STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-03-1917.M5
[MDR TRACKING NO. M5-03-0111-01]

KENT RICE, D.C., *Petitioner*	**BEFORE THE STATE OFFICE**
V.	**OF**
SENTRY INSURANCE A MUTUAL COMPANY AND THE TEXAS WORKERS COMPENSATION COMMISSION, *Respondents*	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Kent Rice, D.C. (the Petitioner) seeks reimbursement from Sentry Insurance a Mutual Company (the Carrier) for approximately $7,800 for numerous treatments and services provided to workers compensation claimant ____ from August 22, 2001 through April 30, 2002. The Petitioner challenges the decision of an Independent Review Organization, which found the disputed services were not medically necessary and were inadequately documented. This decision finds that reimbursement should be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

The hearing convened March 19, 2003, at the Hearings Facility of the State Office of Administrative Hearings (SOAH) before SOAH Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner represented himself and appeared by telephone. The Carrier was represented by Janice G. Menzies. The Commission appeared and was represented by Timothy P. Riley. After receipt of evidence, the record was closed the same day.

II. EVIDENCE AND BASIS FOR DECISION

The Carrier provided the only documentation filed in this proceeding. This consisted of four peer reviews performed between December 13, 2001 and October 3, 2002 by different chiropractors affiliated with a single organization, and a report prepared by Robert L. Brownhill, M.D., who examined the Claimant on January 29, 2002. The Petitioner testified on his own behalf and was the only witness called at the hearing.

A. The Evidence

The Claimant was injured on _____ when an overhead door came down and struck her in the upper back and neck. She began undergoing chiropractic care almost immediately. The services now in dispute were provided more than a year after the accident, between August 22, 2001 and April 30, 2002. The services consisted of therapeutic activities, physician team conference, electrical stimulation, diathermy, myofascial release, computer analysis, nerve conduction study, muscle testing, range of motion evaluations, special reports, spinal x-ray, and x-ray of the cervical spine and shoulder.

The peer reviews and Dr. Brownhills report indicate that the Claimant failed to respond to chiropractic manipulations and physical therapy and that these procedures should be terminated. Dr. Rice testified that these reports and the IRO decision reflected a bias against chiropractic services and that the services he provided were in fact medically necessary. He also testified that the Range of Motion testing and X-rays were required to assess the Claimants condition irrespective of whether the other services should be reimbursed.

2. 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.[1]

The Ground Rules to the Commissions Spine Treatment Guideline 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.[2]

The Petitioner bears the burden of proof in this proceeding pursuant to 28 TEX. ADMIN. CODE 148.21(h) and (i).

C. Analysis

The ALJ concludes that the continuing chiropractic care at issue in this proceeding was not

[1] TEX. LAB. CODE ANN. § 408.021(a).

[2] 28 TEX. ADMIN. CODE 134.1001 (Spine Treatment Guideline), Subsection (e)(2)(A).

shown to have been medically necessary and was inadequately documented. It is undisputed that the Claimant was not improving with chiropractic care. The Petitioners services also do not appear to have significantly relieved the Claimants pain, which remained at consistently high levels. Based on this state of the record, the ALJ concurs with the opinions offered by the Carriers doctors that no further chiropractic and physical therapy services were warranted during the period in dispute. Additionally, the Petitioner did not file any documentation in this proceeding. Nor could he break out the costs for the various types of services provided. Accordingly, even if some the ancillary services, such as the Range of Motion testing, were in fact medically necessary, there is no way to quantify the appropriate level of recovery based on the record of this proceeding. Under these circumstances, the ALJ finds that the Petitioner has failed to establish entitlement to any of the requested reimbursement. Accordingly, the request is denied.

III. FINDINGS OF FACT

1. On_____, Claimant _____ sustained a compensable injury to her upper back and neck when she was struck by an overhead door.

2. At the time of the Claimants compensable injury, Sentry Insurance a Mutual Company (the Carrier) was the workers compensation insurer for Claimants employer.

3. From August 22, 2001 through April 30, 2002, Kent Rice, D.C., (Petitioner) provided the Claimant therapeutic activities, physician team conference, electrical stimulation, diathermy, myofascial release, computer analysis, nerve conduction study, muscle testing, range of motion evaluations, special reports, spinal x-ray, and x-ray of the cervical spine and shoulder.

4. The Carrier denied reimbursement for the expenses associated with the services identified in Finding of Fact No. 3.

5. The Petitioner timely requested dispute resolution by the Texas Workers Compensation Commission, which referred the matter to an Independent Review Organization.

6. The Independent Review Organization found in favor of the Carrier.
7. Notice of the hearing was sent February 3, 2003.

8. 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.

9. The hearing was held March 19, 2003.

10. The chiropractic care and physical therapy provided to the Petitioner did not not improve her medical condition and did not significantly relieve her pain.

11. Based on Finding of Fact No. 10, additional chiropractic and physical therapy services were not medically necessary during the period in dispute, which was more than one year after the

Claimants injury.

12. The Petitioner provided no documentation to support the medical necessity of the disputed services.

13. The Petitioner provided no evidence to itemize the charges for the different types of services provided.

IV. CONCLUSIONS OF LAW

1. The Texas Workers Compensation Commission (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(d) of the Act and TEX. GOVT CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN. ch. 2001.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOVT CODE ANN. §§ 2001.051 and 2001.052.

5. The Petitioner has the burden of proof in this proceeding. 28 TAC §§ 148.21.

6. The disputed services were not shown to be medically necessary health care for the Claimant.

7. The disputed services were not adequately documented.

8. Based on the foregoing, the Petitioners claim for reimbursement from the Carrier for the disputed chiropractic treatment should be denied.

ORDER

The claim by Petitioner Kent Rice, D.C., is denied.

SIGNED this 12TH day of May, 2003.

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KERRY D. SULLIVAN
Administrative Law Judge
State Office of Administrative Hearings