

MEGA REHAB,  
Petitioner,

v.

AMERICAN CASUALTY COMPANY  
OF READING, PA.,  
Respondent

§ BEFORE THE STATE OFFICE  
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§  
§ OF  
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§  
§ ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

MEGA REHAB (Petitioner) sought reimbursement from American Casualty Company of Reading, Pa. (Carrier) for two weeks of daily chiropractic care. An Independent Review Organization (IRO) found that daily chiropractic care was not medically necessary. The ALJ agrees with the IRO decision, finding that Petitioner failed to prove the medical necessity of daily chiropractic treatment.

**I. PROCEDURAL HISTORY**

The Administrative Law Judge (ALJ) convened a hearing on August 5, 2003. Dr. Stephen Dudas represented Petitioner, and the Carrier was represented by attorney Fong Phan. The hearing concluded on that date, but the record was held open until August 15, 2003, in order to allow the Petitioner additional time to submit supplemental evidence and the parties to file written closing arguments.<sup>1</sup>

The record in this case consisted of a 40-page copy of records submitted to the IRO by the Petitioner (Petitioner's Exhibit 2)<sup>2</sup>, a copy of clinical practice guidelines contained within *The New*

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<sup>1</sup> Petitioner supplemented Petitioner's Exhibit 3 containing excerpts of medical guidelines with the complete copy of the guidelines. The supplemental materials are admitted into evidence as Petitioner's Exhibit 4.

<sup>2</sup> Petitioner's Exhibit 1 was not admitted into evidence.

*Millennium Chiropractic Survival*,<sup>3</sup> (Petitioner's Exhibit 3), a 216-page copy of medical records<sup>4</sup> submitted by Carrier (Carrier's Exhibit 1), and testimony by Dr. Dudas.

## II. DISCUSSION

### A. Background

Claimant, an employee of \_\_\_\_, sustained a work-related injury on \_\_\_\_, to her head, neck and low back when boxes of chips, stacked on two pallets, fell on her.<sup>5</sup> Claimant was given aspirin and an ice pack by her employer. Carrier's Exhibit 1, p. 8. Later that evening, Claimant was taken by the Arlington Fire Department to the emergency room of the Medical Center of Arlington. Carrier's Exhibit 1, pp. 1-3. The Department's report noted that Claimant had "no pain on palpation to cervical, thoracic, lumbar areas." Respondent's Exhibit 1, p. 2. X-rays were taken of Claimant at the Medical Center of Arlington which showed that her thoracic and lumbar regions were normal. Respondent's Ex. 1, pp. 5-7. Claimant was released from the Medical Center and went home.

On August 20, 2001, Claimant sought treatment from Stephen Dudas, D.C., at MEGA REHAB. She complained of a headache, neck pain, low back pain, thoracic pain, and loss of sleep. Carrier's Ex. 1, p. 8. Dr. Dudas diagnosed Claimant with the following: (1) unspecified concussion; (2) cervical strain/sprain; and (3) lumbar strain/sprain. Dr. Dudas prescribed daily chiropractic care for the Claimant "during the next two weeks to address her cervical and lumbar injuries." Respondent's Ex. 1, p. 10.<sup>6</sup>

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<sup>3</sup> Written by Dr. Gregg J. Fisher; Progressive Seminars 2001.

<sup>4</sup> The medical records submitted by Carrier did not contain a notice that they were the same documents as those submitted to the IRO. Further, the ALJ notes that none of the documentary evidence introduced in this case contained the Carrier's EOBs; however, no party disputed that the basis for denying reimbursement in this matter was due to Carrier's claim that the services were not medically necessary.

<sup>5</sup> Claimant worked as a production line packer. A co-worker was using a hand jack to lift up one of the pallets, causing its contents to move forward, falling on Claimant's back and forcing her to the ground. Carrier's Exhibit 1, p. 8.

<sup>6</sup> Claimant also complained of sensitivity to light. Dr. Dudas noted that she would be referred to a neurologist to assess her closed head injury and to a pain specialist for appropriate medications. Carrier's Exhibit 1, pp. 8-10.

## 2. Medical Treatment

Claimant was seen by Dr. Moreau at Mega Rehab during the disputed dates of service: August 21, 23, 28, 30, and September 5, 6, and 7, 2001.<sup>7</sup> Claimant's treatment consisted of ice applications, ultrasound, electrical muscular stimulation, and massage therapy. After the first two weeks of treatment, Claimant received aquatics therapy.

## 3. Discussion

The issue in this case is whether the services and treatment provided to Claimant on the disputed dates of service were medically necessary.<sup>8</sup> Petitioner's evidence on this issue consisted of information contained within Petitioner's exhibits and the testimony of Dr. Dudas.

Dr. Dudas noted that Claimant's injuries were to two centrally located body parts, her neck and upper back. He testified that Claimant required daily chiropractic treatment in order to be sure that her pain and symptoms, including muscle spasms, were relieved in her cervical and lumbar spine. Additionally, he testified that Claimant experienced light sensitivity (photophobia) and headaches from a concussion. Dr. Dudas said that daily care was necessary because Claimant showed some reflected radicular pain and it was important to see how she responded to the treatment. He claimed that the treatment provided to Claimant was consistent with several medical guidelines, including the North American Spine Society, the Mercy Guidelines, the Oklahoma Worker's Compensation Low Back Pain Guidelines, the Ohio Guidelines, and the guidelines of the Texas Worker's Compensation Commission.<sup>9</sup>

The SOAP notes describing Claimant's treatment on each of the disputed service dates include as a treatment plan that Petitioner will continue to be treated on a daily basis, without elaborating why this frequency of care was necessary. The SOAP notes are available for dates of

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<sup>7</sup> Claimant was seen by Provider through April 3, 2002, receiving numerous types of treatment, including steroid injections, biofeedback, and work conditioning. Carrier's Exhibit 1. These treatments are not at issue in this case.

<sup>8</sup> The IRO found that the office visit to MEGA REHAB on 9/06/01 was medically necessary.

<sup>9</sup> These guidelines were included in Petitioner's Exhibits 2 and 3.

service 8/20/01, 8/21/01 (disputed), 8/22/01, 8/23/01 (disputed), 8/24/01, 8/27/01, 8/28/01 (disputed), 8/29/01, 8/30/01 (disputed), and 9/06/01 (disputed). Carrier's Exhibit 1, pp. 13-15, 22-24, 31. There are no SOAP notes for September 5<sup>th</sup> or 7<sup>th</sup>. An Aquatics Weekly Flow Sheet indicates that Claimant received aquatics therapy on 9/5/01 and 9/7/01 and contains notes for each day describing Claimant's condition. Carrier's Exhibit 1, p. 29.

Respondent claims that, while Claimant needed some medical care during this time period, daily care was not medically warranted. Respondent has previously paid for five sessions of treatment during the two-week period. On August 21, 2001, Carrier requested a peer review to determine, among other things, whether daily passive chiropractic physical therapy was medically necessary. Carrier's Exhibit 1, pp. 16-18. Dr. Dennis Teal, D.C., performed the peer review and concluded that daily care was not reasonable or necessary, although physical therapy related to the neck and lumbar sprain three times per week was appropriate. Carrier's Exhibit 1, pp. 16-18.

The IRO found that daily care was not reasonable or necessary during the two weeks after Claimant's injury. However, the IRO found that the services provided to Claimant on September 6, 2001, were medically reasonable, excluding the office visit which lacked documentation.

After considering the evidence and reviewing the guidelines offered as guidance by Petitioner, the ALJ agrees that daily chiropractic care does not seem warranted in this case. Petitioner failed to provide a persuasive rationale for the necessity of daily treatment, in light of Claimant's injuries. Petitioner's testimony that Claimant required daily monitoring to see if her symptoms were relieved was not supported by reliable medical explanation, nor does it explain why such monitoring could not be adequately done through less frequent visits. Further, in reviewing the guidelines provided by Petitioner, the ALJ notes that they do not conclusively provide for daily treatment. Almost all of the guidelines refer to treatment 3-5 times per week during the acute stage for injuries such as those Petitioner experienced; however, Petitioner failed to provide the type of documentation that would support daily treatment, which is the most frequent treatment that can be given under the guidelines referenced by Dr. Dudas. Petitioner's Exhibit 2, pp. 28, 30, 31, 32. The ALJ finds Dr. Teal's report, stating that treatment three times per week during the first two weeks following Claimant's injury, to be persuasive.

The IRO decision concluded that daily chiropractic treatment was not necessary and denied services on 8/21/01, 8/23/01, 8/28/01, 8/30/01, 9/5/01, 9/7/01, and the office visit on 9/6/01. The IRO reviewer disagreed with the Carrier's decision to deny services on 9/6/01 for codes 97032, 97010, and 97035, finding those to be medically necessary. The ALJ notes that the office visit on 9/6/01 was billed under code 99213, which requires two of the following: an extended problem-focused history, an extended problem-focused examination, or medical decision-making of low complexity. The SOAP notes for 9/6/01 do not meet the standards of code 99213.

After reviewing all the evidence in this case, the ALJ agrees with the IRO decision stating that services provided to Claimant on September 6, 2001, except for the office visit, were necessary.

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

1. Claimant worked for \_\_\_ and sustained an injury to her head, neck and low back on \_\_\_, when boxes of chips fell on her.
2. \_\_\_ maintains worker's compensation insurance through American Casualty Company of Reading, Pennsylvania (Carrier).
3. Claimant drove herself home after the injury referred to in Finding of Fact No. 1, but later requested ambulance transport to the local hospital emergency room. She was given x-rays, treated and was released.
4. Claimant sought treatment from Dr. Stephen Dudas at MEGA REHAB (Petitioner) on August 21, 2001. After performing an initial evaluation, Dr. Dudas diagnosed her with an unspecified concussion, cervical strain/sprain; and a lumbar strain/sprain. Dr. Dudas recommended that Claimant receive daily chiropractic treatment for two weeks.
5. After the initial evaluation, Claimant received daily chiropractic care from Dr. Stephen Moreau of MEGA REHAB from 8/21/01 to 9/07/01.
6. The treatment consisted of ice, ultrasound, electrical stimulation and massage. From September 5-7, 2001, Claimant also received aquatics therapy.
7. The daily chiropractic treatment was not medically necessary for the Claimant because Petitioner failed to document the need for daily treatment and daily treatment was not required for Claimant's injuries.

8. Chiropractic treatment three times per week during the first two weeks following Claimant's injury is medically necessary.
9. Respondent has already compensated Provider for treatment Claimant received for five days during the first two weeks of her treatment.
10. Petitioner provided necessary chiropractic services to Claimant on September 6, 2001.
11. Claimant's office visit on September 6, 2001, is not adequately documented by Petitioner.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issues presented pursuant to the Texas Workers' Compensation Act (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 of the Act and TEX. GOV'T CODE ch. 2003.
3. An employee who sustains a compensable injury is entitled to health care that relieves the effects naturally resulting from the injury, promotes recovery, and enhances the ability to return to or retain employment. § 408.021 of the Act.
4. Based on the above Findings of Fact and Conclusions of Law, Petitioner failed to prove that daily chiropractic care was medically necessary to treat Claimant.
5. Based on Findings of Fact Nos. 9 and 10, Petitioner is entitled to payment for services, except the office visit, rendered to her on September 6, 2001.

#### **ORDER**

IT IS THEREFORE, ORDERED that American Casualty Company of Reading, Pa. reimburse MEGA REHAB for services, except the office visit, provided on September 6, 2001.

**SIGNED this 14<sup>th</sup> day of October 2003.**

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**SUZANNE FORMBY MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARING**