

DOCKET NO. 453-03-2981.M5
MDR Tracking No. M5-03-0680-01

CHURCHILL REHABILITATION CENTERS, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	OF
VS.	§	
	§	
TASB RISK MANAGEMENT FUND, <i>Respondent.</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Churchill Rehabilitation Centers (Provider) appealed the decision of an Independent Review Organization (IRO) upholding the denial of reimbursement for a prescribed physical therapy program rendered to ____ (Claimant) from April 15, 2002, through May 23, 2002. In this decision, the Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of showing that the prescribed treatment was reasonable and medically necessary for Claimant’s compensable injury. Therefore, TASB Risk Management Fund (Carrier) is not ordered to reimburse Provider for the treatment rendered.

The hearing convened and closed on August 26, 2003, before Steven M. Rivas, ALJ. Pamela Goh, collections manager, appeared on behalf of Provider. Carrier appeared and was represented by James Loughlin, attorney.

I. DISCUSSION

2. Background Facts

Claimant was employed as a special education teacher and sustained a compensable back injury on _____, when she was involved in a fight with a student. On March 15, 2001, Claimant came under the care of Carlos Acosta, M.D., who rendered extensive treatment to Claimant, including diagnostic tests, medication treatment, and a chronic pain management (CPM) program. Dr. Acosta released Claimant from care on March 15, 2002. On April 9, 2002, Claimant re-visited Dr. Acosta and complained of more back pain.

Based on Claimant's pain complaints, Dr. Acosta prescribed a physical therapy program that was conducted at Provider's facility between the disputed dates of service. Provider sought reimbursement¹ from the Carrier for the physical therapy program, which Carrier denied as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission. The dispute was sent to an IRO, which upheld the denial of reimbursement, and Provider filed a request for hearing before the State Office of Administrative Hearings.

3. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021(a) provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The statute further states an 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."

Under TEX. LAB. CODE ANN. §401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

¹ The Provider claimed the amount in dispute was \$3,179, while Carrier pointed out the amount was \$3,116. However, this point is relatively moot because Provider is awarded nothing in this decision.

A. Evidence

Provider's primary position was that it should be reimbursed because Claimant's treating doctor prescribed the physical therapy program, and the services were performed as prescribed. In support of its position, Provider offered 94 pages of documents consisting only of the prescription for the physical therapy and the records of the disputed treatment. Provider's representative, Ms. Goh, did not testify or call any witnesses to testify about the medical necessity of the physical therapy program rendered.

Carrier's main argument was that the physical therapy was not medically necessary because Claimant had very recently completed extensive treatment for her injury, which included a CPM program that had components of a physical therapy program. In support of its position, Carrier offered records of Claimant's prior treatment and called Samuel M. Bierner, M.D., who testified the physical therapy program in dispute was not medically necessary.

Dr. Bierner first stated a CPM program is multi-disciplinary in nature, which means more than one health care provider is assigned to treat a patient during the program. In this case, Claimant's CPM program called for a medical doctor, clinical psychologist, physical therapist, physician assistant, and counselor to implement the program.² During Claimant's first week of the CPM program, she participated in 30 minutes of stretching exercises, 60 minutes of physical exercise, and 30 minutes of walking on one visit.³ In addition to physical activities and continued medication treatment, Claimant also underwent psychological and behavioral examinations as part of her CPM program. At the end of the first week, the physical therapist noted Claimant had participated in "aerobic conditioning, stretching activities, stabilization exercises, and

² Multi-Disciplinary Team Staffing, page 118 of Carrier's Exhibit, dated January 30, 2002.

³ Physical Therapy Progress Note from Dallas Spinal Rehabilitation Center, page 120 of Carrier's Exhibit, dated January 30, 2002.

strengthening exercises.”⁴ A review of the subsequent weekly summaries indicated Claimant participated in similar physical therapy exercises for the following four weeks.

Claimant was discharged from the CPM program on March 15, 2002. The discharge report indicates Claimant “was felt to make great progress throughout the program.”⁵ Claimant returned to Dr. Acosta on April 9, 2002, and complained of back pain. Dr. Acosta prescribed the disputed physical therapy program after he examined Claimant.⁶

Carrier pointed out the prescription does not mention any rationale for prescribing the additional therapy. Dr. Biener asserted the prescription should have noted a re-injury or other exacerbating event that would have justified additional therapy. Furthermore, Dr. Biener noted, the prescription does not mention Claimant’s new back pain was associated with her compensable injury. Finally, Carrier argued additional physical therapy was not necessary based on Dr. Acosta’s assertion that Claimant recently underwent the CPM program “with excellent results.”⁷

Provider’s records of the disputed physical therapy show Claimant participated in most of the same exercises from the physical therapy component of the CPM program. For example, on April 23, 24, 26, and 29, Claimant participated in stretching, stabilization and therapeutic exercises as part of the disputed physical therapy program.⁸

Another interesting point about the treatment in question is that several progress notes reflect Claimant arrived late for her therapy or did not show up at all. One record from May 8, 2002, noted Claimant had to be awakened twice when she was supposed to

⁴ Physical Therapy Weekly Summary for dates January 28, 2002, through February 1, 2002, page 125-126 of Carrier’s Exhibit.

⁵ Discharge Summary, dated March 15, 2002, page 255 of Carrier’s Exhibit.

⁶ Prescription from Dr. Acosta, dated April 9, 2002, page 266 of Carrier’s Exhibit.

⁷ *See id.*

⁸ Therapy Services Daily Progress Report, see page 21 of Provider’s Exhibit.

be performing therapy exercises. The therapy continued in the same manner as it commenced. However, Claimant was dropped from the program by Provider for non-compliance after she missed three consecutive sessions.⁹

1. Analysis

The ALJ finds that Provider should not be reimbursed because there is no evidence Claimant sustained a second injury that would have made further treatment necessary. Additionally, there was insufficient evidence that the treatment in question was necessary to treat Claimant's compensable injury. Furthermore, Claimant had already completed a CPM program with "excellent results" based on the opinion of her treating doctor. Finally, Provider should not be reimbursed because of the lack of interest Claimant displayed during her treatment.

2. Conclusion

Claimant underwent extensive treatment for her compensable injury, which included a multi-disciplinary CPM program. Included in the CPM program was a physical therapy component, which Claimant participated in for several weeks. Following discharge from the CPM program, Claimant's treating doctor prescribed another round of physical therapy, which after reviewing the evidence, was not medically necessary.

II. FINDINGS OF FACTS

1. On____, Claimant sustained a compensable injury.
2. Claimant underwent extensive treatment for her injury, which included diagnostic tests, medication treatment, and a chronic pain management (CPM) program.
3. The CPM program claimant underwent included a physical therapy component, which required Claimant to perform stretching, lifting, and walking exercises.
4. Claimant was released from the CPM program on March 15, 2002, and re-visited her treating doctor on April 9, 2002, complaining of back pain. After an

⁹ See *id* at page 18.

examination, Claimant was prescribed a physical therapy program at Churchill Rehabilitation Centers (Provider).

5. Claimant underwent a physical therapy program at Provider's facilities between April 15, 2002, and May 23, 2002.
6. Provider sought reimbursement for the physical therapy program described in Findings of Facts No. 5 from TASB Risk Management Fund (Carrier), which was denied as not medically necessary.
7. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
8. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing in this case was mailed to the parties on May 28, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
10. The hearing convened and closed on August 26, 2003, with Administrative Law Judge Steven M. Rivas presiding. Pamela Goh, collections manager, appeared on behalf of Provider. Carrier was represented by James Loughlin, attorney.
11. Claimant did not sustain a second injury that required further treatment.
12. Provider offered insufficient evidence that the physical therapy program was necessary to treat Claimant's compensable injury.
13. The physical therapy component of the CPM program included similar exercises that were prescribed in the disputed physical therapy program.
14. Claimant experienced good results from the prior CPM program.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to 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. Provider timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a)(3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
7. The prescribed physical therapy program for dates of service April 15, 2002, through May 23, 2002, was not medically necessary for treatment of Claimant's compensable injury.
8. Based on the Findings of Fact and Conclusions of Law, Provider's appeal for reimbursement should be denied.

ORDER

IT IS ORDERED THAT the reimbursement requested by Provider for the prescribed physical therapy program for dates of service April 15, 2002, through May 23, 2002, be denied.

Signed this 15TH day of October 2003.

**STEVEN M. RIVAS
STATE OFFICE OF ADMINISTRATIVE
HEARINGS ADMINISTRATIVE LAW JUDGE**