

**DOCKET NO. 453-03-3356.M5
MDR TRACKING NO. M5-03-0533-01**

LAURENCE N. SMITH, D.C.,
Petitioner

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BEFORE THE STATE OFFICE

VS.

OF

**TRAVELERS INDEMNITY COMPANY
OF CONNECTICUT,**
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Laurence N. Smith, D.C., appealed an Independent Review Organization (IRO) determination upholding a Travelers Indemnity Company of Connecticut (Travelers) decision denying him reimbursement, on the basis of medical necessity, for certain services he provided to an injured worker (Claimant) from December 31, 2001, until September 25, 2002. This proposal concludes that the claim should be paid because the services at issue were shown to relieve the results of the injury.

I. Procedural History

A hearing convened in this case on August 6, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Dr. Smith appeared by telephone and represented himself. Travelers appeared and were represented by Daniel J. Flanagan. The hearing closed on August 6, 2003.

As there were no issues concerning notice or jurisdiction, those matters are stated in the fact findings and legal conclusions without further discussion here.

II. Discussion

A. Background

1. Factual

The Claimant, a ___year-old male, sustained a work-related injury to his lumbar spine on ___. A magnetic resonance imaging of his lumbar spine revealed a 1.0 millimeter non-lateralizing circumferential disc bulge, and disc desiccation at the L3-L4 and L4-L5 levels. Dr. Smith provided passive care, including office visits with manipulations, on 45 occasions from December 31, 2001, until September 25, 2002.

2. Legal

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 employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. §

408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19).

Dr. Smith has the burden of proof.¹

B. Services Medically Necessary

The preponderant evidence supported Dr. Smith's claim. Dr. Smith cited § 408.021 of the Labor Code, authorizing treatment as necessary to relieve the effects of a compensable injury and *Travelers Insurance Company v. Wilson*, 28 S.W. 3rd 42, 46 (Tex. App.-- Texarkana 2000, no writ), holding that one type of service that is "reasonably required" under § 408.021 is treatment to give reasonable relief from pain. He contended his treatment provided pain relief.

Dr. Smith pointed to range of motion (ROM) and palpation findings on December 1, 2001, and July 15, 2001.² He argued they constituted objective data justifying the treatment. The first findings showed pain and decreased ROM in the lumbar and cervical spines with palpation indicating mild right spasms for the cervical spine and mild bilateral spasms for the lumbar spine. The second findings showed ROM within normal limits for both the lumbar and cervical spine with pain during extension only; palpation showed slight right spasms for the cervical spine and slight left spasms for the lumbar spine.

Dr. Smith's office notes also showed symptom relief. On December 31, 2001, the Claimant presented with complaints of "mild lumbar spine soreness stiffness." The examination revealed "slight tenderness."³ By September 25, 2002, the Claimant complained of "slight cervical and spine soreness." The examination revealed "slight tenderness normal range of motion of the cervical and lumbar spine."⁴ Most of Dr. Smith's office notes record the Claimant as saying the treatments had relieved his symptoms.⁵

Despite the matters described above, the Administrative Law Judge might have concluded that the weight of evidence was against Dr. Smith, were it not for obvious, unexplained defects in Traveler's evidence. The IRO doctor's criticism of passive undisciplined treatment for nine months, beginning more than six months post-injury, and of Dr. Smith's failure to implement increasingly active applications to return the patient to a normal lifestyle as soon as possible and to start a home rehabilitation-based program⁶ might have been more persuasive if he had not also said there were no quantitative or qualitative data to support the continued application of passive therapy. As shown above and by Dr. Smith's testimony, Dr. Smith did provide objective test data.

¹28 TEX. ADMIN. CODE § 148.21(h).

²Ex. 2 at 16, 18.

³Ex. 2 at 24.

⁴Ex. 2 at 38.

⁵Ex. 2 at 22 *et seq.*

⁶Ex. 1 at 3-4.

Two other opinions contained similar misstatements. Roger Thomas Canard, D.C., issued an opinion on November 12, 2002, concluding that the evidence does not show the lumbar spinal manipulations were causally related to the ____, injury. He said none of the chiropractic treatments meet applicable criteria because the Claimant exhausted conservative care before the chiropractic services started and because the services were not documented as medically necessary.⁷ His opinion might have been more convincing had he not also said there were no examination findings or objective data (other than daily chart notes) to support the treatment.⁸ The evidence did not show that Dr. Canard considered Dr. Smith's ROM and palpation findings.

A peer review by Aaron Ford, D.C., dated February 23, 2002, concluded there is no chiropractic documentation to support further chiropractic care. He said Dr. Smith's treatment notes ended on November 21, 2001, with no further documentation of the necessity of continued chiropractic care. He concluded there was no documentation to support continued conservative care, including passive modalities and manipulation.⁹ Again, Dr. Smith's evidence shows treatment notes and other documentation did not end on November 21, 2001, but continued throughout the course of the treatment at issue.

Travelers maintained a determination that the Claimant reached maximum medical improvement as of March 1, 2002,¹⁰ showed that treatment after that date was not justified. Maximum medical improvement is defined in part as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated."¹¹ However, the term appears to relate to income benefits rather than a need for treatment. In any case, it appears that the Claimant did continue to recover with treatment, as shown by Dr. Smith's ROM findings at page 18 of Exhibit 1.

In summation, although the Administrative Law Judge has reservations about the efficacy of passive care for such a long period after an injury, he concludes on the following bases that Dr. Smith's claim should be paid: the Claimant has a statutory right to treatment that relieves the symptoms of his compensable injury; Dr. Smith's evidence showed the Claimant's pain was relieved and that his ROM improved (showing a restoration of function); and the other physicians discussed above did not appear to fully consider all the evidence relevant to the Claimant's treatment.

⁷Ex. 1 at 21-22.

⁸*Id.*

⁹Ex. 1 at 18-19.

¹⁰Ex. 1 at 24.

¹¹TEX. LABOR CODE ANN. § 401.011(30).

III. Findings of Fact

1. Laurence N. Smith, D.C., appealed an Independent Review Organization (IRO) determination upholding a Travelers Indemnity Company of Connecticut decision denying reimbursement, on the basis of medical necessity, for services he provided to an injured worker from December 31, 2001, until September 25, 2002.
2. It is undisputed that Dr. Smith appealed not later than the 20th day after he received notice of the decision.
3. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
5. The Claimant, a ___year-old male, sustained a work-related injury to his lumbar spine on___.
6. Dr. Smith provided passive care, including office visits with manipulations, on 45 occasions from December 31, 2001, until September 25, 2002.
7. Range of motion (ROM) findings on December 1, 2001, for the Claimant showed pain and decreased ROM in the lumbar spine and cervical spine.
8. Palpation on December 1, 2001, for the Claimant showed mild right spasms for the cervical spine and mild bilateral spasms for the lumbar spine.
9. Dr. Smith's office notes on December 31, 2001, showed mild lumbar spine soreness and stiffness; an examination revealed slight tenderness.
10. Testing on July 15, 2002, showed the Claimant's ROM as within normal limits for both the cervical and lumbar spine with pain during extension only.
11. Palpation on July 15, 2002, showed slight right spasms for the cervical spine and slight left spasms for the lumbar spine.
12. Dr. Smith's office notes on September 25, 2002, showed slight spine soreness with normal ROM for the cervical spine and lumbar spine.
13. Dr. Smith's treatments relieved the symptoms of the Claimant's injury.

14. Dr. Smith's treatment of the Claimant from December 31, 2001, until September 25, 2002, was reasonably required by the nature of his compensable injury.

IV. Conclusions of Law

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Dr. Smith had the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. Dr. Smith's treatment of the Claimant from December 31, 2001, until September 25, 2002, qualifies for reimbursement. TEX. LAB. CODE ANN. §413.021.
5. Dr. Smith's claim for treatment to the Claimant from December 31, 2001, until September 25, 2002, should be granted.

ORDER

IT IS, THEREFORE, ORDERED that Travelers Indemnity Company of Connecticut pay for the treatment provided by Laurence N. Smith, D.C., to the Claimant from December 31, 2001, until September 25, 2002, and also pay legally required interest.

Signed August 19th, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

JAMES W. NORMAN
Administrative Law Judge