

SCD BACK & JOINT CLINIC,
Petitioner

v.

LIBERTY INSURANCE
CORPORATION
Respondent,

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issue in this case is whether the SCD Back & Joint Clinic (Petitioner) should be reimbursed by Liberty Insurance Corporation (Respondent) for the cost of services rendered to (Claimant) from January 21, 2002, to May 30, 2002. The amount in controversy is \$1,347.00 plus interest. The Administrative Law Judge (ALJ) finds Petitioner is entitled to \$1,347.00 plus applicable interest.

I. Discussion

A hearing convened on August 12, 2003, before Administrative Law Judge (ALJ) Howard S. Seitzman. H. Douglas Pruett represented Petitioner, Kevin J. Franta represented Respondent. David N. Bailey, D.C., who provided the treatment to Claimant, testified on Petitioner's behalf, and Thomas B. Sato, D.C. testified on behalf of Respondent. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing the same day.

The Claimant suffered a work-related injury on _____. Claimant's work involved lifting chicken carcasses with both hands and placing the chicken carcasses on a machine. Claimant, after experiencing increasing pain for several days, was sent to Scott & White on _____. Claimant was evaluated, prescribed pain medication and returned to work for four hours per day. After one week, Claimant returned to work on a full-time basis. Claimant continued follow-up evaluations and was diagnosed with tendinitis of the left shoulder. Claimant's last evaluation at Scott & White occurred in January 2001 and maximum medical improvement (MMI) was set on February 26, 2001. Claimant's MMI date was later moved to June 11, 2002.

Claimant presented to Petitioner on November 5, 2001, with continuing pain. After evaluation, Claimant was treated by Petitioner using physical therapy and active and passive chiropractic modalities. On November 16, 2001, Claimant was released to work on restricted duty for eight hours per day. On January 2, 2002, Claimant was taken off work because her pain was increasing. Claimant returned to work on February 5, 2002, for four hours per day and on February 18, 2002 for six hours per day. The Respondent's dispute with Petitioner involves treatments administered during eight visits as well as office visit charges.¹

¹ The January 21, 2002 treatments in dispute are (1) electrical stimulation, (2) myofacial release and (3) joint mobilization. The February 4, 2002 treatments in dispute are (1) therapeutic exercises ,(2) group therapeutic procedure, (3) myofacial release and (4) joint mobilization. The February 6, 2002 items in dispute are (1) a limited office visit charge, (2) therapeutic exercises,(3) group therapeutic procedure, (4) myofacial release and (5) joint mobilization. The February 18, 2002 items in dispute are (1) a comprehensive office visit charge and (2) a TWCC-73 charge. The February 25, 2002 item in dispute is a limited office visit charge. The March 11, 2002 items in dispute are (1) a limited office visit charge and (2) a charge for analgesic balm. The April 5, 2002 item in dispute is a limited office visit charge. The May 30, 2002 items in dispute are (1) a limited office visit charge, (2) myofacial release and (3) joint mobilization and (4) a charge for analgesic balm.

Respondent denied the reimbursement for the services as not medically necessary. By letter dated February 28, 2003, MAXIMUS, an independent review organization (IRO), concluded the services provided were not medically necessary for the diagnosis and treatment of Claimant's condition. The IRO premised its decision on (1) Claimant's condition having been extant for approximately one year, (2) lack of significant improvement after the initial two months of care, and (3) the use of passive therapy which could have been used at home. By Order dated May 9, 2003, the Medical Review Division of the Texas Workers' Compensation Commission, based upon the IRO decision, denied all of Petitioner's claims for reimbursement.

The dispute between Petitioner and Respondent involves whether the Claimant's problem was primarily pain or a functional deficit. Although Claimant's pain was subjectively measured and recorded, Petitioner argues that the primary purpose of the services was not to provide relief from pain. The primary goal was functional restoration, which was measured objectively. Respondent contends that the treatments offered by Petitioner at the chronic stage of shoulder sprain were not efficacious and did not fulfill the requirements of 28 TAC § 180.22(a).² Because Claimant had already returned to work, Respondent contends the primary problem was the treatment of pain. Respondent claims pain was not addressed until the Claimant was referred by Petitioner to a chronic pain management program. Further, Respondent contends the functional improvement could have been achieved through home therapy.

The ALJ finds that the treatment provided was medically necessary.

Pain was a problem, but not the Claimant's primary problem. Claimant experienced pain. The prognosis, prepared by Petitioner following the November 5, 2001 evaluation, clearly states that there is a high probability that Claimant will have continued residual pain. Petitioner referred Claimant to Dr. Suchowiecky for pain medication evaluation and for chronic pain treatment. Petitioner recognized the pain issue and made appropriate referrals.

Claimant's primary problem was a functional deficiency. Claimant had a repetitive trauma injury. The stated goals of the treatment were to normalize joint motion, decrease pain and increase physical capacity. Claimant had a functional deficiency and Claimant's functional status was significantly improved by Petitioner's treatment. Claimant had a treatment plan supported by clear explanation and documentation demonstrating why the treatment was necessary and what gains were to be expected. The therapeutic exercises ended in February 2002, and the evidence does not establish that Claimant could have achieved similar improvement through home therapy. The evidence establishes that the treatments were medically necessary.

The office visits were appropriate and medically necessary. Although, Petitioner referred Claimant to a chronic pain program in February 2002, Petitioner continued to be Claimant's supervising treating professional.

² (a) Health care providers shall provide reasonable and necessary health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; and/or
- (3) enhances the ability of the employee to return to or retain employment.

II. Findings of Fact

1. The Claimant suffered a work-related injury on _____.
2. Claimant's work involved lifting chicken carcasses with both hands and placing the chicken carcasses on a machine
3. Claimant, after experiencing increasing pain for several days, was sent to Scott & White on _____. Claimant was evaluated, prescribed pain medication and returned to work for four hours per day. After one week, Claimant returned to work on a full-time basis. Claimant continued follow-up evaluations and was diagnosed with tendinitis of the left shoulder.
4. Claimant's last evaluation at Scott & White occurred in January 2001, and maximum medical improvement (MMI) was set on February 26, 2001. Claimant's MMI date was later moved to June 11, 2002.
5. Claimant presented to SCD Back & Joint Clinic (Petitioner) on November 5, 2001, with continuing pain and after evaluation, Claimant was treated by Petitioner using physical therapy and active and passive chiropractic modalities.
6. Liberty Insurance Corporation's (Respondent) dispute with Petitioner involves various treatments administered during visits on January 21, 2002, February 4, 6, 18, and 25, 2002, March 11, 2002 and May 30, 2002.
7. The goal of the treatment was to normalize joint motion, decrease pain and increase physical capacity.
8. Respondent denied the reimbursement for the services as not medically necessary.
9. By letter dated February 28, 2003, MAXIMUS, an independent review organization (IRO), concluded the services provided were not medically necessary for the diagnosis and treatment of Claimant's condition.
10. By Order dated May 9, 2003, the Medical Review Division of the Texas Workers' Compensation Commission, based upon the IRO decision, denied all of Petitioner's claims for reimbursement.
11. Petitioner filed its request for a hearing on May 16, 2003.
12. Notice of hearing was sent on June 11, 2003.
13. On June 30, 2003, Respondent filed an agreed request for a continuance of the hearing and the hearing was reset for August 12, 2003.
14. The hearing convened on August 12, 2003 with Administrative Law Judge (ALJ) Howard S. Seitzman presiding. H. Douglas Pruet represented Petitioner and Kevin J. Franta represented Respondent. The record closed the same day.
15. Claimant had a repetitive trauma injury.
16. Claimant had a functional deficiency, and Claimant's functional status was significantly improved by Petitioner's treatment.

17. Claimant had a treatment plan supported by clear explanation and documentation demonstrating why the treatment was necessary and what gains were to be expected
18. Claimant could not have achieved similar improvement through home therapy.
19. Claimant experienced pain and was referred to Dr. Suchowiecky for pain medication evaluation and for chronic pain treatment.
20. From the outset, Petitioner recognized that there was a high probability that Claimant would have continued residual pain.
21. Petitioner recognized the pain issue and made appropriate referrals.
22. From November 5, 2001 through May 30, 2002, Claimant visited Petitioner eight times.
23. After her visit with Petitioner on November 5, 2001, Claimant was released to work eight hours per day on November 16, 2001, on restricted duty.
24. On January 2, 2002, Claimant was taken off work because her pain was increasing.
25. Claimant was returned to work on February 5, 2002, for four hours per day and beginning February 18, 2002 for six hours per day.
26. Therapeutic exercises ended in February 2002.
27. Petitioner referred Claimant to a chronic pain program in February 2002
28. The office visits were appropriate and medically necessary as Petitioner continued to be Claimant's supervising treating professional after the referral for pain management.
29. The amount billed for the services rendered by Petitioner is \$1,347.00.
30. The services provided to Claimant by Petitioner were medically necessary.

III. 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. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) (Vernon Supp. 2003) and TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 2000 and Vernon Supp. 2003).
3. Petitioner timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 (Vernon 2002).
5. Petitioner has the burden of proof in this matter. 28 TAC § 148.21(h).
6. Petitioner met its burden of proving that all of the services were medically necessary or reasonably required health care under TEX. LAB. CODE ANN. § 408.021.

ORDER

THEREFORE IT IS ORDERED that Liberty Insurance Corporation shall reimburse the SCD Back & Joint Clinic \$1347.00 plus applicable interest. All relief requested that is not expressly granted herein is DENIED.

SIGNED this 6th day of October, 2003.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**