matter of this appeal, as well as later treatments, were reviewed by the Extensive Peer Review dated May 6, 2002. That review concludes that the treatments were maintenance, and that there is no evidence of any change in the Claimant's status. The review indicates that the medical evidence suggests that the Claimant has reached a stable end treatment point. The Carrier's expert did not find that the Claimant's condition or complaints improved with the treatments, and based upon that finding concluded that future chiropractic care is not necessary. A home exercise program and over the counter medications were recommended to treat the Claimant's symptoms. In a nutshell, the Carrier argues that since the treatments do not result in improvement in the Claimant's medical condition, they are not reasonably medically necessary.

On June 27, 2002, the Texas Medical Foundation performed an independent review of the 14 sessions. The Notice of Independent Review Decision noted that the Claimant has the 9% impairment rating and that there is evidence of moderate chronic degenerative changes in the lumbar spine. The IRO found that the Provider notes for treatment supported the medical necessity of the treatments and that the Claimant responded well to the treatments. The IRO determined that the treatments were medically necessary and that they allowed the Claimant to continue with his employment.

The SOAP notes documenting the 14 sessions reveal that the Claimant was treated on a regular basis and after 9 of the 14 sessions he reported feeling only “slightly better.” After 4 sessions he reported feeling “better,” and on the last one he indicated he felt “much better.” The objective measures indicate that the Claimant suffers from some impairments, but they remained virtually consistent throughout the 14 sessions. The Provider argues that since the Claimant suffers a permanent impairment, he is entitled to medical treatments that may reduce his pain so that he may continue to work.

The Carrier, who seeks relief from the MRD decision, has the burden of proof. From the evidence, the ALJ concludes that the 14 sessions of chiropractic services at issue in this appeal were not medically necessary to treat the Claimant's compensable injury or pain stemming from it. Hence the Provider's request for reimbursement is denied.

III. Findings of Fact

1. On _____, the Claimant sustained a work-related injury to his back.
2. On the date of injury, the Claimant's employer was _____, and Facility Insurance Company (Carrier) was its workers' compensation insurance carrier.
3. As a result of the compensable injury, the Claimant suffered pain in his back.
4. The Claimant began to receive chiropractic manipulations from Jesus E. Garcia, D.C. (Provider) for his back pain on October 21, 1993.
5. The Claimant reached maximum medical improvement (MMI) with a whole-person impairment rating of 9% on April 14, 1994.
6. Seven years after the Claimant reached MMI, the Provider furnished 14 sessions of chiropractic services (the 14 sessions) to the Claimant from April 28, 2001 to November 27, 2001, to treat pain in the Claimant's back.
7. The Provider did not establish that the 14 sessions were related to the compensable injury.
8. The Claimant's pain symptoms did not improve much, if at all, during the seven-month period when the 14 sessions occurred.
9. The Provider sought reimbursement from the Carrier for the sessions for a total of \$932.00.
10. The Carrier denied the Provider's request for reimbursement for the 14 sessions, claiming the Provider's documentation did not show that they were medically necessary to treat the compensable injury.
11. On April 29, 2002, the Provider filed a request for medical dispute resolution with Texas Workers' Compensation Commission (TWCC), seeking reimbursement for the 14 sessions.
12. TWCC referred the dispute to an independent review organization (IRO), which reviewed the medical dispute and found the 14 sessions were medically necessary or effective to treat the Claimant's compensable injury.
13. Based on the IRO's review, the MRD, on July 11, 2002, ordered the Carrier to pay for the 14 sessions.

14. After the IRO review and the MRD denial, the Carrier, on July 17, 2002, asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the dispute.
15. On August 8, 2002, TWCC mailed notice of a contested-case hearing concerning the dispute to Carrier and the Provider.
16. On January 9, 2003, SOAH ALJ Wendy Harvel held a contested-case hearing on the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
17. The Carrier appeared at the hearing through its attorney, Steven Tipton.
18. The Provider did not appear at the hearing.

IV. Conclusions of Law

19. 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. LABOR CODE ANN. §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. ch. 2003 (West 2001).
20. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
21. As the party seeking relief, the Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h) (2002).
22. 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. TEX. LABOR CODE ANN. § 408.021 (a).
23. The above Findings of Facts do not reasonably show that the Claimant's pain during the period of the 14 sessions, which began eight years after the compensable injury and seven after the Claimant reached maximum medical improvement (MMI), was related to the compensable injury.
24. The above Findings of Facts do not reasonably show that the period of the 14 sessions, were medically necessary to treat the compensable injury.
25. Based on the above Findings of Fact and Conclusions of Law, the Provider's request for reimbursement for the 14 sessions be denied.

ORDER

IT IS ORDERED THAT the Provider's request for the reasonable and necessary costs of the Claimant's Chiropractic sessions, in the amount of \$932.00 is denied.

Signed March 3, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE