DOCKET NO. 453-03-3461.M5
MDR TRACKING NO. M5-03-1200-01

MAIN REHAB AND DIAGNOSTIC,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
	§	**OF**
V.	§	
	§	
INSURANCE COMPANY	§	
OF THE WEST,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Main Rehab and Diagnostic (Petitioner) is appealing the decision of Forte3, an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (Commission) Medical Review Division tracking number M5-03-1200-01 denying reimbursement for part of a physical therapy program. The IRO determined from the medical documentation submitted for review that the medical services provided from May 4, 2002, to July 1, 2002, were not medically necessary to treat the Claimant's condition.[1] The Administrative Law Judge (ALJ) finds the treatment was medically necessary and Respondent should reimburse Petitioner for the medical services provided.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On July 17, 2003, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner was represented by Scott C. Hilliard, attorney. Insurance Company of the West (Respondent) was represented by Dan C. Kelley, attorney. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. The hearing concluded the same day following the presentation of evidence.

II. DISCUSSION

1. Background

Claimant, a 29-year old man, suffered an injury to his left shoulder on___, while working for___. He was injured while lifting bags of feed weighing between 50 and 100 pounds. Claimant had worked for ___for approximately five years and was used to lifting heavy bags. On the date of

[1] Physical therapy services were provided from April 2, 2002, to July 1, 2002. The IRO determined that only the services provided from April 2, 2002, to May 2, 2002, were medically necessary. Respondent did not appeal the IRO's determination of medical necessity for the first 30 days of treatment.

injury, he felt a pop in his left shoulder and experienced immediate pain. An MRI revealed subacromial bursitis, supraspinatus tendonosis[2] or a small partial tear, and mild degenerative joint disease of the acromioclavicular joint with a large inferior acromial tear. Initial treatment for the injury, which only gave Claimant temporary relief, included rest and multiple injections. His treating physician recommended surgery after Claimant returned to work and continued to experience pain. Claimant was unable to continue on the job and was terminated.

Claimant changed treating physicians and was prescribed medication and physical therapy, which was provided to him from April 2, 2002 to July 1, 2002. Following physical therapy, Claimant participated in a preauthorized work hardening program and has now been released to work without restrictions. Claimant did not have surgery as recommended by his first physician. The IRO concluded that physical therapy provided from April 2, 2002, to May 2, 2002, was medically necessary, but that the remainder of the physical therapy program was not. The amount in controversy is $4,979.[3]

2. Evidence

The documentary evidence presented consisted of three exhibits. Exhibit 1 contains 557 pages of medical records, Exhibit 2 contains 20 pages of medical records, and Exhibit 3 contains 91 pages of medical records.

Osler Kamath, D.C., provided the physical therapy services in dispute and testified for Petitioner. Dr. Kamath has been a chiropractor for four years and is on the Commissions's list of approved doctors. He testified that Claimant responded well to physical therapy as quantified by improved range of motion, and improvement in activities of daily living and overall functionality. (Exh. 1, 12-14) Dr. Kamath further testified that following an examination on April 15, 2002, the consulting orthopaedist recommended physical therapy be continued. (Exh. 2, 18 and 19) On May 1, 2002, the orthopaedist noted that Claimant had significantly improved and that physical therapy should be continued. (Exh. 1, 20)

On April 4, 2002, Intracorp provided Respondent with a physician advisor review. The reviewing chiropractor recommended against chiropractic manipulation and physical medicine modalities because he believed in all probability treatment would have no lasting benefit for Claimant. Instead, he recommended an appropriate home self care and support program. (Exh. 3, 11-14) Dr. Kamath testified that he disagreed with the reviewer's opinion because a home exercise program is performed without proper equipment in a non-clinical setting. Additionally, the home

[2] The ALJ consulted both Dorland's Illustrated Medical Dictionary, 28th Edition (1994) and Merriam Webster's Medical Dictionary (1995) and was unable to locate the word tendonosis. The ALJ assumes that the medical provider meant tendinitis.

[3] Reimbursement for the first 30 days of treatment is not included in this amount.

setting does not provide for one-on-one supervision and does not allow the treating doctor to perform myofascial release and joint mobilization, and to assess range of motion.

3. Conclusion

The IRO concluded that physical therapy provided from May 4, 2002, to July 1, 2002, was not medically necessary. The burden is on Petitioner to show that this finding was incorrect. Dr. Kamath testified that both he and the consulting orthopaedist recommended conservative treatment to avoid surgical intervention. The medical records show that Claimant responded well to treatment and that he was released to work without restrictions. It is noteworthy that Claimant was successfully treated without surgery, which had been recommended by his original treating physician and would have been recommended by the consulting orthopaedist if Claimant failed conservative treatment. The peer review relied on by Respondent was obviously incorrect because Claimant did have lasting benefit from treatment.

The documentary evidence and the testimony of Dr. Kamath showed that the medical services provided to Claimant from May 4, 2002, and July 1, 2002, were medically necessary. The ALJ concludes that Petitioner's appeal should be granted and that Respondent should reimburse Petitioner in the amount of $4,979 for the medical services delivered to Claimant.

III. FINDINGS OF FACT

1. On___, Claimant sustained an on-the-job injury to his left shoulder while lifting bags of feed weighing between 50 and 100 pounds.

2. At the time of Claimant's injury, Insurance Company of the West (Respondent) provided workers' compensation insurance to the Claimant's employer.

3. An MRI revealed subacromial bursitis, supraspinatus tendonosis or a small partial tear, and mild degenerative joint disease of the acromioclavicular joint with a large inferior acromial tear.

4. Treatment for the injury, which only gave Claimant temporary relief, included rest and multiple injections.

5. Claimant continued to experience pain, and his treating physician recommended surgery.

6. Claimant sought conservative, non-surgical care from Main Rehab and Diagnostic (Petitioner), which provided Claimant physical therapy from April 2, 2002, to July 1, 2002.

7. On April 15, 2002, Claimant was examined by a consulting orthopedist who recommended that Claimant be treated with anti-inflammatory medication and continued physical therapy.

8. On May 1, 2002, Claimant was again examined by the consulting orthopedist who noted that Claimant had significantly improved and recommended that Claimant continue with physical therapy.

9. Claimant has been released to work without restrictions.

10. Claimant did not require surgical intervention for treatment of his compensable injury.

11. Respondent denied the Petitioner's request for payment for the services referred to in Finding of Fact No. 6.

12. Petitioner requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.

13. On April 16, 2003, Forte, an independent review organization certified by the Texas Department of Insurance, issued its decision finding that treatment provided from April 2, 2002, to May 2, 2002, was medically necessary, but that treatment provided from May 4, 2002, to July 1, 2002, was not medically necessary.

14. By letter dated May 15, 2003, Petitioner filed a request for hearing.

15. The Commission sent notice of the hearing to the parties on June 11, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

16. The hearing on the merits convened on July 17, 2003, before Michael J. Borkland, Administrative Law Judge. Petitioner was represented by Scott C. Hilliard, attorney, and Respondent was represented by Dan C. Kelley, attorney. The hearing concluded that same day.

V. 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. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

3. Petitioner timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.

4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).

5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC §148.21(h) and (i), and 1 TAC 155.41.

6. Based on Findings of Fact Nos. 3 - 10, Petitioner established that the medical services provided were medically necessary for treatment of the Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

7. Based on Findings of Fact Nos. 3 - 10, and Conclusions of Law Nos. 5 and 6, Petitioner proved that reimbursement should be allowed.

8. Respondent should reimburse Petitioner for providing treatment to Claimant in the amount of $4,979 plus interest.

ORDER

IT IS, THEREFORE, ORDERED that Respondent, Insurance Company of the West, reimburse Petitioner for fees incurred in treating Claimant in the amount of $4,979.

SIGNED this 14th day of August 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS