SOAH DOCKET NO. 453-03-3644.M5
MDR Docket No. M5-03-1585-01

THOMAS S. SOLBY, D.C.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
AMERICAN HOME ASSURANCE CO.,	§	**ADMINISTRATIVE HEARINGS**
Respondent	§	

DECISION AND ORDER

Thomas S. Solby, D.C. (Provider) appealed the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) declining to order reimbursement of $1,027.00 for office visits with manipulation (CPT Code 99213-MP), therapeutic exercises (CPT Code 97110), hot or cold pack treatments (CPT Code 97010), traction (CPT Code 97012), and electric stimulation (CPT Code 97014) that he provided to Claimant on 12 dates of service between May 8, 2002, and November 6, 2002. Carrier denied reimbursement on the basis that the treatments were not reasonable or medically necessary. The Administrative Law Judge (ALJ) finds the disputed treatments were reasonable and medically necessary. Therefore, Carrier is to reimburse Provider $1,027.00.[1]

1 At the hearing, Carrier stated that it no longer disputes the reasonableness or medical necessity of office visits with manipulation (CPT Code 99213-MP) on May 8, May 24, June 5, June 21, July 12, August 9, August 12, and August 28, 2002, but continues to dispute those provided on June 12, June 26, October 31, and November 6, 2002. Carrier also no longer disputes the modalities (CPT codes 97010, 97012, and 97014) provided on August 9, 2002. Carrier did not indicate at the hearing if payment has been made for the undisputed treatments. (Carrier's Ex. 5, 1-2).

I. PROCEDURAL HISTORY

ALJ Sharon Cloninger convened the hearing on September 9, 2003, in the William P. ClementsBuilding, 300 West 15th Street, Fourth Floor, Austin, Texas. Provider appeared and represented himself. Carrier was represented by Christine Karcher, attorney, who appeared via telephone. The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below. After evidence was presented, the hearing concluded and the record closed that same day.

II. BACKGROUND

Claimant, who works as a baggage handler for an airline, injured his lumbar spine on___ while bending and twisting to pick up a piece of luggage that weighed approximately 85 pounds. Provider began treating Claimant that same day, using conservative applications that included manipulation, therapeutic exercises, electric stimulation, traction, and hot/cold packs. A February 20, 2002 MRI of Claimant's spine revealed posterior central disc bulges at L2-3, L3-4, L4-5, and L5-S1, with annular fissuring at all levels except L4-5, and neuroforminal narrowing at L4-5 and L5-S1. (Carrier's Ex. 1, 24).

The disputed treatments were provided just prior to, during, and immediately after Claimant's participation in a work hardening program from May 28, 2002, through July 19, 2002. Following a functional capacity evaluation (FCE) performed on July 22, 2002, Claimant was cleared for return to full duty at work provided he did not lift bags weighing more than 91 pounds without the assistance of a second person. The FCE evaluator also recommended that Claimant continue to receive chiropractic adjustments as part of his ongoing therapy. On_____, Claimant suffered an exacerbation of his injury, resulting in three days off work and further treatment by Provider. Claimant was placed at Maximum Medical Improvement (MMI) on September 18, 2002, with a 10 percent impairment rating, which was modified to 5 percent on December 4, 2002. (Carrier's Ex. 1, 24; Carrier's Ex. 2, 15; Carrier's Ex. 4, 16).

Provider requested reimbursement from Carrier for Claimant's treatments, which was denied. Provider appealed Carrier's denial before the Commission's Medical Review Division (MRD). The MRD denied Provider's appeal following its review of a May 14, 2003 decision issued by an independent review organization (IRO) finding the treatments were not medically necessary. (Carrier's Ex. 1, 19-20).

On September 3, 2003, nearly four months after the IRO decision was issued, Stephen R. Tomko, D.C., conducted a peer review of Provider's treatment of Claimant. Dr. Tomko concluded the disputed office visits with manipulation on May 8, May 24, June 5, June 21, and July 12, August 9, August 12, and August 28, 2002, were reasonable and medically necessary. He concluded the office visits with manipulation on October 31, and November 6, 2002, were not reasonable or medically necessary because Claimant's recurring back pain could have been treated with an at-home exercise program and over-the-counter medication. He also found the electrical stimulation on August 9, 2002 to be reasonable and medically necessary. He further stated there were no significant changes in Claimant's medical condition to support medical necessity for dates of service on June 12, and June 26, 2002. (Carrier's Ex. 2, 15-16).

III. APPLICABLE LAW

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. LAB. CODE § 408.021(a).

IV. EVIDENCE AND DISCUSSION

Provider testified on his own behalf, and offered two exhibits, which were admitted. Carrier offered six exhibits, which were admitted.

A. Provider's testimony

Provider testified that the disputed treatments promoted Claimant's recovery from his compensable injury. He said Claimant is a complicated patient because of extensive degenerative changes to his back as revealed by the February 20, 2002 MRI; congenital thoracolumbar S shaped scoliosis; a prior injury in ___ to the same area of his back; and his age of 52 at the time of his compensable injury. He said the complicating factors underlie Claimant's need for more treatment than might be typically necessary for his type of compensable injury.

According to Provider, the treatments provided to Claimant on June 12, June 21, and June 26, 2002 were medically necessary because Claimant experienced increased back pain on those dates due to lifting bags as part of his work hardening program. Provider argued in closing that he is satisfied with his treatment of Claimant, because although there was a question initially that Claimant would recover enough to return to work, the extensive treatments allowed Claimant to fully recover from his severe injury and return to work full time.

B. Documentary evidence

According to the Guidelines for Chiropractic Quality Assurance and Practice Parameters (the guidelines), therapeutic necessity exists in the presence of an injury or recurrence evidenced by recognized signs and symptoms, and likely to respond favorably to the treatment planned. Claimant's chart establishes the existence of objective signs of injury and recurrence, and Claimant's clinical history establishes a favorable response to the treatment rendered. The guidelines also set out that recurrent episodes of back pain are to be treated similarly to acute cases, of which passive care is a vital component. (Provider's Ex. 1, 2).

V. ANALYSIS

The issue in this case is whether the disputed treatments were medically necessary to treat Claimant's compensable injury. The ALJ does not find the IRO decision persuasive, because the IRO reviewer did not take into account Claimant's exacerbation of injury on_____, and relied in part on a guideline related to management of chronic non-malignant pain, which is irrelevant to Claimant's pain resulting from an acute injury. The ALJ gives greater weight to the peer review decision by Dr. Tomko, and to Carrier's stipulation at the hearing on the merits that it no longer disputes the treatments found to be reasonable and medically necessary by Dr. Tomko.[2]

The ALJ disagrees with Dr. Tomko's opinion to the extent he found disputed treatments not to be reasonable or medically necessary. The ALJ finds instead that the disputed treatments provided prior to Claimant's participation in a work hardening program beginning May 28, 2002, to have been reasonable and medically necessary because of Claimant's complicated medical condition. The ALJ finds the treatments provided during Claimant's work hardening program to have been reasonable and medically necessary to address his increased back pain and to enable him to continue participating in the work hardening program, which was necessary for his ultimate recovery and return to work.

The ALJ finds all disputed treatments on August 9, August 12, and August 28, 2002, to be reasonable and medically necessary to treat Claimant's _____exacerbation of injury, especially given the degenerative condition of his spine, his scoliosis, his prior back injury, his age, and the chiropractic treatment guidelines that establish passive care as a vital component of treatment for acute injuries. The ALJ finds the treatments provided October 31, and November 6, 2002, to have been medically necessary for

2 The remaining disputed treatments are office visits with manipulation on June 12, June 26, October 31, and November 6, 2002; therapeutic exercises on May 8, May 24, June 5, June 12, and June 21, 2002; hot/cold packs on June 26, August 9, August 12, August 28, October 31, and November 6, 2002; electric stimulation on June 26, August 12, August 28, October 31, and November 6, 2002; and traction on June 26, August 9, August 12, August 28, October 31, and November 6, 2002.

Claimant's recovery, as evidenced by the reduction of his September 18, 2002 whole body impairment rating of 10 percent to a rating of 4 percent on December 5, 2002. Provider proved the disputed treatments were reasonable and medically necessary. Therefore, Provider is entitled to reimbursement of $1,027.00 from Carrier.

VI. FINDINGS OF FACT

1. Claimant sustained a compensable work-related injury to his back on_____, while working as a baggage handler for an airline whose workers' compensation insurance carrier at the time was American Home Assurance Company (Carrier).

2. Thomas S. Solby, D.C. (Provider) began treating Claimant for his back injury on ___, and diagnosed him to have back strain/sprain.

3. An MRI conducted on February 20, 2002, revealed disc bulges at L2-3, L3-4, L4-5, and L5-S1 with no obvious mass effect on the exiting roots.

4. Claimant was a complicated patient, as evidenced by the MRI results set forth in Finding of Fact No. 3; his congenital AS@ scoliosis of the spine; the ___ injury to the same area of his back; and his age of 52 at the time the compensable injury occurred.

5. Provider treated Claimant with office visits with manipulation, therapeutic exercises, hot/cold packs, electric stimulation, and traction between May 8, 2002, and November 6, 2002.

6. Treatment provided May 8 and May 24, 2002, prior to Claimant's entrance into a work hardening program on May 28, 2002, was medically necessary for management of his injury.

7. Treatment provided during the work hardening program on June 5, June 21, and July 12, 2002, was medically necessary to evaluate Claimant and assess his spinal integrity during his participation in the program, and to relieve the increased back pain he experienced due to lifting bags as part of the program.

8. Treatment provided on August 9, August 12, and August 28, 2002 was necessary for Claimant's recovery from the August 9, 2002 exacerbation of his compensable injury.

9. Chiropractic treatment provided on October 31 and November 6, 2002, was necessary to treat Claimant's recurrence of back pain and to improve his condition.

10. Claimant's whole body impairment rating improved from 10 percent on September 18, 2002 to 4 percent on December 5, 2002.

11. Provider's treatment of Claimant allowed Claimant recover from his compensable injury, return to work, and retain employment.

12. Provider sought reimbursement of $1,027.00 from Carrier for the treatments rendered to Claimant, which included:

    a. office visits with manipulation (CPT Code 99213-MP) on June 12, June 26, October 31, and November 6, 2002;

    b. therapeutic exercises (CPT Code 97110) on May 8, May 24, June 5, June 12, and June 21, 2002;

    c. hot/cold packs (CPT Code 97010) on June 26, August 9, August 12, August 28, October 31, and November 6, 2002;

    d. electric stimulation (CPT Code 97014) on June 26, August 12, August 28, October 31, and November 6, 2002;

    e. and traction (CPT Code 97012) on June 26, August 9, August 12, August 28, October 31, and November 6, 2002.

13. Carrier refused to reimburse Provider for the above services on the basis that the treatments were not reasonable or medically necessary.

14. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement of $1,027.00 for the above-described services.

15. The MRD issued a decision on May 19, 2003, after reviewing the IRO decision, stating that Provider did not prevail on the issues of medical necessity.

16. On May 26, 2003, Provider appealed the MRD decision to the State Office of Administrative Hearings (SOAH).

17. On July 2, 2003, notice of the hearing in this case was mailed to Provider and Carrier.

18. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

19. On September 9, 2003, SOAH Administrative Law Judge Sharon Cloninger held a hearing on the Petitioner's appeal in the William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Provider and Carrier's attorney Christine Karcher attended the hearing. The hearing concluded and the record closed that same day.

II. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented in this case, 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 case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.

3. Provider timely filed notice of appeal of the decision of TWCC's Medical Review Division (MRD), as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.

4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC§ 148.4(b).

5. As the party appealing the MRD decision, Provider had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC §148.21(h) and (i).

6. Based on Findings of Fact Nos. 6-11 and pursuant to TEX. LABOR CODE § 408.021(a), Provider's treatment of Claimant's compensable injury was reasonable and medically necessary.

7. Based on the above Findings of Fact and Conclusions of Law, Provider's appeal should be granted, and Provider should be reimbursed $1,027.00.

ORDER

Provider had the burden of proof in this case. Provider met its burden. IT IS, THEREFORE, ORDERED THAT Carrier is to reimburse Provider $1,027.00.

SIGNED November 10, 2003.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS