

____, § BEFORE THE STATE OFFICE
Petitioner §
V. §
§ OF
TRANSPORTATION INSURANCE §
COMPANY §
Respondent § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

____ (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Envoy Medical Systems, LLC, an Independent Review Organization (IRO), denying Petitioner reimbursement for certain massage therapy sessions for the period October 1, 2001, through October 29, 2001, (Disputed Services). The amount in controversy is \$210.00. The Administrative Law Judge (ALJ) finds Petitioner is not entitled to reimbursement from Transportation Insurance Company (Respondent).

I. DISCUSSION

A hearing convened on November 18, 2003, before Administrative Law Judge (ALJ) Stephen J. Pacey. ____ appeared and was assisted by Barton Levy, a Commission Ombudsman. David Swanson represented Respondent, and Samuel Bierner, M. D., testified on Respondent's behalf. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing the same day.

The Petitioner suffered a work-related injury on _____. Petitioner worked in a hospital and injured her back while lifting a cot. Petitioner complained of sudden low back pain, and despite physical therapy and chiropractic treatment, the pain did not subside. A neurologist was consulted and performed an electromyogram (EMG) on Petitioner. The EMG was normal. Except for degenerative disc disease, the magnetic resonance imaging (MRI) test was also unremarkable. Petitioner argued that the massage therapy makes her feel better. She pointed out that the massage was not ordinary massage, rather it was acupressure that was directed at knotted muscles. She indicated that her back felt better after this type of therapy. Her doctor, M. David Dennis M. D., reported that he prescribed the conservative treatment of massage to keep Petitioner active and functional. He opined in a letter dated January 21, 2002, that it is a medical necessity to treat her chronic back pain to help stabilize her depression so that she may function, be productive, and return to work.

Respondent argued that, in addition to physical therapy and chiropractic treatment, Petitioner was treated with acupuncture, injections, and various medications without significant benefit. Respondent asserted that massage therapy was one more treatment that will not be successful in dealing with Petitioner's problem.

Dr. Bierner testified that Petitioner was diagnosed with a lower back strain. Dr. Bierner explained that massage therapy performed more than one year after the injury is not a useful modality. Dr. Bierner noted that exercise would help Petitioner. According to Dr. Bierner, massage therapy is primarily used to remove scar tissue after an injury, while exercise actually develops and stretches the

muscles in order to strengthen and support the spine. Dr. Bierner said Petitioner has not shown improvement from massage therapy. He stated that the record does not indicate objective measurement of functional gains, thus no improvement is reflected in the records. Dr. Bierner concluded that if Petitioner was his patient, he would recommend exercise.

Respondent argued that Rod Lee, M. D.'s records indicated Petitioner reached maximum medical improvement (MMI) on January 12, 1994, with 0% impairment. Respondent asserted that Dr. Dennis' records indicated Petitioner reached MMI on May 3, 1995, with 10% impairment. Respondent concluded that the massage treatments were not reasonably required to cure or relieve pain caused by the compensable injury. Respondent noted that depression treatment is not related to massage therapy.

The ALJ finds that the massage therapy was not medically necessary. There was no evidence that the treatments were reasonably required to cure or relieve pain caused by the compensable injury. The record reflects that Petitioner suffers from depression, and the massages temporarily make her feel better.

II. FINDINGS OF FACT

1. ____ (Petitioner) suffered a work-related injury on ____, while lifting a cot which sprang open.
2. Petitioner was diagnosed with lower back sprain.
3. After physical therapy and chiropractic treatment, Petitioner's pain did not subside
4. A neurologist was consulted and performed an electromyogram (EMG) on Petitioner. The EMG was normal.
5. The magnetic resonance imaging (MRI) test was unremarkable.
6. In addition to physical therapy and chiropractic treatment, Petitioner was treated with acupuncture, injections, and various medications without significant benefit.
7. Petitioner received massage therapy from October 1, 2001, through October 29, 2001.
8. Respondent denied the reimbursement for the services as not medically necessary.
9. By letter dated March 4, 2003, Envoy Medical Systems, LLC, an independent review organization (IRO), concluded the services provided were not medically necessary for the treatment of Petitioner's condition.
10. By Order dated March 5, 2003, the Medical Review Division of the Texas Workers' Compensation Commission, based upon the IRO decision, denied all of Petitioner's claims for reimbursement.
11. Petitioner filed its request for a hearing on March 25, 2003.
12. Notice of hearing was sent on April 29, 2003.
13. On September 15, 2003, Respondent filed an agreed request for a continuance of the hearing, and the hearing was reset for October 18, 2003.
14. The hearing convened on November 18, 2003, before Administrative Law Judge (ALJ)

Stephen J. Pacey. ___ appeared and was assisted by Barton Levy, a Commission Ombudsman. David Swanson represented Respondent. The record closed the same day.

15. Massage therapy performed more than one year after the injury is not a useful modality.
16. Eight years after the injury, exercise, not massage, is the proper modality.
17. No improvement was demonstrated from the massage therapy.
18. Massage therapy is not a proper treatment for depression .
19. The massage therapy was not objectively measured nor were functional gains demonstrated.
20. Petitioner reached maximum medical improvement (MMI) on January 12, 1994 with 0% impairment.
21. The massage therapy sessions were not appropriate or medically necessary.
22. The amount billed for the services rendered to Petitioner is \$210.00.
23. The services provided to Petitioner were not medically necessary.

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. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Ch. 2003.
3. Petitioner timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TAC §148.21(h).
6. Petitioner did not meet its burden of proving that all of the services were medically necessary or reasonably required health care under TEX. LAB. CODE ANN. § 408.021.

ORDER

THEREFORE IT IS ORDERED that Transportation Insurance Company shall not be required to reimburse ___ \$210.00.

SIGNED this 15th day of January 2004.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS