

**DOCKET NO. 453-03-0704.M5**  
**[MDR TRACKING NO. M5-02-2279-01]**

**DAVID BAUGHER, D.C.,**  
**Petitioner**

**VS.**

**CONTINENTAL CASUALTY**  
**COMPANY,**  
**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

David Baugher, D.C. seeks reimbursement of \$624.00 from Continental Casualty Company (Continental) for thirteen chiropractic manipulations administered to an injured worker (Claimant) over a seven month period. This decision agrees with Continental that Dr. Baugher failed to present objective findings and adequate documentation demonstrating the medical necessity of the manipulations. Consequently, reimbursement is not warranted.

**I. Statement of the Case**

Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on December 3, 2002. Dr. Baugher appeared and represented himself at the hearing. Continental appeared and was represented by Attorney James Loughlin. Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law without discussion here.

**II. Discussion**

In December 2000, Claimant fell from a chair at work and bumped her head on the floor. Thereafter, she began seeing Dr. Baugher, who diagnosed her with neck and back sprains/strains. Included in the care Dr. Baugher provided to the worker were thirteen chiropractic manipulations provided from May to September 2001, for which he seeks reimbursement of \$624.00. In support of Dr. Baugher's claim that his services were rendered consistent with § 408.021(a) of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 et seq., which entitles injured workers to all reasonably required healthcare,<sup>1</sup> he argued the following:

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<sup>1</sup>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."**

- The manipulations were rendered in order to break up soft tissue fibrosis that had accumulated as a result of the injury.
- The treatments constituted infrequently administered post-MMI<sup>2</sup> support care. Because she was at MMI, Claimant did not fall under the normal acute-phase treatment regimen even though the need for the care appeared to have been judged by Continental and the Independent Review Organization under those standards.
- The *Spine Treatment Guideline (Guideline)*<sup>3</sup> does not adequately account for treatment rendered, as here, beyond the general treatment time-frame format.
- Even though a post-MMI treatment plan might be a reasonable option, such a plan was not used here because Dr. Baugher did not know whether he would ever see Claimant again; she came in on an “as-needed” basis when she felt she was physically falling below her MMI level. According to Dr. Baugher, his “plan” always is not to see a post-MMI patient again.
- Even though Dr. Baugher’s treatment notes at each visit by Claimant were very brief and contained little information regarding his objective findings relating to Claimant’s condition, chiropractors’ objective findings manifest themselves in the treatment administered.

In support of its decision to deny reimbursement for the thirteen treatments, Continental offered the following arguments:

- Although the *Guideline* requires that treatment of work related injuries be adequately documented, Dr. Baugher failed to do so.
- Dr. Baugher did not have a treatment plan, which is required by the *Guideline* regardless of whether MMI has been reached.
- The nature of the adjustments performed by Dr. Baugher on Claimant’s visits, which he asserted constituted his objective finding, was not a sufficient substitute for objective findings.

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<sup>2</sup>“MMI” refers to “Maximum Medical Improvement.”

<sup>3</sup>28 TEX. ADMIN. CODE § 134.1001 *et seq.*

This decision does not conclude Dr. Baugher's treatments were unnecessary. Instead, his claim should be denied based on the absence of objective findings documenting Claimant's need for treatment and her positive response to it. The ALJ acknowledges Dr. Baugher's argument that because the disputed treatments were rendered post-MMI and on an as-needed basis, they occurred outside the traditional treatment format where a plan of treatment might more logically be used. Notwithstanding the argument's legitimacy, however, under no circumstances would Dr. Baugher be freed from the *Guideline's* requirements of objective findings and adequate documentation to support the treatment rendered. Dr. Baugher's argument that the manipulations themselves constituted his objective findings was not persuasive. While the manipulations might logically have been the product of his conclusion that treatment was necessary, they would not constitute pre-required, objective findings upon which he would have based his treatment.

Dr. Baugher's records did not adequately establish objective findings of medical necessity for the manipulations. Further, they were not consistent with the types of documents that, according to the Ground Rules of the *Guideline*, may be used to appropriately document progress attained via the manipulations.<sup>4</sup> Consequently, his request for reimbursement should be denied.

### **III. Findings of Fact**

1. An injured worker (Claimant) suffered a compensable injury in \_\_\_\_\_ when she fell from a chair and hit her head on the floor.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage through Continental Casualty Company (Continental).
3. On thirteen occasions from May 8, 2001, to December 7, 2001, David Baugher, D.C. performed chiropractic manipulations on Claimant, for which he requested \$624.00 in reimbursement from Continental under CPT Code 99213-MP.
4. Continental refused reimbursement.

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<sup>4</sup> The list of appropriate documents is found at 28 TAC § 134.1001(e)(3)(E).

5. In response to Continental's denial of reimbursement, Dr. Baugher requested medical dispute resolution.
6. The Independent Review Organization (IRO) that reviewed Dr. Baugher's claim found he was not entitled to reimbursement.
7. Upon receiving the IRO's decision, Dr. Baugher timely requested a hearing before the State Office of Administrative Hearings.
8. The SOAH hearing was held on December 3, 2002.
9. Notice of the hearing was sent to the parties on October 21, 2002. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
10. Dr. Baugher's medical records relating to his treatment of Claimant did not document objective findings reflecting either the medical necessity of the chiropractic manipulations provided to Claimant or her positive response to them.

#### **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(d) 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. §§2001.051 and 2001.052.
4. As Petitioner, Dr. Baugher has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).

5. Based on Finding 10 and pursuant to § 408.021(a) of the Act and 28 TAC § 134.1001, Dr. Baugher failed to demonstrate that the manipulations were medically necessary to treat Claimant's compensable injuries.
  
6. Dr. Baugher's request for reimbursement should be denied.

**ORDER**

**IT IS ORDERED** that the claim of David Baugher, D.C., for reimbursement from Continental Casualty Company in the amount of \$624.00 is denied.

**Signed this 30<sup>th</sup> day of January, 2003.**

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**GARY W. ELKINS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**