

**DOCKET NO. 453-03-1905.M5
(MRD Docket No. M5-02-2898-01)**

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| CONTINENTAL CASUALTY COMPANY, Petitioner | § | BEFORE THE STATE OFFICE |
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| V. | § | OF |
| | § | |
| MARK L. HANSON, D.C. Respondent | § | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

I. INTRODUCTION

Continental Insurance Company (Carrier) appealed the decision of the Texas Workers' Compensation Commission's Medical Review Division (MRD)-based on its review of an Independent Review Organization (IRO) decision-ordering reimbursement of \$2,665 in payment for chiropractic services provided to _____ (Claimant) by Mark L. Hanson, D.C. (Provider) from February 4, 2002, through April 5, 2002. The treatments and services were billed under 13 different Current Procedural Technology (CPT) codes. Carrier denied payment on the grounds that the treatments and services were not medically necessary. The Administrative Law Judge (ALJ) finds that two of the disputed treatments should be reimbursed, but that the remainder were not medically necessary. Therefore, Carrier is to reimburse Provider \$154.00.

II. PROCEDURAL HISTORY

ALJ Sharon Cloninger convened and concluded the hearing on March 12, 2003, in the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Provider appeared by telephone and represented himself. Carrier was represented by Erin Shanley, attorney. The Texas Workers' Compensation Commission (the Commission) did not participate in the hearing. The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below.

III. DISCUSSION

A. Evidence

On _____ Claimant was a laborer at _____ in Arlington, Texas. On that date, he sustained a compensable injury when he punctured his left wrist with a staple gun. The staple was removed later that day at a local hospital. Because the staple had gone into Claimant's ulna¹, Claimant was instructed to take antibiotics to prevent bone infection. (Carrier Ex. 1, 5).

¹ The ulna is the bone on the little finger side of the forearm that forms with the humerus the elbow joint and serves as a pivot in rotation of the hand. *Merriam-Webster's Medical Dictionary* (1995) at 726.

On February 4, 2002, Claimant sought treatment from Provider at the Back Pain Chiropractic & Rehab Clinic in Fort Worth, Texas. Claimant complained of pain in his left wrist, left forearm, left elbow, left shoulder, and neck. (Carrier Ex. 1, 9). Provider's primary diagnosis of Claimant was wrist injury with associated myofascial² syndrome complicated by elbow pain, with a second diagnosis of shoulder injury. Provider's treatment plan for Claimant included, but was not limited to, the use of cryotherapy, electrical stimulation, massage, ultrasound and acupuncture by a licensed acupuncturist daily for one-to-two weeks. (Carrier Ex. 1, 10).

Provider referred Claimant to the Texas Bone & Joint Center in North Richland Hills, Texas, where he was examined on February 20, 2002, by Deepak V. Chavda, M.D. Dr. Chavda's impression was that Claimant had status post staple injury to the left wrist and forearm ulnar dorsal aspect with localized tenderness. He recommended medication, an aggressive physical therapy program to stretch the extensor³ tendons, and provided Claimant with information about home rehab programs. (Carrier Ex. 1, 29). Dr. Chavda also reviewed X-rays taken February 11, 2002, of Claimant's left elbow and found them to be unremarkable. (Carrier's Ex. 1, 31).

In follow-up visits with Claimant on March 1, March 8, and March 29, 2002, Dr. Chavda recommended continued therapy with Provider.⁴ (Carrier's Ex. 1, at 40, 48, and 78). In the March 18, 2002, follow-up visit, Dr. Chavda did not recommend continued therapy with Provider. In the March 29, 2002, examination of Claimant, Dr. Chavda noted tendinitis of the extensor carpi ulnaris⁵ and the abnormal findings by MRI of the extensor digiti minimi⁶ tendon sheath. (Carrier Ex. 1, 77).

Provider billed Carrier for 30 office visits, 17 heat modality treatments, 17 electrical

² Myofascial is of or relating to the fasciae of the muscles. *Id. at 443*. Fascia is a sheet of connective tissue covering or binding together body structures. *Id. at 230*.

³ An extensor is a muscle serving to extend a bodily part. *Id. at 223*

⁴ The recommendation does not specify what sort of therapy, so the ALJ assumes it to be a continuation of the therapy recommended February 20, 2002.

⁵ The extensor carpi ulnaris is a muscle on the ulnar side of the back of the forearm that extends and adducts the hand. *Id. at 223*.

⁶ The extensor digiti minimi is a slender muscle on the medial side of the extensor digitorum communis that extends the little finger. *Id. at 223-224*.

stimulation treatments, 15 therapeutic exercise treatments, neuromuscular re-education, massage therapy, group therapy, gait training and acupuncture, all occurring from February 4, 2002, through April 5, 2002. Carrier denied payment, finding the services and treatments to be medically unnecessary.

In support of its position, Carrier presented a March 20, 2002 peer review by Andrew D. Markiewitz, M.D., Board Certified in Orthopedic Surgery, in which Dr. Markiewitz stated proper care of a puncture wound is local first aid to the area, a tetanus shot, and antibiotics. He also said an orthopedic surgeon should assess whether Claimant has a localized infection which requires debridement and intravenous antibiotics. He said there was no medical necessity for any chiropractic care.(Carrier Ex. 1, 61-65; Carrier Ex. 2, 17-21; and Provider Ex. 1, 31-35, 37-41, 63, 65-68.)

Carrier also presented a May 6, 2002 letter from Jack Kern, M.D., Diplomate, American Board of Orthopaedic Surgery. Dr. Kern stated that his review of Claimant's medical records indicates Claimant suffered a puncture wound without apparent post-injury complications. He said active exercises of the fingers, of the wrist, and early, prompt return to the activities of daily life and work are the accepted methods of treatment for such an injury. He said one would expect some pain, swelling, soreness, and limitation of activity for about three weeks. He concluded there was no indication for chiropractic treatment. (Carrier Ex. 1, 94-96; Carrier Ex. 2, 22-24).

Carrier also presented the testimony of Brian Glenn, D.C., who testified that Claimant's treatment should have consisted of proper wound care. He said because Claimant suffered no infection, no nerve injury, and no internal derangement, chiropractic care was not indicated.

Although Provider testified on his own behalf, he presented no evidence that the treatments and services he provided to Claimant were medically necessary to cure or relieve the effects naturally resulting from the compensable injury, to promote Claimant's recovery, or to enhance the ability of Claimant to return to or retain employment.

B. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, there was medical necessity for the treatment rendered to Claimant by Provider. Medical necessity is defined in TEX. LABOR CODE ANN. § 408.021, which states:

- (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by 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.

IV. ANALYSIS AND CONCLUSION

The ALJ was persuaded by Dr. Kern's letter, Dr. Markiewitz's report, and Dr. Glenn's testimony that proper treatment for Claimant's compensable injury consisted of preventing infection to the puncture wound and bone, and that because there was no nerve injury or internal derangement, chiropractic care was not indicated. The ALJ agrees with Dr. Glenn that it was necessary for Claimant to make his initial visit to Provider, and an unspecified number of visits to coordinate future care, but that 30 visits were not necessary.

Even if the ALJ were to find, based on Dr. Chavda's recommendation, that aggressive physical therapy to treat Claimant's extensor tendons was medically necessary, there is insufficient evidence to prove such treatment was provided.

Therefore, the ALJ concludes Provider should be reimbursed for Claimant's initial office visit to Provider on February 4, 2002, and for a second office visit on February 5, 2002, in which Provider determined Claimant should be referred to Dr. Chavda. The office visit on February 4, 2002, was billed under CPT Code 99204⁷ in the amount of \$106.00, and the February 5, 2002 office visit was billed under CPT code 99213-MP⁸ in the amount of \$48.00. Accordingly, the ALJ orders a total reimbursement of \$154.00.

V. FINDINGS OF FACT

1. _____ (Claimant) sustained a compensable work-related injury on _____, while employed with the Arlington, Texas business _____, whose workers' compensation insurance carrier was Continental Casualty Company (Carrier).
2. On February 4, 2002, Claimant sought treatment from Mark L. Hanson, D.C.(Provider), who diagnosed Claimant to have a wrist injury with associated myofascial syndrome, complicated by elbow pain, with a secondary diagnosis of shoulder pain.
3. On February 5, 2002, Dr. Hanson referred Claimant to Deepak V. Chavda, M.D., who recommended medication and an aggressive physical therapy program to stretch the extensor tendons, and who provided Claimant with information about home rehab programs.
4. Between February 4, 2002, and April 5, 2002, Provider's treatment of Claimant included 30 office visits, 17 heat modality treatments, 17 electrical stimulation treatments, 15 therapeutic

⁷ CPT Code 99204 is used for an office or other outpatient visit for the evaluation and management of a new patient. The Maximum Allowable Reimbursement (MAR) is \$106.00.

⁸ CPT Code 99213-MP is used for an office or other outpatient visit for the evaluation and management of an established patient, and the -MP modifier is added when the first manipulation for the visit is performed. The MAR is \$48.00.

exercise treatments, neuromuscular re-education, massage therapy, group therapy, gait training, and acupuncture.

5. Provider billed Carrier for the treatments and services listed in Finding of Fact No. 4.
6. Carrier denied payment on the grounds that the services and treatment listed in Finding of Fact No. 4 were not medically necessary.
7. Proper treatment of Claimant's compensable injury consisted of wound care, a tetanus shot, and antibiotics to prevent infection.
8. Chiropractic care was not necessary to cure or relieve the effects naturally resulting from Claimant's compensable injury, to promote recovery, or to enhance Claimant's ability to return to or retain employment.
9. Because Claimant sought treatment from Provider in an initial office visit on February 4, 2002, it was reasonable and necessary for Provider to evaluate Claimant on that date, and during a second office visit on February 5, 2002, to refer Claimant to Dr. Chavda.
10. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement for the treatments and services listed in Finding of Fact No. 4.
11. The case was referred to Independent Review Incorporated, an independent review organization, which rendered a decision November 25, 2002.
12. Based on the IRO decision, the MRD on December 17, 2002, ordered Carrier to reimburse Provider \$2,665.00 of the disputed amount.
13. On January 3, 2003, Carrier appealed the MRD's decision to the State Office of Administrative Hearings (SOAH).
14. On January 29, 2003, notice of the hearing was mailed to Carrier, Provider, and the Commission's APA Litigation Section. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
15. On March 12, 2003, SOAH Administrative Law Judge Sharon Cloninger convened the hearing in the William Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Provider appeared *pro se* by telephone. Carrier's representative Erin Shanley, attorney, attended the hearing. The hearing concluded and the record closed that same day.

VI. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented in this case, pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. §413.031.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely filed notice of appeal of the decision of TWCC's Medical Review Division (MRD), as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC § 148.4(b).
5. As the party appealing the MRD decision, Provider had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC §148.21(h) and (i).
6. Based on Finding of Fact Nos. 7 and 8, and pursuant to Tex. Labor Code Ann. § 408.021(a), Provider's chiropractic treatment of Claimant was not medically necessary.
7. Based on Finding of Fact No. 9, and pursuant to Tex. Labor Code Ann. § 408.021(a), the February 4, 2002 and February 5, 2002 office visits were medically necessary to treat Claimant's compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, Carrier met its burden of proving that Provider should not be reimbursed for chiropractic treatment and services, except for the office visits on February 4, 2002, and February 5, 2002.
9. Based on the above Findings of Fact and Conclusions of Law, Carrier's appeal should be granted in part and denied in part, and Carrier should reimburse Provider \$154.00.

ORDER

Carrier had the burden of proving its case at the SOAH hearing. Carrier proved its case in part. Therefore, IT IS ORDERED THAT Continental Casualty Company is to reimburse Mark L. Hanson, D.C., \$154.00 for the disputed services and treatments.

Signed this 13th day of May, 2003.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS