

**SOAH DOCKET NO. 453-03-1904.M5**  
**[MDR TRACKING NO. M5-03-0056-01]**

|                                 |   |                                |
|---------------------------------|---|--------------------------------|
| <b>LOUIS PATINO, D.C.,</b>      | § | <b>BEFORE THE STATE OFFICE</b> |
| <b>Petitioner</b>               | § |                                |
|                                 | § |                                |
| <b>VS.</b>                      | § | <b>OF</b>                      |
|                                 | § |                                |
| <b>SERVICE LLOYDS INSURANCE</b> | § |                                |
| <b>COMPANY,</b>                 | § |                                |
| <b>Respondent</b>               | § | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

Louis Patino, D.C. seeks reimbursement of \$5,125 from Service Lloyd’s Insurance Company (Carrier) for chiropractic treatments administered to an injured worker (Claimant) from August 22, 2001, through September 21, 2001. This decision finds Dr. Patino is not entitled to the requested reimbursement because the initial course of conservative chiropractic treatments showed only marginal success in relieving Claimant’s pain. There was insufficient evidence that additional conservative chiropractic treatments would be successful in alleviating Claimant’s pain and therefore the additional treatments were not medically necessary.

**I. STATEMENT OF THE CASE**

Administrative Law Judge (ALJ) Nancy N. Lynch convened and closed a hearing on March 12, 2003. Dr. Patino appeared by telephone and represented himself. Carrier appeared and was represented by Attorney Tommy W. Lueders. Notice and jurisdiction, which were not disputed, are addressed in the findings of fact and conclusions of law without further discussion here.

**II. DISCUSSION**

**A. Applicable law**

Section 408.021(a) of the Texas Labor Code (Act) provides that 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.**

“Health care” includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services. Act, § 401.011(19).

Dr. Patino has the burden of proof in this proceeding because he is challenging the decision of the Independent Review Organization (IRO). 28 TEX. ADMIN. CODE (TAC) § 148.21(h).

**B. The facts**

Claimant suffered an injury to his lower back on \_\_\_\_\_, while lifting heavy objects at work. However, his claim for workers’ compensation benefits was contested and it was not until \_\_\_\_\_, that his injury was determined to be compensable. (TWCC-24, Exh. 1)

Claimant consulted Dr. Patino the day after the injury, \_\_\_\_\_. At that time, Claimant described his pain as constant (76-100% of his time awake), bilateral lower lumbar pain at 10 on a scale of 1-10 (10 being the most extreme). Pain radiated into both legs and was aggravated by bending and twisting at the waist. Claimant reported he had no symptoms of back pain during the year before the accident.

Dr. Patino diagnosed Claimant's injury as a lumbar sprain/strain, radiculitis (lumbar), and muscle spasm. Dr. Patino selected a plan of treatment designed to return the patient to pre-injury status. The plan included manipulation at the lumbar spinal levels, myofascial release, muscle stimulation, traction, and therapeutic activity on the lumbar region to reduce pain, swelling, and inflammation, increase mobility, and reduce muscle spasms. The patient was also instructed to perform specific stretches and exercises at home.

Dr. Patino instructed the patient not to return to work for three weeks. After the three-week period, Dr. Patino would re-examine him and determine whether he was ready to return to work. Dr. Patino also gave Claimant a lumbar support and planned to refer him out for medication to control pain and muscle spasms.<sup>1</sup>

After the initial visit, Dr. Patino treated Claimant for nine weeks. Basically, the treatment followed the program plan designed at the first visit with occasional modification through the daily patient record entries.

During the first two weeks, Claimant received daily treatments. The next four weeks, he received treatments four days each week. The last three weeks, he received treatments three days each week. During this period, Claimant received a total of 34 days of treatments. Carrier paid for the first 18 treatments. The disputed dates of service begin on August 22, 2001, and continue through September 21, 2001.

Dr. Patino now seeks reimbursement of \$5,125 for services rendered during that time.<sup>2</sup> He argued:

- that services he rendered were consistent with the Act § 408.021(a) as reasonable and medically necessary healthcare because it relieved Claimant's pain, an effect naturally resulting from Claimant's compensable injury.
- that looking at the daily treatment notes, it might not appear that Claimant had progressed a great deal during treatment, but if one looks at the notes from the beginning to the end of treatment, a drop in Claimant's pain levels from almost a 10 to a 2 or 3 is evident; and
- that he could only use conservative therapies because the dispute over whether this was a compensable injury prevented him from referring Claimant for other diagnostic testing and possible treatment.

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<sup>1</sup>He apparently was not able to refer the Claimant out for medication management due to the dispute with the Carrier over compensability.

<sup>2</sup>This is the amount reflected in the table of disputed services or the TWCC 60s. Dr. Patino gave a slightly different number but the background noise during Dr. Patino's telephone testimony led the ALJ to infer someone was adding the amounts on the TWCC 60s and simply made a mathematical error.

Carrier argued that Dr. Patino should not be paid the amount in controversy for the following reasons:

- Carrier paid for the first 18 treatments and Claimant did not have any significant improvement during that time.
- The peer review doctor diagnosed Claimant's injury as a lumbar strain injury with muscle spasm, i.e. a soft tissue injury.
- A limited amount of chiropractic care would be reasonable and necessary.
- This kind of injury should resolve within four weeks total treatment.
- Consecutive days of treatment would not be medically necessary.
- A home exercise program would have been appropriate.
- Because Claimant did not significantly improve during the first 18 visits, continuing the same course of chiropractic treatment was not reasonable or medically necessary (though some other kind of treatment might have been.)
- Dr. Patino did not meet his burden of proof to show the IRO's decision was wrong.

### **C. ALJ's Analysis**

The ALJ concludes that reimbursement should be denied because Dr. Patino did not prove continuing the conservative chiropractic care beyond the initial 18 visits was reasonable and medically necessary to relieve Claimant's pain.

Dr. Patino and the peer review chiropractor both diagnosed this injury as a lumbar strain/strain injury with muscle spasm. There was some disagreement whether there was radiculitis. Regardless, both doctors believed that a course of chiropractic care was appropriate initially. The disagreement related to two basic issues: whether Claimant was getting any relief from his pain as a result of the treatments given, and whether a home exercise program would have been an appropriate and sufficient alternative at the end of the 18 days of treatment.

This is a close case. The ALJ has closely reviewed the daily notes entered by Dr. Patino or his staff. The notes indicate only marginal success during the first 18 days. There was not sufficient evidence that continuing such treatment was both reasonable and medically necessary. The Claimant did not offer sufficient evidence to explain why such an intense course of office treatments were necessary as opposed to fewer office treatments, accompanied by more home exercises.

Dr. Patino's other documentation is also very minimal. More extensive treatment notes describing Claimant's response to treatment might have helped prove Dr. Patino's case.

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

1. An injured worker (Claimant) suffered a compensable injury in \_\_\_\_\_ when he lifted heavy material while on the job.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Service Lloyd's Insurance Company (Carrier).
3. Claimant saw Dr. Patino, D.C., the day after his injury and began undergoing chiropractic treatments.
4. Claimant's injury was diagnosed by Dr. Patino as radiculitis (lumbar), lumbar sprain/strain, and muscle spasm.
5. Carrier paid for the first 18 chiropractic treatments.
6. Carrier denied payment for chiropractic treatments from August 22, 2001, until September 21, 2001, in the amount of \$5,125.
7. Dr. Patino sought review of the denial of his claim by the Carrier.
8. The Independent Review Organization (IRO) found that Dr. Patino's claim was not entitled to reimbursement because the initial 18 conservative chiropractic treatments had not noticeably relieved Claimant's pain.
9. Upon receiving the IRO's decision, Dr. Patino timely requested a hearing before the State Office of Administrative Hearings.
10. The SOAH hearing was held on March, 12, 2003.
11. Notice of the hearing was sent to the parties on January 29, 2003. 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.
12. The records and daily notes kept by Dr. Patino, and the other evidence he submitted in the hearing, failed to demonstrate that the conservative chiropractic treatments given Claimant after his injury were helpful.

### **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. Patino has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
5. Based on the above findings of fact and conclusions of law and pursuant to § 408.021(a) of the Act and 28 TAC § 134.1001, Dr. Patino failed to demonstrate that the chiropractic treatments rendered to Claimant from August 22, 2001, to September 21, 2001, were reasonably and medically necessary to treat Claimant's compensable injury.
6. Dr. Patino's request for reimbursement should be denied.

**ORDER**

**IT IS ORDERED** that the claim of Louis Patino, D.C., for reimbursement from Service Lloyds Insurance Company in the amount of \$5,125.00 be, and the same is hereby denied.

**Signed May 9, 2003.**

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**NANCY N. LYNCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**