

**SOAH DOCKET NO. 453-03-2854.M5**  
**[MDR TRACKING NO. M5-02-2993-01]**

**KEVIN R. WHITE, D.C.,  
PETITIONER**

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**BEFORE THE STATE OFFICE**

**V.**

**OF**

**FEDERAL INSURANCE COMPANY  
COMPANY,  
RESPONDENT**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. DISCUSSION**

Kevin R. White, D.C., (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Envoy Medical Systems, LLC, an Independent Review Organization (IRO). The Commission's March 10, 2003 Order denied Petitioner's request for reimbursement for chiropractic treatments, manipulations of the cervical spine, from July 27, 2001, through November 13, 2001, because they were not medically necessary. The Commission determined that the chiropractic treatments were not medically necessary within the meaning of Section 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401 et seq. (the Act).

This decision denies the requested reimbursement for the chiropractic treatments.

A one-day hearing convened June 2, 2003. Petitioner appeared by telephone. William Weldon represented Federal Insurance Company (Respondent). There were no contested issues of notice or jurisdiction. The record closed upon adjournment of the hearing.

Petitioner is the treating physician for \_\_\_\_ (Patient). Patient was approximately 36-years old when she sustained a compensable injury on \_\_\_\_\_, while attempting to lift a 35-40 pound bag. Patient experienced pain in her neck and upper back, headaches, and right arm numbness and tingling. Patient, after treatment by others, began treatment by Petitioner on June 24, 1999. Patient became pregnant in 1999 and was bedbound. Following the birth of her child in early 2000, she resumed her treatment with Petitioner. Petitioner discharged patient on September 14, 2000. Patient became pregnant again and following Patient's second pregnancy, she was treated by Petitioner on an "as needed basis" for headaches and problems with her neck. Petitioner began treating Patient on an "as needed basis" in July 2001 and last treated Patient in November 2001.

No neurological or functional assessments were performed. Patient's continuing complaints are headaches, neck pain and back pain.

The eleven dates for which Petitioner requested reimbursement are July 26, 2001; August 7, 21, and 28, 2001; September 11 and 25, 2001; October 4, 9, 16 and 30, 2001; and November 13, 2001.

Petitioner contends that chiropractic treatments are medically necessary because they were needed to treat Patient's pain from a herniated disc. Respondent contends the chiropractic treatments were not medically necessary.

By letter dated January 29, 2003, the IRO concluded the July 26, 2001, through November 13, 2001 chiropractic treatments were not medically necessary for the diagnosis and treatment of Patient's condition. The IRO premised its decision on Patient's condition, her having reached maximum medical improvement, the absence of specific clinical objective findings, and the fact that no neurological or functional assessments were performed.

Petitioner had the burden of proof in this proceeding. There are no specific clinical objective findings associating Patient's treatment with her compensable injury. During his testimony, Petitioner admitted that Patient's chiropractic treatments may have stemmed from her lifting her children. Petitioner failed to sustain his burden of proving that the chiropractic treatments were medically necessary for the treatment of Patient.

## **II. FINDINGS OF FACT**

1. \_\_\_\_\_ (Patient) was approximately 36-years old when she sustained a work related injury on \_\_\_\_\_, while attempting to lift a 35-40 pound bag.
2. Patient experienced pain in her neck and upper back, headaches, and right arm numbness and tingling.
3. Patient, after treatment by others, began treatment with Kevin R. White, D.C., (Petitioner) on June 24, 1999.
4. Patient became pregnant in 1999 and was bedbound.
5. Following the birth of her child in early 2000, she resumed her treatment with Petitioner.
6. Petitioner discharged patient on September 14, 2000.
7. Patient became pregnant again and following Patient's second pregnancy, she was treated by Petitioner on an "as needed basis" for headaches and problems with her neck.
8. Petitioner last treated Patient in November 2001.
9. Petitioner requested payment for eleven cervical spine manipulations (Chiropractic Treatments) of Patient on the following dates: July 26, 2001; August 7, 21, and 28, 2001; September 11 and 25, 2001; October 4, 9, 16 and 30, 2001; and November 13, 2001.

10. Federal Insurance Company (Respondent) contended the Chiropractic Treatments were not medically necessary.
11. Petitioner contends that Chiropractic Treatments are medically necessary because they were needed to treat Patient's pain from the herniated disc.
12. By letter dated January 29, 2003, Envoy Medical Systems, LLC, an Independent Review Organization (IRO) concluded the July 26, 2001, through November 13, 2001 Chiropractic Treatments were not medically necessary for the diagnosis and treatment of Patient's condition.
13. Patient's continuing complaints are headaches, neck pain and back pain.
14. No neurological or functional assessments were performed.
15. Patient reached maximum medical improvement.
16. There are no specific clinical objective findings.
17. The Texas Workers' Compensation Commission (Commission) March 10, 2003 Order denied Petitioner's request for the July 27, 2001, through November 13, 2001 Chiropractic Treatments because they were not medically necessary.
18. Petitioner timely requested a hearing to contest the Commission's decision.
19. By letter dated April 23, 2003, the Commission issued a notice of hearing.
20. A one-day hearing was convened by Administrative Law Judge Howard S. Seitzman on June 2, 2003, in the hearing rooms of the State Office of Administrative Hearings.
21. Petitioner appeared by telephone. William Weldon represented Respondent.

### **III. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation 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 TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.

4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. 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. TEX. LAB. CODE ANN. § 408.021(a).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Petitioner failed to prove the Chiropractic Treatments were medically necessary for the treatment of Patient's injury.
8. Patient's Chiropractic Treatments of Petitioner on July 26, 2001; August 7, 21, and 28, 2001; September 11 and 25, 2001; October 4, 9, 16 and 30, 2001; and November 13, 2001, were not medically necessary.

### **ORDER**

**THEREFORE IT IS ORDERED** that Petitioner Kevin R. White's request for payment for cervical spine manipulations on July 26, 2001; August 7, 21, and 28, 2001; September 11 and 25, 2001; October 4, 9, 16 and 30, 2001; and November 13, 2001, is **DENIED**.

**SIGNED this 30th day of June 2003.**

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**HOWARD S. SEITZMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**