

SOAH DOCKET NO. 453-03-3601.M5
MDR Tracking Number: M5-03-1163-01

MAIN REHAB AND DIAGNOSTIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
LIBERTY MUTUAL FIRE	§	
INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is an appeal by Main Rehab and Diagnostic (“Petitioner”) from a decision of an independent review organization (“IRO”) on behalf of the Texas Workers’ Compensation Commission (“Commission”) in a dispute regarding the medical necessity of chiropractic treatment. The IRO found that the insurer, Liberty Mutual Fire Insurance Co. (“Respondent”) properly denied reimbursement for physical therapy that Petitioner administered between August 20 and October 22, 2002, to a claimant suffering from a foot injury.

Petitioner challenged the decision on the basis that the treatment at issue was, in fact, medically necessary, within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that reimbursement of Petitioner should be denied, as previously ordered.

JURISDICTION AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction or venue.

STATEMENT OF THE CASE

The hearing in this docket was convened on September 3, 2003, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by Scott Hilliard, attorney. Respondent was represented by Charlotte Salter, attorney. After presentation of evidence and argument, the hearing was adjourned on that same date.¹ The parties were allowed an opportunity to submit written briefing, and the record in the case closed on September 24, 2003.

¹The staff of the Commission formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of the hearing.

The record revealed that on____, the claimant suffered a compensable injury when his left foot was caught between heavy objects. The claimant first presented to Dr. Osler Kamath, a licensed chiropractor who practices through Petitioner, on May 23, 2002, complaining of pain, numbness, and stiffness in the left foot and ankle. Dr. Kamath found objective indications of hypesthesia, soreness, and decreased range of motion in those areas. Dr. Kamath recorded a diagnosis of “crush injury” and “contusion” of the foot, as well as “foot sprain/strain.” To treat these conditions, the doctor formulated the following plan:

[The patient] will begin a conservative regimen of physical therapy targeted towards the injured areas. He will receive a combination of active and passive therapies. Treatment frequency will be 5x/week for 2 weeks and 4x/week thereafter. Range of Motion (ROM) and muscle strength testing will be performed periodically to monitor progress and modify treatment as needed.

The goals of the treatment [are] to increase ROM and muscle strength; alleviate pain and paraesthesia, and enhance functionality.

Consistent with this plan, the claimant made more than 20 visits to Petitioner’s clinic, prior to August 20, 2002. (Reimbursement for this initial period of treatment is not in dispute.)

In describing the claimant’s office visit on August 20, 2002, Dr. Kamath’s notes again catalogued the patient’s immediate complaints of pain, numbness, and stiffness in the left foot and ankle, as well as objective findings of soreness and decreased range of motion in those areas. The soreness had improved since the patient’s previous visit, Dr. Kamath concluded, while the range of motion had not. He also observed muscle spasms and “improper movement or a fixation at the foot on the left.” The plan of treatment set out in the notes was essentially the same as that described in the report for May 23, 2002. Dr. Kamath continued to treat the claimant according to this plan through October 22, 2002. (The claimant made 17 visits for examination and therapy during this disputed period.)

When Petitioner subsequently billed Respondent (the insurer for the claimant’s employer) \$4,053 for services from August 20 through October 22, 2002, Respondent denied reimbursement on the grounds that the treatment had been medically unnecessary. In a letter dated March 18, 2003, Respondent stated that chiropractic peer reviews had found Petitioner’s treatment in this case “excessive and unwarranted” and concluded that Petitioner “has failed to show how the disputed services were necessary for this patient...” Petitioner then sought medical dispute resolution through the Commission.

The IRO to which the Commission referred the dispute issued a decision on April 1, 2003, concluding that Petitioner had provided the claimant with disproportionately extensive chiropractic treatment for an injury that appeared “not to be severe.” The IRO declared that chiropractic treatment would not be reasonable or necessary for this type of injury-for which medication, injections, and home-based exercise would have sufficed.

The Commission’s Medical Review Division (“MRD”) reviewed the IRO’s decision and, on May 9, 2003, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

THE PARTIES' EVIDENCE AND ARGUMENTS

A. PETITIONER

Petitioner argued that the claimant needed the disputed treatment to achieve optimal rehabilitation. The IRO decision and several peer reviews failed to perceive this, asserted Petitioner, because they ignored the observations of the treating physicians and, in effect, “re-diagnosed” the claimant’s injury to minimize its severity. Particularly notable in that respect is the IRO’s articulated rationale for decision, which characterized the injury as a mere “contusion injury of the foot, specifically of the fifth toe.” Testifying on Petitioner’s behalf, Dr. Kamath declared that this injury clearly amounted to more than a contusion, since it ultimately resulted in the claimant’s receiving a whole-body impairment rating of 2 percent.² By contrast, a contusion represents “self-limiting” damage that eventually heals without permanent bodily impairment.

Petitioner also noted that Dr. James Laughlin, D.O., examined the claimant (upon Dr. Kamath’s referral) on July 24, 2002, and added a diagnosis of plantar fasciitis and tear of the anterior fibulotalar ligament in the left foot. Dr. Laughlin recommended injections to relieve the claimant’s pain and concluded, “This, in conjunction with continued conservative care could facilitate the patient’s progress and assist in returning the patient to more active status...” (However, the patient later refused the recommended injections.)

According to Dr. Kamath, the need for therapeutic treatment continued after August 20, 2002, because the claimant was still experiencing “deficits” in functioning at that time and was still adding to the moderate progress he previously had made under that treatment. As corroboration, Dr. Kamath noted that Dr. Laughlin examined the claimant for a second time on September 26, 2002, and found him still to be suffering pain in the left ankle and on the weight-bearing surface of the left heel.

B. RESPONDENT

According to Respondent, Dr. Kamath continued in this case-for an inordinately long period-to pursue treatment that had been shown to be ineffective. Dr. Kamath thus failed to provide efficient management of the claimant’s health care, as required by 30 TEX. ADMIN. CODE § 180.22. Respondent noted that the claimant continued to complain of the same symptoms at the start of the disputed period (on August 20, 2002) as he had at the start of the initial period of treatment by Dr. Kamath (on May 23, 2002). Indeed, a handwritten note within Dr. Kamath’s report for August 20 indicated that the claimant’s range of motion in the left ankle “has diminished slightly” since earlier examinations.

Respondent also cited written opinions from two chiropractic peer reviewers, asserting that chiropractic care was unnecessary in this case after June 18, 2002.

²Dr. Kamath determined this rating when he declared the claimant at maximum medical improvement on November 27, 2002; according to Dr. Kamath, a designated doctor for the Commission later found an even higher (3 percent) impairment rating.

Dr. Thomas Sato, a licensed chiropractor, testified at the hearing for Respondent. He concluded that the record showed little or no improvement in the claimant's symptoms that could be attributed to the chiropractic modalities administered between August 20 and October 22, 2002. This result was not surprising, he suggested, since similar treatment between May and August had also produced little benefit. In order to justify continuing chiropractic treatment after August 20, Dr. Sato asserted, the earlier treatment should have been documented as "efficacious" in resolving the patient's condition by at least 50 to 75 percent. Since that, in fact, did not occur, Dr. Kamath should have perceived that the patient was not responding to his treatment and referred him for something else. Indeed, noted Dr. Sato, the claimant's condition actually seemed to get somewhat worse with chiropractic therapy during September of 2002.

In summary, Dr. Sato stated, he could not find that any treatment prescribed by Dr. Kamath had sped up the claimant's natural healing process. Rather, the claimant improved at about the same rate between May and November of 2002 as Dr. Sato would have predicted in the absence of chiropractic intervention. He noted, in particular, that plantar fasciitis is typically a self-limiting condition, resolving itself without extensive treatment.

ANALYSIS

Petitioner bears the burden of proving those deficiencies that it contends should invalidate the IRO's decision in this case. In the ALJ's view, it has not discharged that burden.

The ALJ acknowledges that the rationale for the IRO's decision in this case was sketchy and elliptical, at best, and focused on a diagnosis made immediately after the accident by a physician who did not treat the complainant for any significant period of time. (As Dr. Sato acknowledged, the symptoms that Dr. Kamath later observed may not yet have had time to develop when the first diagnosis was made.) Still, the IRO's specific comments are not clearly wrong, nor do they preclude the likelihood that the IRO reviewer had other and more general reasons for the overall conclusion that the disputed treatment was unnecessary.

The ALJ finds that the record in this case, as a whole, fails to give preponderant support for the asserted necessity of such treatment. Dr. Kamath's clinical reports appear to indicate little change in the claimant's condition in the seven months between May and November of 2002, and they provide almost no insight into what sort of therapies or modalities Dr. Kamath was employing in his efforts to alleviate the claimant's symptoms.

Although Petitioner cited Dr. Laughlin's examinations as corroborating Dr. Kamath's diagnoses and plans, the ALJ believes that they generally provide rather equivocal support. On July 24, 2002, for instance, Dr. Laughlin noted the patient's "normal range of motion of the ankle and foot," in contrast to Dr. Kamath's findings before and after this date. On September 26, 2002, Dr. Laughlin stated that "the patient's progress is less than expected with the present conservative care alone" and again recommends injections. He then gave a word-for-word repetition of his months-earlier assessment that injections and conservative care could facilitate the patient's return to a more "active status."

The totality of the record indicates that Dr. Sato has provided the most accurate summary of this case-*i.e.*, that neither the first nor second round of treatment provided by Dr. Kamath brought

the claimant significant relief or restoration of function, beyond what would have occurred from natural healing over time, and that the relative lack of progress associated with the first round of treatment should have indicated that a further regimen of such treatment (as was pursued from August 20 to October 22, 2002) probably would not be efficacious in resolving the patient's condition.

CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have not been shown to be medically necessary. Reimbursement for these services should be denied, accordingly, as initially determined by the IRO.

FINDINGS OF FACT

1. On, the claimant suffered an injury to the left foot that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. §401.001 *et seq.* Subsequent to the injury, claimant experienced chronic pain, numbness, and stiffness in the left foot and ankle.
2. Dr. Osler Kamath, a licensed chiropractor who practices through Main Rehab and Diagnostic ("Petitioner") began treatment of the claimant on May 23, 2003, upon diagnosing the claimant as suffering from "crush injury" and "contusion" of the foot, as well as "foot sprain/strain."
3. Dr. Kamath treated the claimant under a plan for a "conservative regimen" of active and passive therapies, administered five times per week for two weeks, then four times per week thereafter, with goals of increasing range of motion and muscle strength in the affected areas, alleviating pain and paraesthesia, and enhancing functionality.
4. On August 20, 2002, Dr. Kamath again examined the claimant and noted complaints of pain, numbness, and stiffness similar to those noted in the examination of May 23, 2002. Dr. Kamath formulated a plan of treatment essentially the same as that described in the report for May 23, 2002. Dr. Kamath continued to treat the claimant according to this plan from August 20 through October 22, 2002, a period during which the claimant made 17 visits for examination and therapy.
5. Petitioner sought reimbursement of \$4,053 for services from August 20 through October 22, 2002, as noted in Finding of Fact No. 4, from Liberty Mutual Fire Insurance Company ("Respondent"), the insurer for the claimant's employer.
6. Respondent denied the requested reimbursement on grounds that the disputed treatment had been excessive and medically unnecessary, with little change in the treatment plan since the patient's first visit to Dr. Kamath.
7. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.

8. The independent review organization (“IRO”) to which the Commission referred the dispute issued a decision on April 1, 2003, concluding that the disputed treatment was not reasonable and necessary for the type of injury involved.
9. The Commission’s Medical Review Division reviewed and concurred with the IRO’s decision in a decision dated May 9, 2003, in dispute resolution docket No. M5-03-1163-01.
10. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings (“SOAH”), seeking review and reversal of the MRD decision regarding reimbursement.
11. The Commission mailed notice of the hearing’s setting to the parties at their addresses on June 25, 2003.
12. A hearing in this matter was convened on September 3, 2003, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented.
13. The medical services noted in Findings of Fact Nos. 3 and 4 did not provide significant relief of the claimant’s symptoms or restoration of function, as distinguishable from the effects of natural healing associated with the mere passage of time.
14. The claimant’s relative lack of progress through the treatment noted in Finding of Fact No. 3 indicated that a further regimen of such treatment, as noted in Finding of Fact No. 4, would probably not be efficacious in resolving the patient’s condition.

CONCLUSIONS OF LAW

1. The Texas Workers’ Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR 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 § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV’T CODE ANN. ch. 2001 and the Commission’s rules, 28 TEX. ADMINISTRATIVE CODE (“TAC”) §133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).

6. Based upon the foregoing Findings of Fact, the treatments for the claimant noted in Finding of Fact No. 4 do not represent elements of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions in this matter by the IRO, issued on April 1, 2003, and by the MRD, issued on May 9, 2003, were correct; therefore, reimbursement of \$4,053 for the services noted in Finding of Fact No. 4 should be denied.

ORDER

IT IS THEREFORE, ORDERED that the appeal of Main Rehab and Diagnostic, seeking reimbursement of \$ \$4,053 for medical services from August 20 to October 22, 2002, be denied, in accordance with the findings and decision of the independent review organization issued in this matter on April 1, 2003, and concluding that the disputed services had not been shown to be medically necessary.

SIGNED this 29th day of September, 2003.

MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS