

MICHAEL M. STELZER, D.C., <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
EMPLOYERS INSURANCE COMPANY OF WAUSAU <i>Respondent</i>	§	
	§	
	§	ADMINISTRATIVE HEARINGS

### **DECISION AND ORDER**

Michael M. Stelzer, D.C., appealed an Independent Review Organization (IRO) determination upholding an Employers Insurance Company of Wausau (Employers) decision denying him reimbursement, on the basis of medical necessity, for certain services he provided to an injured worker (Claimant) from March 13, 2002, until December 11, 2002. This proposal concludes that the claim should be denied because the services at issue were not shown to be medically necessary under applicable legal standards.

#### **I. Procedural History**

A hearing convened in this case on July 16, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), 300 West 15<sup>th</sup> Street, Austin, Texas. Dr. Stelzer appeared by telephone and represented himself. Employers appeared and was represented by Attorney Charlotte Salter. The hearing closed on July 16, 2003.

As there were no disputed 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, an approximately 38-year-old female at the time, suffered a compensable injury on \_\_\_\_, while working at a truck stop when she lifted pans weighing about 40 to 50 pounds.
- The Claimant began to notice a tingling in her right shoulder followed by a sudden stabbing pain in her neck and complete numbness in her right arm.
- On October 26, 1999, she underwent a back operation, but her pain increased.
- Dr. Stelzer saw the Claimant 82 times for neck and low back pain after he became her treating doctor on December 11, 2000.

- The treatments at issue are office visits, manipulations, required reports, physical therapy sessions, and durable medical equipment.
- The issue to be determined is whether the services and treatments were medically necessary.

## 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. Stelzer has the burden of proof.<sup>1</sup>

### B. Services Not Shown to be Medically Necessary

Dr. Stelzer did not prove that the services were medically necessary.

Dr. Stelzer 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. 3<sup>rd</sup> 42, 46 (Tex. App.-- Texarkana 2000, no writ), holding that one type of service that is "reasonably required" under § 408.021 is reasonable pain relief. He contended that the Claimant's pain was relieved. His September 25, 2002, notes say the Claimant got some relief from the last treatment, but only for about a day.<sup>2</sup> His November 11, 2002, notes say her symptoms diminished after her last visit, but increased in her mid-back with muscle spasm over the weekend.<sup>3</sup> He argued that §408.021 is satisfied when a patient receives temporary relief from treatment and that lasting relief is not a prerequisite.

Dr. Stelzer also contended that part of his function is to manage his patients' pain and this includes referrals. He cited the fact that he referred the Claimant to Arthur S. Hernandez, M.D., an orthopedic surgeon, for pain treatment.

Dr. Stelzer argued that the peer review upon which Employers' based its decision<sup>4</sup> was not legal because it was not based on all the documentation he pointed out that the peer reviewer complained about not receiving requested records from him (Dr. Stelzer). According to Dr. Stelzer, the peer reviewer violated 28 TAC § 133.106(b) and (f)(3) and TEX. INS. CODE ANN. art. 21.58A § 7(c) by trying to get documentation from him instead of Employers.

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<sup>1</sup>28 TEX. ADMIN. CODE (TAC) § 148.21(h).

<sup>2</sup>Ex. 4 at 39.

<sup>3</sup>Ex. 4 at 55.

<sup>4</sup>Ex. 4 at 68-70.

Employers' evidence showed:

- Dr. Hernandez reported on January 2, 2002, (more than a year after Dr. Stelzer began treating the Claimant) that the Claimant continued to have significant pain mostly in her back. His objective assessment showed +2 tenderness over the L4-L5 and L5-S1 interspaces.<sup>5</sup>
- Dr. Stelzer's March 13, 2002, daily notes of subjective findings said she had ongoing strong neck and low back pain.<sup>6</sup>
- Dr. Stelzer's April 24, 2002, daily notes of subjective findings said she continued to have strong right lower extremity symptoms. There was relief for about 36 hours after her last treatment.<sup>7</sup>
- Dr. Hernandez's May 20, 2002, daily notes of subjective findings said the Claimant presented with severe low back pain with radiation down her right leg and, at times, both legs.<sup>8</sup>
- Dr. Stelzer's July 10, 2002, daily notes of subjective findings said the Claimant continued to have severe neck pain, right upper extremity pain, low back pain, and right lower extremity pain that interferes with all activities of daily living and sleeping.<sup>9</sup>
- Dr. Stelzer's August 16, 2002, daily notes of subjective findings said the Claimant continued to have neck pain in her right upper extremity and low back pain in her bilateral lower extremity. His objective findings showed increased pain in the cervical spine and lumbar spine with increased paraspinal muscle tonus.<sup>10</sup>
- A September 23, 2002, letter from Jerjis J. Denno, M.D., recommending lumbar surgery, noted that the Claimant has had extensive failed conservative treatments.<sup>11</sup>
- Dr. Stelzer's September 25, 2002, daily notes of subjective findings said the Claimant had continued right upper extremity and lower extremity symptoms "that seem to be

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<sup>5</sup>Ex. 4 at 13.

<sup>6</sup>Ex. 4 at 19.

<sup>7</sup>Ex. 4 at 24.

<sup>8</sup>Ex. 4 at 26.

<sup>9</sup>Ex. 4 at 29.

<sup>10</sup>Ex. 4 at 33. Tonus is defined as the slight, continuous contraction of muscle, which in skeletal muscles aids in the maintenance of posture and in the return of blood to the heart. Para means at or from the side. *Dorland's Illustrated Medical Dictionary* (28th ed. 1994) at 1224, 1994.

<sup>11</sup>Ex. 4 at 36.

worsening.” He said there was some relief from the last treatment, but only for about a day. His objective findings noted decreased range of motion.<sup>12</sup>

- An October 3, 2002, functional capacity evaluation said the Claimant’s chief complaint was of severe pain in her bilateral cervical region, right shoulder region, and bilateral low back pain that radiates down her right lower extremity.<sup>13</sup>
- Dr. Stelzer’s October 16, 2002, daily notes of subjective findings indicated the Claimant had increased low back pain after slipping on a tomato the previous week.<sup>14</sup>
- Dr. Stelzer’s October 17, 2002, daily notes of subjective findings said the Claimant had diminished symptoms since physiotherapy the day before, but her low back pain was worse than the day before.<sup>15</sup>
- Dr. Hernandez wrote on October 25, 2002, that the Claimant continued to have severe lower back pain and wished to proceed with additional epidural steroid injections or proceed with nucleoplasty.<sup>16</sup>
- Dr. Hernandez wrote on November 11, 2002, that the Claimant said her neck pain had become increasingly severe.<sup>17</sup>
- Dr. Stelzer’s November 11, 2002, daily notes of subjective findings said the Claimant’s symptoms diminished since her last visit but increased in mid-back with muscle spasm over the weekend.<sup>18</sup>
- Dr. Hernandez wrote on December 9, 2002, that the Claimant said she continued to have significant pain in her neck and low back and that her back was irritated by a recent mylogram. His objective assessment showed +2 tenderness over the L4-L5 and L5-S1 interspaces.<sup>19</sup>
- Dr. Stelzer’s December 11, 2002, daily notes of subjective findings said the Claimant had severe pain after her mylogram, and this caused her to increase her medications and stay in bed for complete rest.<sup>20</sup>

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<sup>12</sup>Ex. 4 at 39.

<sup>13</sup>Ex. 4 at 42.

<sup>14</sup>Ex. 4 at 45.

<sup>15</sup>Ex. 4 at 48.

<sup>16</sup>Ex. 4 at 50.

<sup>17</sup>Ex. 4 at 53.

<sup>18</sup>Ex. 4 at 55.

<sup>19</sup>Ex. 4 at 64.

<sup>20</sup>Ex. 4 at 65.

The evidence showed Dr. Stelzer treated the Claimant for a long period of time during which her condition was not relieved. Although she got temporarily relief at times, she also felt worse at other times. Dr. Denno's September 23, 2002, letter aptly stated that extensive conservative treatment had failed. It appears that the Claimant's real need was lumbar spinal surgery.

Dr. Hernandez's January 2, 2002, notes made it obvious that the Claimant was experiencing significant pain after already having seen Dr. Stelzer for more than a year. Her pain was still there on March 13, 2002, when Dr. Stelzer started the treatments at issue. Based on this evidence, Dr. Stelzer failed to show that there was potential for restoring the Claimant's function or improving her condition as required by Part I.A.1. and 2. of the Medicine Ground Rules in the Commission adopted *Medical Fee Guideline*.<sup>21</sup> This was also shown retrospectively by Dr. Hernandez's objective assessment of the Claimant's pain on December 9, 2002, +2 tenderness over the L4-L5 and L5-S1 spinal interspaces, which was exactly the same as his January 2, 2002, objective assessment.

The matters described above amply support the IRO doctor's conclusions that: chiropractic treatment has been extensive; although previous treatments failed, treatments continued; documentation does not show relief of symptoms; documentation does not show how treatment was beneficial to the Claimant; and, if anything, the Claimant's condition deteriorated.<sup>22</sup>

### III. Findings of Fact

1. Michael M. Stelzer, D.C., appealed an Independent Review Organization (IRO) determination upholding an Employers Insurance Company of Wausau decision denying reimbursement, on the basis of medical necessity, for services he provided to an injured worker from March 13, 2002, until December 11, 2002.
2. It is undisputed that Dr. Stelzer appealed not later than the 20<sup>th</sup> 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, an approximately 38-year-old female at the time, suffered a compensable injury on \_\_\_, while working at a truck stop when she lifted pans weighing about 40 to 50 pounds.
6. On October 26, 1999, the Claimant underwent a back operation, but her pain increased.
7. Dr. Stelzer saw the Claimant 82 times for neck and low back pain after he became her treating doctor on December 11, 2000.

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<sup>21</sup>28 TEX. ADMIN. CODE § 134.201.

<sup>22</sup>Dr. Stelzer argued that the peer review upon which Employers based its decision to deny coverage was invalid. However, that issue was irrelevant because the controlling issue is whether Dr. Stelzer proved at the hearing that his services were medically necessary. He had the burden of proof because he lost at the IRO level.

8. The treatments at issue are office visits, manipulations, required reports, physical therapy sessions, and durable medical equipment.
9. The issue to be determined is whether the services and treatments were medically necessary.
10. As of January 2, 2002, the Claimant continued to have significant pain mostly in her back with an objective assessment of +2 tenderness over her L4-L5 and L5-S1 spinal interspaces.
11. On March 13, 2002, the first day of the disputed services, the Claimant continued to have significant neck and low back pain.
12. During the course of Dr. Stelzer's treatment of the Claimant, the Claimant got temporarily relief at times, but also often felt worse.
13. The Claimant's pain as of December 9, 2002, as shown by an objective assessment, was the same that it had been on January 2, 2002: +2 tenderness over the L4-L5 and L5-S1 spinal interspaces.
14. The Claimant had extensive conservative treatment that failed.
15. Dr. Stelzer failed to show that there was a potential for the treatments to restore the Claimant's function.
16. Dr. Stelzer failed to show that there was a potential for the treatments to improve the Claimant's condition.

#### **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(k) 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. Stelzer had the burden of proof in the case. 28 TEX. ADMIN. CODE §148.21(h).
4. Dr. Stelzer's treatment of the Claimant from March 13, 2002 until December 11, 2002, does not qualify for reimbursement. TEX. LAB. CODE ANN. §413.021; 22 TEX. ADMIN. CODE § 134.201.
5. Dr. Stelzer's claim for treatment to the Claimant from March 13, 2002, until December 11, 2002, should be denied.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the claim of Michael M. Stelzer, D.C., against Employers Insurance Company of Wausau for treatments to the Claimant from March 13, 2002, until December 11, 2002, be, and the same is hereby, denied.

**Signed August 25<sup>th</sup>, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**JAMES W. NORMAN**  
**Administrative Law Judge**