

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE
v.		OF
KOREY D. KOTHMANN, D.C., Respondent		ADMINISTRATIVE HEARING

DECISION AND ORDER

I. PROCEDURAL HISTORY

Petitioner, American Home Assurance Company (Carrier), appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) ordering reimbursement to Korey D. Kothmann, D.C., (Dr. Kothmann/Provider) for medical services provided to ___ Claimant. This decision orders the Carrier to reimburse the Provider \$5,185.00.

The Administrative Law Judge (ALJ) convened a hearing on April 10, 2003. The hearing was concluded and the record closed that date. The Carrier was represented by Dan C. Kelley, attorney. The Provider appeared *pro se*, telephonically.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this preceding is whether the Carrier should reimburse the Provider \$5,185.00 plus interest for medical services provided between March 19, 2002, and May 6, 2002, and billed under CPT Codes 97032 (low voltage muscle stimulation), 97250 (myofascial release), 97265 (joint mobilization), 97110 (therapeutic exercises), 97530 (therapeutic activity), and 97112 (neuromuscular re-education). The Carrier argued that the medical services provided to the Claimant were not medically necessary and reasonably required to treat the compensable injury.

The documentary record in this case consisted of 98 pages of medical records (Pet. Exh. 1), a one-page retrospective review by Brad Hayes, D.C. (Pet. Exh. 2), a one-page retrospective review by Michael Hamby, D.C. (Pet. Exh. 3), and an additional 101 pages of records (Res. Exh. 1). Also, Dr. Hamby provided testimony for the Carrier, and Dr. Kothmann testified in his own behalf.

Dr. Hamby is a full-time practicing chiropractor residing in California. He graduated from Parmer College of Chiropractic in Iowa in 1985, and he is also licensed to practice in Texas. Dr. Hamby reviewed the Claimant's medical records, which included the prior peer review, chart records from treating physicians, and treatment plan recommendations. He utilized various guidelines in his review, including the Presley-Reed Guidelines.

Dr. Hamby testified that Claimant was diagnosed with cervical and upper thoracic sprain or strain with attendant brachial radiculitis, and a right rotator cuff strain or sprain. He testified that he disagreed with the diagnosis because findings and treatment were recorded only on pre-printed forms

with various items circled, and that the chart did not contain descriptions of objective evaluations and findings to measure the Claimant's subjective complaints. Additionally, it was Dr. Hamby's opinion that the Provider's records fell below the standard of care for the chiropractic profession. He pointed out that the Claimant had received a great deal of treatment that should have been responded to and that the vague records did not support ongoing treatment.

On cross-examination, Dr. Hamby testified that he reviewed the examinations of March 18, 2002, April 15, 2002, and May 8, 2002, and found them to lack objective testing such as an MRI to support findings. Dr. Hamby did not respond to the question of why should expensive diagnostic testing be performed prior to establishing that conservative treatment as performed on Claimant failed.

A retrospective peer review was also provided by Dr. Hayes. He stated that the Claimant's pain level remained unchanged during treatment and that reported increased range of motion was not quantified. Further, Dr. Hayes stated that a patient should respond significantly to treatment and that it appeared that Claimant did not. Dr. Hayes utilized the Mercy Guidelines in making his review.

Dr. Kothmann began practicing chiropractic five years ago after attending Parker Chiropractic School in Dallas, Texas. He graduated from Texas Tech University with a major in biology and a minor in chemistry. Dr. Kothmann testified that TWCC rules allow for treatment of up to three months after injury, and that the Claimant was treated for less than three months and then returned to full duty.

Regarding Dr. Hayes' peer review, Dr. Kothmann testified that the Mercy Guidelines utilized by Dr. Hayes were developed in Canada and are used primarily for the lumbar sacral area, which is not in issue in this case. Additionally, he stated that the Mercy Guidelines are not recognized by TWCC. In his written response to Dr. Hayes' peer review, Dr. Kothmann stated that a thorough review of the medical records showed pain reduction, improved range of motion, complete recovery of muscle strength, and that every exam showed objective improvement. He stated that he is not familiar with guidelines employed in Dr. Hamby's review.

Dr. Kothmann used guidelines provided by Intracorp, an insurance case management company, in support of the treatment provided to the Claimant. The Intracorp guidelines allowed for up to 84 days for treatment of injuries with complicating conditions. He stated that Claimant presented with four complicating conditions: the dominant extremity was effected; there was decreased range of motion; more than three weeks of painful restrictive movement was involved; and there was an associated neurological condition.

Additionally, Dr. Kothmann testified that the Claimant was given four comprehensive examinations. Each examination was documented and contained information pertaining to the Claimant's symptoms, and the results from tests such as range of motion studies, kinesiological studies, and orthopedic evaluations. (Res. Exh. 1, pages 17 - 27)

Based on the evidence, the ALJ concludes that Petitioner's appeal should be denied. The particular facts, reasoning, and legal conclusions in support of this decision are set forth below in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. On ___ (Claimant) suffered a compensable injury to her neck and right shoulder lifting a bag containing three-litre bottles of soft drinks.
2. The Claimant's injury is covered by worker's compensation insurance written for the Claimant's employer by American Home Assurance Company (Carrier).
3. Korey Kothmann, D.C., (Provider) treated the Claimant's injury from March 19, 2002, through May 6, 2002.
4. The Provider treated the Claimant's injury during office visits (CPT Code 99213-MP) with low voltage electrical stimulation (CPT Code 97032), myofascial release (CPT Code 97250), joint mobilization (CPT Code 97265), therapeutic exercises and activities (CPT Codes 97110 and 97530), and Neuromuscular re-education (CPT Code 97112).
5. The Carrier denied payment in the amount of \$5,185 on the basis that treatment was not medically necessary and that treatment records did not justify reimbursement.
6. The treatment records adequately documented the Claimant's complaints, symptoms, treatment.
7. The treatment records adequately documented the Claimant's improvement in pain level, range of motion and muscular strength.
8. The Claimant returned to full duty following treatment.
9. The Provider documented that the medical services referred to in Finding of Fact No. 4 were medically necessary and reasonably required.
10. The Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission.
11. The MRD issued its findings and decision on January 10, 2003, concluding that the disputed expenses should be paid, and the Carrier timely appealed this decision.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE §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 TEX. LABOR CODE §413.031 and TEX. GOV'T CODE ch. 2003.

3. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
4. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LABOR CODE §413.031.
5. Based on Findings of Fact Nos. 6 - 9, the Carrier failed to prove that reimbursement for treatment should be disallowed.
6. Based on Findings of Facts Nos. 3, 4, and 6 - 9 and Conclusion of Law No. 5, the Provider is entitled to reimbursement in the amount of \$5,185 for the services provided on the disputed dates of service between March 19, 2002, and May 6, 2002.

ORDER

IT IS, THEREFORE, ORDERED that American Home Assurance Company shall reimburse Korey D. Kothmann, D.C. for fees incurred in treating the Claimant in the amount of \$5,185.

ISSUED this 23rd day of May 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS