

A. KENT RICE, D.C.,  
*Petitioner*

V.

FIDELITY & GUARANTY INSURANCE  
COMPANY,  
*Respondent*

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

## DECISION AND ORDER

A. Kent Rice, D.C., seeks reimbursement from Fidelity & Guaranty Insurance Company (Carrier) for numerous chiropractic treatments and services provided to Claimant Dr. Rice challenges the decision of an Independent Review Organization, which found that the disputed services were not medically necessary and were inadequately documented. This decision finds that reimbursement should be denied in part and granted in part.

### I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues regarding notice and jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened June 24, 2003, at the hearings facility of the State Office of Administrative Hearings before Administrative Law Judge (ALJ) Katherine L. Smith. Dr. Rice represented himself and appeared by telephone. The Carrier was represented by Steven M. Tipton, an attorney. The record was closed the same day.

### II. BASIS FOR DECISION

#### A. Background

Claimant was injured on \_\_\_\_, when he was hit by a truck and wedged against a fork lift. He injured his lower back, groin, and abdomen. He was diagnosed with lumbar radiculitis and thoracic nerve root irritation. He was under chiropractic care beginning on February 27, 2001. The services in dispute were provided between May 19, 2001, and February 8, 2002. The services in question include office visits, reports analyses, physical therapy sessions, motor studies, range of motion testing, physician conferences, report preparation, and functional capacity evaluations (FCEs). Claimant underwent work hardening from August 8 to October 19, 2001, which is not in dispute in this proceeding.

## **B. Applicable Law**

Pursuant to the Texas Workers' Compensation Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.<sup>1</sup>

The Commission's Spine Treatment Guideline (STG), 28 Tex. Admin. Code (TAC) § 134.1001, sets certain requirements for treating spinal injuries.<sup>2</sup> The STG provide that treatment of a work-related injury must be:

- (1) adequately documented;
- (2) evaluated for effectiveness and modified based on clinical changes;
- (3) provided in the least intensive setting;
- (4) cost effective;
- (5) consistent with this guideline or contain a documented clinical rationale for deviation from this guideline;
- (6) objectively measured and demonstrate functional gains; and
- (7) consistent in demonstrating ongoing progress in the recovery process by appropriate re-evaluation of the treatment.

STG Ground rule (e)(2)(A). The STG requires a documented treatment plan (including proposed methods, expected outcomes, and probable duration) and documentation substantiating any need to deviate from the STG. STG Ground rule (e)(3)(B)(iii). The treating doctor must demonstrate the appropriateness of all services and the relatedness of all services to the compensable injury. STG § (c)(2)(A)(ii) and (iii). The STG recognizes three levels of care based on the length of treatment, type of injury, and response to treatment: initial, intermediate, and tertiary. Additionally, the STG recognizes a post-tertiary level of treatment.

Dr. Rice bears the burden of proof in this proceeding pursuant to 28 TAC § 148.21(h) and (i).

## **C. Analysis**

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<sup>1</sup> TEX. LAB. CODE ANN. § 408.021(a).

<sup>2</sup> Although the Spine Treatment Guideline was repealed, effective January 1, 2002, it was largely in effect at the time of the injury and treatments in question.

Dr. Rice's main complaint is that the IRO was remiss in not asking for additional information pursuant to 28 TAC § 133.308 for before making its decision. With the additional evidence submitted in this proceeding, Dr. Rice believes that there is sufficient information to justify the care given.

Carrier counters that Dr. Rice was obligated to supply all the documentation supporting the medical necessity of the treatment, and that the IRO was not obligated to seek out more information. Carrier also argues, however, that the IRO had sufficient information from which to make its decision denying reimbursement. In support of its position, Carrier relies on the written statements of three reviewing doctors. Ex. 3. Kellie Timberlake-Lancaster, D.C., stated that she saw no objective findings or ongoing notes justifying why Claimant's case was not a routine case and nothing to suggest why Claimant's treatment did not fall within the usual guidelines. Dr. Timberlake-Lancaster stated further that there was no indication that treatment was necessary beyond April 27, 2001. Michael Doone, D.C., also stated that there was no justification for treatment beyond May 2, 2001, at which time Claimant should have reached maximum medical improvement (MMI). Finally, Gregory Baker, D.C., who performed a medical evaluation of Claimant on November 9, 2001, found that Claimant had reached MMI on May 15, 2001, and was 0% impaired by November 2001.

Dr. Rice testified that there are 26 services at issue, consisting of 17 office visits and nine case management services, but Dr. Rice actually testified about 35 services. At issue in this proceeding are treatments provided in May 2001, which Dr. Rice identified as being part of the initial phase of care; treatments provided in June and July 2001, which Dr. Rice identified as being part of the intermediate phase of care; and services provided after December 3, 2001, which Dr. Rice identified as being part of the post-tertiary phase. Ex. 1 at 1-2. During the tertiary phase, Claimant attended work hardening.

Although the Carrier's experts stated that intensive, ongoing treatment was not necessary beyond the first of May, the ALJ is willing to consider that Claimant needed additional treatment during the time Dr. Rice determined to be the intermediate phase of care. It would have been reasonable for Dr. Rice to have performed further diagnostic testing at the beginning of the intermediate phase of care and an FCE to determine whether Claimant was a candidate for work hardening during the tertiary phase of care. The ALJ, therefore, finds that reimbursement should be provided for the following services: range of motion testing and motor study provided on June 7, 2001, and FCE performed on July 12, 2001. With regard to the rest of the services that were provided between May 19, 2001, and July 13, 2001, the ALJ is of a different opinion, however.

Although Dr. Rice believes that he has now provided sufficient information justifying the care given, he is mistaken. In short, Dr. Rice has provided insufficient documentation justifying reimbursement for the services provided. To make it easier for the reader to understand the basis for the ALJ's reasons, the ALJ refers the reader to the attached Appendix.

With regard to the remaining services provided in December 2001 and later consisting of reports analyses, office visits, range of motion testing, motor study, report preparation, and FCE, the ALJ concurs with the opinions offered by the Carrier's reviewers that no further chiropractic services were warranted and concludes that the continuing chiropractic care was inadequately documented

and medically unnecessary. At that point, Claimant was in the post-tertiary phase of care. Yet Dr. Rice continued to provide additional treatment with no apparent planning or re-evaluation for effectiveness. The ALJ is particularly struck by the lack of reference to the work hardening program and why more treatment was still necessary after such an intensive program. The ALJ notes, in particular, that no FCE was performed at the end of the work hardening program to assess Claimant's status. Although Claimant is entitled to "all health care reasonably required by the nature of the injury as and when needed . . . that cures or relieves the effects naturally resulting from the compensable injury,"<sup>3</sup> that does not mean that the Claimant is entitled to every treatment available. Although the STG recognizes that some injured workers may be outside the guideline's parameters, cases exceeding the guideline's level of treatment are "subject to more careful scrutiny and review" and "require documentation of the special circumstances justifying that treatment." STG Ground rule (e)(1). The documentation of the treatments provided in December and later do not meet heightened scrutiny and the need for more careful documentation.

Although Claimant continued to experience pain, the record fails to show that the treatments provided by Dr. Rice during the post-tertiary phase of care were reasonable or necessary to deal with Claimant's complaints. Claimant returned to work on November 3, 2001, with light duty. What Dr. Rice was hoping to accomplish with subsequent treatment is not clear from the record. On January 11, 2002, Dr. Rice noted that flare-ups were a result of Claimant's duties. Ex. 1 at 122. But there was no description of what had happened and how his duties exacerbated his original injury. Further, just saying on \_\_\_\_\_, that the "medical necessity of on going treatment is substantiated by persistent symptoms and significant correlating objective findings" is not enough, particularly, when the identical statement was made on June 7, 2001. Ex. 1 at 122, 71. The only conclusion that one can make is that there was little or no substantial change in Claimant's condition from the beginning to the end of his treatment.

Therefore, except for the range of motion testing and motor study performed on June 6, 2001, and the FCE performed on July 13, 2001, the chiropractic care at issue in this proceeding was inadequately documented and not shown to be medically necessary. The ALJ finds that Dr. Rice failed to establish entitlement to any other request for reimbursement. Accordingly, the request for additional reimbursement is denied.

### **III. FINDINGS OF FACT**

1. Claimant was injured on \_\_\_\_\_, when he was hit by a truck and wedged against a fork lift. He injured his lower back, groin, and abdomen. He was diagnosed with lumbar radiculitis and thoracic nerve root irritation.
2. At the time of the Claimant's compensable injury, Fidelity & Guaranty Insurance Company (Carrier) was the workers' compensation insurer for Claimant's employer.
3. Claimant began chiropractic care with A. Kent Rice, D.C., on February 27, 2001. The

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<sup>3</sup> TEX. LAB. CODE ANN. § 408.021(a).

services in dispute include office visits, reports analyses, physical therapy sessions, motor studies, range of motion testing, physician conferences, report preparation, and functional capacity evaluations (FCEs), which were provided between May 19, 2001, and February 8, 2002.

4. The Carrier denied reimbursement for the expenses associated with the services identified in Finding of Fact No. 3.
5. Dr. Rice timely requested dispute resolution by the Texas Workers' Compensation Commission (Commission), which referred the matter to an Independent Review Organization.
6. The Independent Review Organization's decision was issued on December 2, 2002, finding in favor of the Carrier.
7. Dr. Rice filed a request for a hearing on December 13, 2002.
8. Notice of the hearing was sent January 10, 2003.
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. Dr. Rice reasonably performed range of motion testing and a nerve conduction study on June 6, 2001, at the beginning of the intermediate phase of care and a functional capacity evaluation (FCE) on July 12, 2001, to determine whether Claimant was a candidate for work hardening during the tertiary phase of care.
11. Dr. Rice provided inadequate documentation supporting the billings submitted for the remainder of the services provided between May 19, 2001, and July 13, 2001.
12. Dr. Rice provided additional treatment during the post-tertiary phase of care with no planning or re-evaluation for effectiveness.
13. The need for additional chiropractic services, including reports analyses, office visits, range of motion testing, motor study, report preparation, and an FCE provided in December 2001 and later during the post-tertiary phase was not adequately documented and described.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Dr. Rice filed a timely request for a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) §

148.3.

4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TAC § 148.4.
5. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC ch. 148.
6. Dr. Rice had the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TAC §148.21(h).
7. Except for the range of motion testing and motor study performed on June 6, 2001, and the FCE performed on July 7, 2001, the remainder of the services provided between May 19 and July 13, 2001, were not adequately documented and properly billed pursuant to 28 TAC § 134.1001, Ground rule (e)(2)(A).
8. Concerning the remaining services referenced in Finding of Fact Nos. 12 & 13, the services were not adequately documented pursuant to 28 TAC § 134.1001, Ground rules (e)(1) and (e)(2)(A).
9. Based on Findings of Fact Nos. 11 - 13 and Conclusions of Law Nos. 7 & 8, the disputed services were not shown to be medically necessary health care for the Claimant and did not constitute reasonable health care pursuant to TEX. LAB. CODE ANN. § 408.021(a).
9. Based on the foregoing, the Dr. Rice's claim for reimbursement from the Carrier for the disputed chiropractic treatment should be denied.

### **ORDER**

Fidelity & Guaranty Insurance Company shall reimburse Dr. Rice for the range of motion testing and nerve conduction study performed on June 6, 2001, and the functional capacity evaluation performed on July 13, 2001. Otherwise, Dr. Rice's claim for additional reimbursement is denied.

**SIGNED this 19<sup>th</sup> day of September 2003.**

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**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**