

**SOAH DOCKET NO. 453-03-3599.M5
MDR NO. M5-03-1528-01**

MAIN REHAB AND DIAGNOSTIC	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
NORTHERN INSURANCE COMPANY	§	
OF NEW YORK	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Main Rehab and Diagnostic (Provider) has appealed the decision of the Independent Review Organization (IRO) denying reimbursement for physical therapy, work conditioning, and related treatments provided to injured worker ___ (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Provider has shown by a preponderance of the evidence that it is entitled to be reimbursed for some of the disputed services in issue. In total, Provider is entitled to reimbursement in the sum of \$6,231.

I. BACKGROUND

Claimant is a construction laborer who suffered a compensable injury on ___, when he tripped and fell, lacerating the palm of his right hand. Claimant received immediate emergency care for his hand, which consisted of cleansing and bandaging the wound and providing medication for the pain. Approximately one week later, Claimant saw Dr. Brian Rogers, who determined that Claimant's sensation and grip strength appeared to be normal. Dr. Rogers recommended therapy to aid in the healing of Claimant's wound. Dr. Rogers saw Claimant again a month later, and noted that Claimant continued to have pain in his hand but his grip again appeared to be normal. Dr. Rogers recommended continued therapy but also indicated that Claimant's hand should continue to heal.

On May 20, 2002, Claimant changed treating doctors and began seeing Osler Kamath, a chiropractor affiliated with Provider. Dr. Kamath concluded that Claimant had nerve damage, although there were no electrodiagnostic studies performed, or deficits in motor function noted, to support such a conclusion. Based on Dr. Kamath's conclusions and recommendations, Claimant began receiving extensive chiropractic treatment from Provider.¹ Claimant saw Provider on at least 60 different dates of service between May 29, 2002, and October 23, 2002, during which time Claimant received various physical therapy and chiropractic treatments, and engaged in work conditioning. Virtually all of those services are in dispute in this case. The total amount in dispute is \$19,589.50. Northern Insurance Company of New York (Carrier), as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse the treatments, contending they were not medically necessary.

Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the services in issue were not medically necessary treatment for Claimant's compensable injury. Provider then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing

¹ Dr. Kamath is affiliated with Provider and actually provided the bulk of the treatment on behalf of Provider.

convened on October 30, 2003, with ALJ Craig R. Bennett presiding. Provider appeared through its attorney, Scott Hilliard. Carrier appeared through its attorney, Steve Tipton. The hearing concluded that same day and the record closed on November 26, 2003, after the parties submitted written closing arguments. No parties objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

Carrier characterizes Claimant's hand injury as relatively minor and disputes that the extensive treatment provided to Claimant was medically necessary. In particular, Carrier points out that the medical personnel who first saw Claimant determined that the laceration to his hand was only 1.2 cm deep and that he had no nerve damage. For such an injury, Carrier contends no extensive treatment was necessary, particularly not chiropractic treatment and over 50 office visits in a five-month period. Carrier points out that at least three different doctors have determined the extensive treatment provided was not necessary, citing to two peer review doctors and the IRO reviewer's conclusions. At the hearing, Carrier presented the testimony of Katherine Blanchette, M.D., who testified that chiropractic care was not necessary treatment for Claimant's compensable injury. In her testimony, Dr. Blanchette explained the documentation of the injury and her opinion that the extensive chiropractic care provided to Claimant was not appropriate, given the limited nature of Claimant's injury. Carrier also notes that there was little variation in the treatment provided to Claimant and little improvement during the time period in question.

Provider responds by noting that none of the reviewing doctors relied on by the Carrier actually examined Claimant. Provider asserts that it was in the best position to determine Claimant's condition and that it documented and substantiated the basis for the treatment provided. Dr. Kamath testified at length at the hearing regarding the necessity for the treatment and his conclusions that Claimant's injury was more extensive than Carrier considered it to be. Dr. Kamath also testified that the documentation did show improvement in Claimant's functioning during the course of treatment, citing to improvements in pain levels and in functional ability as shown by different testing. Provider also pointed out that the work conditioning provided after August 23, 2002, was preauthorized by Carrier and cannot be challenged now.

After considering the parties' arguments and evidence, the ALJ concludes that Provider is entitled to reimbursement for some services. First, as for work conditioning, the ALJ agrees that Carrier cannot dispute those services now. Carrier argues it erroneously preauthorized them based on misrepresentations by the Provider. After considering the evidence, though, the ALJ concludes Carrier has not shown that Provider made any material misrepresentations that Carrier relied upon. The record certainly indicates a difference of opinion about the extent of Claimant's injury, but the ALJ is not persuaded that Provider misrepresented any facts to Carrier in seeking preauthorization for the work conditioning.

Carrier also argues the documentation does not establish that work conditioning was properly rendered; however, Carrier did not deny reimbursement on this ground and cannot assert it for the first time at the hearing. Moreover, the ALJ concludes the documentation is sufficient to establish the work conditioning was properly provided. Therefore, because Carrier preauthorized the treatment and the treatment was properly documented, Carrier is responsible for reimbursing the reasonable costs associated with it. In total, Carrier preauthorized three weeks of work conditioning and Provider billed Carrier for 14 days of work conditioning provided between August 23, 2002 and September 13, 2002. The total amount billed during that time period was \$3,852 for work

conditioning, \$48 for an office visit, and \$200 for a functional capacity exam. The ALJ finds that these services were all related to the work conditioning and were reasonable and necessary. Therefore, Carrier is to reimburse Provider the sum of \$4,100 for such services.

As for the remaining treatment, the ALJ finds that the bulk of it was not medically necessary. The preponderance of the evidence indicates that Claimant's injury was relatively minor, limited in nature to his right hand, involved no nerve damage, and should have healed relatively well without extensive therapy. The ALJ finds it excessive and unwarranted for Provider to have seen Claimant four days a week for approximately two-and-a-half months to provide extensive chiropractic treatment for a relatively minor hand laceration. This conclusion is supported by the testimony of Dr. Blanchette and the findings of the IRO reviewer. However, because Dr. Kamath was Claimant's treating doctor, it was appropriate for him to regularly examine Claimant and perform some diagnostic testing to ensure that Claimant's injury was healing and involved no ongoing damage. Therefore, the ALJ concludes Provider is entitled to reimbursement for office visits billed under CPT Code 99213 on May 31, June 13, June 27, July 11, July 29, August 9, August 21, September 20, and October 23, 2002. For each visit, Provider billed the amount of \$48, for total reimbursement of \$432 for office visits in that time period.

Further, Provider is entitled to reimbursement for the diagnostic testing performed on Claimant to measure the extent of injury and level of healing. In particular, Provider is entitled to reimbursement in the amount of: (1) \$384 for CPT Code 95999-WP on May 31, 2002; (2) \$815 for CPT Codes 95900-27, 95904-27, and 95925-27 on July 11, 2002; (3) and \$500 for CPT Code 97750-FC on August 9, 2002. All other services were unnecessary and should not be reimbursed.

In summary, the ALJ finds that Provider is entitled to reimbursement in the total amount of \$6,231 for work conditioning, office visits, and diagnostic testing necessary for treatment of Claimant's compensable injury. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable, work-related injury to his hand on ___.
2. Northern Insurance Company of New York (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. After suffering his injury, which involved a laceration 1.2 cm deep, Claimant received immediate emergency care for his hand, including cleansing and bandaging of the wound and medication for the pain.
4. In April and May 2002, Claimant saw Dr. Brian Rogers, who determined that Claimant's sensation and grip strength appeared to be normal.
5. On May 20, 2002, Claimant changed treating doctors and began seeing Osler Kamath, a chiropractor affiliated with Provider.
6. Dr. Kamath concluded that Claimant had nerve damage, although there were no electrodiagnostic studies performed, or deficits in motor function noted, to support such a conclusion.

7. Based on Dr. Kamath's conclusions and recommendations, Claimant saw Provider on at least 60 different dates of service between May 29, 2002, and October 23, 2002, during which Claimant received various physical therapy and chiropractic treatments, and engaged in work conditioning.
8. The total amount billed for the disputed services is \$19,589.50.
9. Carrier denied reimbursement for the services, contending they were not medically necessary.
10. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
11. MRD denied reimbursement on May 9, 2003, based on the IRO physician reviewer's determination that the services in issue were not medically necessary.
12. On May 19, 2003, Provider requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
13. Notice of the hearing was sent by the Commission to all parties on June 25, 2003.
14. On October 30, 2003, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Provider appeared through its attorney, Scott Hilliard. Carrier appeared through its attorney, Steve Tipton. The hearing concluded that same day, and the record closed on November 26, 2003, after the parties submitted written closing arguments.
15. Carrier preauthorized three weeks of work conditioning for Claimant.
16. Provider administered fourteen days of work conditioning to Claimant and billed Carrier \$4,100 for medically necessary services related to the work conditioning.
17. Claimant's injury was relatively minor, limited in nature to his right hand, involved no nerve damage, and should have healed relatively well without extensive therapy.
18. It was medically unnecessary for Provider to have seen Claimant four days a week for approximately two-and-a-half months to provide extensive chiropractic treatment for Claimant's relatively minor hand laceration.
19. Because Dr. Kamath was Claimant's treating doctor, it was appropriate for him to regularly examine Claimant and perform some diagnostic testing to ensure that Claimant's injury was healing and involved no ongoing damage.
20. The office visits billed at \$48 per visit under CPT Code 99213 on May 31, June 13, June 27, July 11, July 29, August 9, August 21, September 20, and October 23, 2002, were medically necessary treatment for Claimant's compensable injury.
21. The services billed in the total amount of \$1,699 under CPT Code 95999-WP on May 31, 2002; CPT Codes 95900-27, 95904-27, and 95925-27 on July 11, 2002; and CPT Code 97750-FC on August 9, 2002, were medically necessary treatment for Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Provider has shown, by a preponderance of the evidence, that office visits and diagnostic services referenced in Finding of Fact Nos. 20 and 21 were medically necessary for treatment of Claimant's compensable injury. TEX. LAB. CODE ANN. §§ 408.021(a)(1-3) and 401.011(19).
7. Provider is entitled to reimbursement in the amount of \$2,131 for the services referenced in Findings of Fact Nos. 20 and 21, and Conclusion of Law No. 6.
8. Provider has shown that it is entitled to reimbursement for \$4,100 for work conditioning provided to Claimant, because Carrier preauthorized such treatment.

ORDER

IT IS, THEREFORE, ORDERED that Northern Insurance Company of New York reimburse Main Rehab and Diagnostic the sum of \$6,231 plus interest for the treatments provided to Claimant between May 29 and October 23, 2002.

SIGNED January 6, 2004.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**