

LIBERTY MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
VS.		
KELLY ALANA, D.C., Respondent		

DECISION AND ORDER

Liberty Mutual Insurance Company (Petitioner) challenges an Independent Review Organization (IRO) decision granting reimbursement to Kelly Alana, D.C. (Respondent), for passive and active physical therapy related services provided to an injured worker from August 2001 to February 2002. The Administrative Law Judge (ALJ) concludes that because the services provided were not appropriate for the claimant's chronic condition, because the claimant's medical records demonstrate that his condition failed to improve as a result of the treatments, and because many of the treatments were administered after the need for knee surgery was established, reimbursement should be denied.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened a hearing on January 14, 2004. Petitioner appeared at the hearing and was represented by Attorney Kevin Franta. Respondent appeared and was represented by Attorney Larry Laurent. Following post-hearing filings by the parties, the record closed on February 6, 2004.

Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

On ____, the claimant suffered a compensable crush injury to his knee. Following initial medical care, the claimant sought medical care from Southwest Injury and Rehab (Southwest), where Respondent is employed.¹ From August 1, 2001 until the claimant underwent knee surgery on February 19, 2002, Southwest treated the claimant on dozens of occasions via various passive and active physical therapy related treatments. The treatments included such procedures as electrical stimulation, myofascial release, manual traction, joint mobilization, and neuromuscular re-education. Therapeutic activities and exercises employed the treadmill, stationary bicycle, stretching, Therabands, and weights.

¹ The disputed services were provided by John House, D.C., who is no longer employed at Southwest. Dr. Alana became the claimant's treating doctor following Dr. House's departure.

The treatments were administered to the claimant up to and following his knee surgery performed on February 19, 2002. Only those services provided prior to the surgery are in dispute. The purpose of the surgery, which was first proposed as a possible treatment option in October 2001, was to address symptomatology relating to the claimant's compensable injury.

B. Parties' Positions

Petitioner opposes reimbursement for the administered treatments for the following reasons:

- After the various treatments were administered for a reasonable amount time without positive results, Respondent should have re-evaluated the injury and treatment history and considered the potential need for alternative treatment approaches.
- The claimant was in the chronic stage of injury when he began treatments at Southwest. Many of the treatments administered to him were passive in nature and, thus, not proper at the chronic stage of injury, particularly at the point knee surgery was reasonably anticipated.
- The therapies administered at Southwest would not repair an ACL tear, which ultimately was diagnosed.
- Many of the exercises could have been performed at home. The treadmill exercises could have been replicated with walking. The Theraband therapy, which utilizes an elastic band, could easily have been replicated at home.

Respondent argues that reimbursement is supported for the following reasons:

- The claimant progressed during Respondent's care.
- After evaluating the claimant on several occasions, an orthopaedic surgeon recommended Respondent continue with the physical therapy services being provided by Respondent.
- The therapy provided to the claimant allowed him to get around until the knee surgery could be performed.

C. Analysis and Conclusion

Reimbursement should be denied. While the services provided by Respondent appear to have been consistent with the recommendations of an orthopaedic surgeon who evaluated the claimant on several occasions, the ALJ was persuaded by the testimony of Petitioner's expert witness, Thomas Sato, D.C., that the claimant was not responding positively to Respondent's treatments. At best, the results were neutral. A review of Respondent's Daily Progress Notes supports this conclusion. Although the claimant's pain level was reported at mild-to-moderate in the early to middle part of October 2001, for example, it increased to moderate in late October, was reported as moderate and moderate-to-severe in January 2002, and was again reported as moderate and mild-to-moderate in February 2002.

Further review of the Daily Progress Notes sheds additional light on the neutral results claimant experienced from Respondent's services. For each of the four reported measures under "Assessment/Goals" portion of the notes "Range of Motion," "Strength/Endurance," "Swelling/Pain," and "Functional Activities" Respondent reported either neutral findings or no change to the Claimant's condition on the majority of visits.

The ALJ was also persuaded by Dr. Sato's testimony that where a patient has not responded favorably to treatment after a reasonable amount of time has elapsed, it is time to re-evaluate the treatment and consider other alternatives. The evidence suggests Respondent did not follow this approach but, instead, continued down the same treatment path. Consistent with Dr. Sato's testimony, the ALJ also questions the medical efficacy of continuing with the various physical therapy modalities while the claimant was awaiting a planned knee surgery. While it was an orthopaedic surgeon that continued to recommend the same course of treatments administered by Respondent variously described as "therapy," "physical therapy," and "followup care" such recommendations, standing alone, do not reveal an underlying rationale regarding the benefits of such treatment. The ALJ was not persuaded by Respondent's representation that the continued physical therapy would allow the claimant to "get around" while awaiting surgery, and such a rationale could not apply to the many treatments administered prior to the introduction of knee surgery as a possibility.

Although little time was spent addressing Dr. Sato's testimony that the claimant could have handled at least some of the treatment modalities at home, the testimony was not effectively rebutted by Respondent.

For these reasons, the ALJ concludes that Petitioner proved Respondent's chiropractic and physical therapy services provided during what appeared to be a chronic phase of the claimant's injury and leading up to a surgical intervention was not reasonably required by the nature of the claimant's injury, did not cure or relieve the effects naturally resulting from the compensable injury, did not promote recovery, did not enhance the claimant's ability return to or retain employment, and were not otherwise medically necessary to treat the claimant's compensable injuries. Consequently, the reimbursement requested by Respondent is denied.

Petitioner also seeks reimbursement from Respondent for amounts it has already paid Respondent for the disputed services. Because the ALJ concludes Respondent is not entitled to payment for the disputed services, Petitioner is entitled to reimbursement from Respondent for these amounts.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury to his right knee in ____.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Liberty Mutual Insurance Company (Petitioner).
3. From August 1, 2001, until the claimant underwent knee surgery on February 19, 2002, Southwest Injury and Rehab (Southwest), the employer of Kelly Alana, D.C. (Respondent),

treated the claimant on dozens of occasions via various passive and active physical therapy related treatments.

4. Respondent provided its chiropractic and physical therapy services to Claimant during a chronic phase of Claimant's injury, and some of the services were provided after surgical intervention had been planned.
5. Respondent's services included such procedures as electrical stimulation, myofascial release, manual traction, joint mobilization, and neuromuscular re-education. Therapeutic activities and exercises supervised by Respondent employed the treadmill, stationary bicycle, stretching, Therabands, and weights.
6. Petitioner refused reimbursement for the services, but unintentionally paid for some of them.
7. In response to Petitioner's denial of reimbursement, Respondent requested medical dispute resolution.
8. An Independent Review Organization (IRO) concluded Respondent was entitled to reimbursement for the disputed services.
9. Upon receiving the IRO decision, Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to the parties on October 21, 2002. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
11. The hearing was held on January 14, 2004.
12. Claimant's pain level was mild-to-moderate in the early to middle part of October 2001, increased to moderate in late October 2001, and was moderate and moderate-to-severe in January 2002.
13. For each of four reported measures under "Assessment/Goals" portion of Respondent's Daily Progress Notes "Range of Motion," "Strength/Endurance," "Swelling/Pain," and "Functional Activities" Respondent reported either neutral findings or no change to the Claimant's condition on the majority of office visits.
14. The treadmill therapy administered to Claimant could have been replicated by Claimant by walking.
15. The Theraband therapy could have been replicated by Claimant at home.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. As Petitioner, Liberty Mutual Insurance Company bears the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
4. Petitioner proved the disputed chiropractic and physical therapy services were not reasonably required by the nature of the claimant's injury, did not cure or relieve the effects naturally resulting from the compensable injury, did not promote recovery, and did not enhance the claimant's ability return to or retain employment. TEX. LAB. CODE ANN. §408.021.
5. Respondent should be denied reimbursement, and Petitioner is entitled to reimbursement for the amounts it has already paid Respondent for disputed services relating to the claimant's compensable knee injury.

ORDER

IT IS ORDERED that the reimbursement claim of Kelly Alana, D.C., for chiropractic and physical therapy services rendered to the claimant between August 1, 2001, and February 19, 2002, for the claimant's compensable knee injury is denied.

IT IS FURTHER ORDERED that Liberty Mutual Insurance Company is entitled to reimbursement from Kelly Alana, D.C., for all amounts it has paid for the disputed services.

Signed this 6th day of April, 2004.

GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS