DOCKET NO. 453-03-1759.M5
MDR NO. M5-02-2476-01

ST. PAUL MERCURY INSURANCE CO., *Petitioner*	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
CENTRAL DALLAS REHABILITATION, *Respondent*	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

St. Paul Mercury Insurance Company (Carrier) requested a hearing on the decision of the Independent Review Organization (IRO) granting reimbursement to Central Dallas Rehabilitation (Provider) for office visits, various passive modalities (including joint mobilization and myofascial release), chiropractic manipulations, range-of-motion treatments, muscle testing, and work hardening provided to injured worker ____ (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Carrier has shown that the treatments in dispute were not medically necessary and should not be reimbursed.

I. BACKGROUND

Claimant suffered compensable, work-related injuries to his shoulder and spine when he fell from scaffolding on ____. The very next day, Claimant began receiving treatment from Provider. This treatment included joint mobilization, myofascial release, chiropractic manipulations, range-of-motion treatments, and muscle testing. Between January 30, 2001, and April 2, 2001, Claimant had 37 sessions with Provider which are not in dispute in this case. Provider continued to provide this same type of treatment and, on April 23, 2001, Provider placed Claimant in a work hardening program. Claimant remained in the work hardening program until June 5, 2001. Carrier, as the workers compensation insurance carrier for Claimant's employer, declined to reimburse the treatments after April 2, 2001, including the work hardening program, contending they were not medically necessary. The dates of service in dispute are April 3, 2001 through August 27, 2001, and the total amount in dispute is $13,722

Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to

an IRO designated by the Commission for the review process. The IRO determined that the services in issue were medically necessary treatment for Claimant's compensable injury. Carrier then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on August 17, 2004, with ALJ Craig R. Bennett presiding. Carrier appeared through its attorney, Steve Tipton. Provider appeared by telephone through its attorney, Scott Hilliard. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. PARTIES' ARGUMENTS

This case involves a dispute over the necessity of chiropractic treatment, office visits, various passive modalities and testing, and work hardening for Claimant. Carrier asserts that Claimant merely had shoulder and spine strain/sprains, and should not have needed extensive treatment to recover from these relatively minor injuries. Carrier points out that Claimant had 37 sessions with Provider prior to the dates of service in dispute. Carrier argues that this was more than adequate and that Claimant should not have needed additional treatments. Moreover, Carrier asserts that the additional treatments provided no benefit to Claimant, noting that Claimant was able to perform light duty work on March 7, 2001, but actually regressed to a sedentary level by May 7, 2001, after continuing with treatment by Provider. Further, Carrier points out that Claimant himself indicated the chiropractic treatments were not significantly helping him.

As for work hardening, Carrier argues that such treatment was not necessary for Claimant's relatively minor injury. Moreover, Carrier contends that the documents do not show that genuine work hardening was provided to Claimant, as there was little or no psychiatric evaluation or vocational assistance—two essential components of work hardening. Carrier's arguments are supported by the testimony of its witness, Dr. Roger Canard, who provided expert opinions consistent with Carrier's position.

Provider disagrees on the extent of Claimant's injury, asserting that Claimant had a labrum tear in addition to the other injuries noted by Carrier. Moreover, Provider argues that Carrier has disregarded Claimant's spinal injuries when focusing on the treatment needed. Provider points out

that Carrier initially challenged Claimant's extent of injury and whether any spinal injuries were work-related and compensable. These spinal injuries were later determined to be compensable by a Commission Appeal Panel. Provider alleges that, in addressing the treatment for Claimant's injuries, Carrier's peer review doctor focused only on the shoulder injury and did not adequately address the spinal strain/sprains. Given the extensive injuries to numerous body parts, Provider asserts that the treatment provided to Claimant was reasonable.

Provider also asserts that the documentary evidence shows that work hardening was necessary for Claimant. In particular, Provider contends that Claimant still had significant pain, limited range of motion, and limited strength even after the various chiropractic and other treatments were provided. Based on this, Provider concluded that Claimant would not be able to perform his prior job duties. Further, because Claimant showed signs of symptom magnification, Provider argues that these were behavioral concerns that would need to be addressed to allow Claimant to return to work. Provider's arguments were supported at hearing by the testimony of Dr. Ted Krejci.

III. ALJ'S ANALYSIS

After considering the arguments and evidence presented, the ALJ concludes the disputed services were not medically necessary for treatment of Claimant's compensable injury. Therefore, the ALJ finds that Provider is not entitled to reimbursement.

First, Claimant's injury was fairly limited. The weight of the evidence supports the conclusion that Claimant merely had shoulder and spinal strain/sprains, and not a labrum tear. Specifically, neither Dr. Canard, the IME doctor, nor the designated doctor diagnosed Claimant with a labrum tear and there are no objective diagnostic studies or other evidence in the record supporting a finding of a labrum tear.

Given the limited scope of Claimant's injury, the ALJ finds Dr. Canard's opinion persuasive that the 37 sessions provided to Claimant by Provider were more than sufficient to treat Claimant's injury. Specifically, Dr. Canard's opinion is that the accepted treatment protocol would be “one to three times per week with no consecutive day care, not exceeding six weeks or 12 office visits of

chiropractic care."[1] Provider correctly points out that Dr. Canard's written peer review was primarily focused on Claimant's shoulder injury, although he did mention the possibility that Claimant had a cervical sprain. At the hearing, though, Dr. Canard testified that his treatment opinion did not change in light of the compensability determination related to Claimant's spinal injuries. Rather, Dr. Canard affirmed that the treatment in dispute was not necessary for the spinal injuries for the exact same reasons they were not necessary for the shoulder injury. Dr. Canard noted that even the designated doctor, while Claimant was in the work hardening program, found that Claimant had no measurable spinal impairment.

Moreover, as the evidence clearly shows, the continued treatment by Provider was of little ongoing benefit and, in fact, during the treatment Claimant's ability to return to work actually regressed. On March 7, 2001, Dr. Ken Haycock performed a Functional Capacity Evaluation (FCE) on Claimant and concluded that he could function at a light duty level. On April 24, 2001, Claimant was found to be at maximum medical improvement (MMI) and released to return to work without restrictions by Dr. Hooman Sedighi, M.D., who performed an independent medical examination of Claimant.[2] However, on May 7, 2001, in the middle of Provider's treatment, Claimant was placed at a sedentary level and not released to work by Provider. Further, Claimant himself indicated that Provider's treatment appeared to provide little benefit. Dr. Sedighi noted that "[Claimant] continues to go to the chiropractor's office for passive modalities and therapy without any lasting benefit as reported by the patient. Chiropractic manipulations have not afforded the patient any significant long term benefit per his own report."[3]

Therefore, the evidence tends to indicate that the additional treatments in dispute in this case were not likely to offer significant benefit to Claimant. It does not appear that additional chiropractic manipulations and the other passive modalities in issue were reasonable or necessary, when the first 37 sessions provided relatively little benefit. Moreover, given the nature of the injuries, the ALJ

[1] Carrier's Ex. 2, at 2.

[2] Claimant was later examined by the Commission's designated doctor and also found to be at MMI, although this examination occurred on or around June 1, 2001. The designated doctor found a higher level of impairment than Dr. Sedighi—based on Claimant's limited range of motion in his shoulder.

[3] Carrier's Ex. 3, at 1.

agrees with Dr. Canard's assessment that Claimant's condition was likely to improve with time and increased usage once he returned to work. As such, the ALJ does not find the continued chiropractic treatments, passive modalities, range-of-motion treatments, muscle testing, or office visits to be medically necessary for treatment of Claimant's compensable injuries, and Carrier is not required to reimburse these treatments.

The ALJ also finds that work hardening was not medically necessary. Work hardening is defined as:

> Work Hardening: A highly structured, goal-oriented, individualized program designed to maximize the ability of the persons served to return to work. Work hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker. Work Hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work Hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.[4]

To support the necessity of work hardening, the evidence should contain adequate justification of the need for an interdisciplinary program to allow Claimant to return to work. Further, the evidence should reflect specific impairments of the Claimant's ability to perform some or all of the functions of his job before work hardening is deemed necessary. Finally, the work hardening should be directed at specifically training Claimant to return to work.

[4] See 28 TEX. ADMIN. CODE §134.201, which adopts the Commission's Medical Fee Guideline. The Medicine Ground Rules, at II. E., define and describe Work Hardening. Although there have been, and continue to be, legal challenges to the Commission's various guidelines, the ALJ is unaware of any dispute as to the reliability of the Commission's definition of work hardening.

While the evidence indicates that Claimant had ongoing pain and some limited functioning, there is persuasive evidence in the record indicating that Claimant was still capable of returning to work and did not need work hardening. As noted above, Both Dr. Canard and Dr. Sedighi concluded that Claimant was capable of returning to work prior to the work hardening program. As Dr. Canard noted, "There is no indication of pathology of the shoulder that would require work hardening and I feel the patient can return to work without restrictions. I feel the earlier the patient returns to work, the more the shoulder will come back to normal function as the result of the sprain and contusion."[5] Dr. Canard affirmed this opinion at the hearing and further indicated that Claimant's spinal strain/sprains did not alter his conclusion.

Moreover, from the documentation in the record, it appears that Provider did not provide a full work hardening program to Claimant. There is little evidence regarding Claimant's job requirements and duties, and little discussion of how Claimant's work activities were impeded by his compensable injury or how work hardening might improve his ability to return to work. Moreover, the record is lacking in evidence showing significant behavioral and attitudinal treatments for Claimant—an element of work hardening. Although the lack of documentation is not an issue in this case, it can be relevant to the issue of medical necessity. Namely, if a Carrier contends a certain treatment is not necessary, and the evidence indicates that treatment was not fully provided, that supports Carrier's position that the treatment was not necessary. In this case, the records tend to indicate that Claimant generally went through a standardized rehabilitation program and not an individualized work hardening program focused on Claimant's job duties. This supports the assertion that genuine work hardening was not actually necessary for Claimant.

For the reasons identified above, the Carrier established by a preponderance of the evidence that the services in dispute were not medically necessary treatment for Claimant. Accordingly, reimbursement should be denied.

[5] Carrier's Ex. 2, at 4.

IV. FINDINGS OF FACT

1. ____ (Claimant) suffered compensable, work-related injuries to his shoulder and spine on ____.

2. St. Paul Mercury Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injuries.

3. On January 30, 2001, Central Dallas Rehabilitation (Provider) began providing treatment to Claimant for his compensable injuries. This treatment included joint mobilization, myofascial release, chiropractic manipulations, range-of-motion treatments, and muscle testing.

4. Between January 30, 2001, and April 2, 2001, Claimant had 37 treatment sessions with Provider which are not in dispute in this case.

5. Provider continued to provide treatment to Claimant and, on April 23, 2001, Provider placed Claimant in a work hardening program.

6. Claimant was capable of returning to work prior to the work hardening program.

7. Provider failed to show that Claimant had behavioral, attitudinal or other factors that prevented Claimant from being able to return to work on or after April 24, 2001.

8. Claimant remained in the work hardening program until June 5, 2001.

9. After the conclusion of the work hardening program, Provider continued to provide various treatment to Claimant through August 27, 2001.

10. The continued therapeutic and chiropractic treatment by Provider was of little ongoing benefit and, in fact, during the treatment Claimant's ability to return to work actually regressed.

    a. On March 7, 2001, Dr. Ken Haycock performed a Functional Capacity Evaluation (FCE) on Claimant and concluded that he could function at a light duty level.

    b. On April 24, 2001, Claimant was found to be at maximum medical improvement (MMI) and released to return to work without restrictions by Dr. Hooman Sedighi, M.D., who performed an independent medical examination of Claimant.

    c. On May 7, 2001, in the middle of Provider's treatment, Claimant was placed at a sedentary level and not released to work by Provider.

11. Claimant himself indicated that Provider's treatment appeared to provide him little lasting benefit.

12. Provider billed Carrier the amount of $13,722 for the treatments provided to Claimant between April 3, 2001 and August 27, 2001.

13. Carrier, as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse the treatments provided between April 3, 2001 and August 27, 2001, including the work hardening program, contending they were not medically necessary.

14. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).

15. MRD ordered reimbursement on September 24, 2002, based on the IRO physician reviewer's determination that the services in issue were medically necessary.

16. On October 9, 2002, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).

17. Notice of the hearing was sent by the Commission to all parties on January 17, 2003. Based upon the parties' agreements, the hearing was continued. Thereafter, the case was abated in its entirety pending the resolution of related compensability disputes.

18. The abatement was lifted and, on August 17, 2004, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Carrier appeared through its attorney, Steve Tipton. Provider appeared by telephone through its attorney, Scott Hilliard. The hearing concluded and the record closed that same day.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.

2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.

3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).

6. Carrier has shown, by a preponderance of the evidence, that the services in issue provided to Claimant between April 3, 2001, and August 27, 2001 were not medically necessary for treatment of Claimant's compensable injury.

7. Carrier is not liable to reimburse Provider for the treatments provided to Claimant between April 3, 2001, and August 27, 2001.

ORDER

IT IS ORDERED that St. Paul Mercury Insurance Company is not required to reimburse Central Dallas Rehabilitation for the treatments provided to Claimant between April 3, 2001, and August 27, 2001.

SIGNED September 23, 2004.

CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS