

CLEBURNE PHYSICAL THERAPY &
FITNESS CENTER

V.

AMERICAN HOME ASSURANCE
COMPANY

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Cleburne Physical Therapy & Fitness Center (Provider) has appealed the decision of the Independent Review Organization (IRO) denying reimbursement for physical therapy 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 the services in issue were medically necessary. Therefore, Provider is entitled to reimbursement in the sum of \$832.

I. BACKGROUND

Claimant suffered a compensable, work-related injury to her shoulder in ___. Thereafter, Claimant underwent surgery and received three weeks of follow-up physical therapy treatment from Provider. Claimant suffered an exacerbation of her injury and had to undergo another surgery on July 18, 2002. After the surgery, Claimant's treating doctor again referred her to Provider for post-operative physical therapy to assist in her recovery. Claimant received physical therapy from Provider from July 30, 2002 through October 23, 2002. At issue in this proceeding are dates of service of September 13, 2002, and October 7, 9, 14, 16, 18, 21, 22, and 23, 2002. As noted above, the total amount in dispute is \$832. American Home Assurance Company (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 convened on November 13, 2003, with ALJ Craig R. Bennett presiding. Provider appeared through its designated representative, Sue Simmerman. Carrier appeared through its attorney, Dan Kelley. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

Essentially, this case boils down to a dispute over the necessity of in-office physical therapy during the third month following Claimant's surgery. Carrier argues that only two months of in-office physical therapy was necessary after Claimant's surgery, and asserts that Claimant should have been placed on a home exercise program for the third month. Carrier relies mainly on the peer review report obtained by it and also points out that the IRO reviewing doctor agreed that continued treatment in the third month was unnecessary. Provider disagrees, noting Claimant's treating doctor recommended the additional therapy and, because the therapy followed Claimant's second surgery, the recovery period was longer and slower and required more intensive treatment.

After considering the arguments and evidence presented, the ALJ finds that Provider has shown by a preponderance of the evidence that the disputed services provided to Claimant were medically necessary for treatment of Claimant's compensable injury. Therefore, the ALJ finds that Provider is entitled to reimbursement. In reaching this decision, the ALJ notes the following factors supporting the medical necessity of the treatment in issue:

- Claimant's treating doctor, Von Evans (who is not associated with Provider in any way), prescribed the additional physical therapy in issue. In fact, he specifically prescribed the additional physical therapy on September 26, 2002, *immediately prior* to the third month of treatment.
- The professional treatise *Guide to Physical Therapy Practice* recognizes that 3 to 36 visits are the generally accepted lower and upper limits for physical therapy treatments in situations such as that presented in Claimant's case. In total, Provider rendered 32 treatments to Claimant after her second surgery, within the accepted general range recognized by the treatise.
- The professional treatise *Clinical Orthopaedic Rehabilitation* recognizes continued physical therapy treatment as being normal during weeks 8 to 12 (*i.e.*, the third month) following a surgery of the type performed on Claimant. It further suggests home exercise programs for weeks 12 through 16 (*i.e.*, the fourth month). The treatment provided by Provider was within the guidelines of this treatise as well.
- The Provider's representative, Sue Simmerman (a licensed physical therapist), testified that the third month of in-office treatment was necessary for Claimant because Claimant had not shown enough improvement after the first two months, continued to have limited movement in her shoulder, continued to experience numbness in her arm, and was engaged in physical therapy exercises that could not be performed at home (such activities being designed to return her to work and assist her in work-related activities).

The ALJ found Ms. Simmerman's testimony to be highly credible and persuasive. Further, the ALJ finds the determinations by Claimant's treating doctor and by Claimant's physical therapist to be more persuasive than the summary conclusions of the peer reviewer utilized by the Carrier and the IRO reviewer, neither of whom actually examined Claimant. In considering the totality of the record, the ALJ concludes that the preponderance of the evidence shows that the treatments in issue were medically necessary.

Therefore, Provider has met its burden of proof and is entitled to reimbursement for the treatments. 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 her shoulder in ___
2. American Home Assurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for her compensable injury.
3. In the course of treatment for her compensable injury, Claimant underwent surgery and received three weeks of follow-up physical therapy treatment from Provider.
4. Claimant had an exacerbation of her injury and underwent another surgery on July 18, 2002.
5. After the second surgery, Claimant's treating doctor, Von Evans, M.D., again referred her to Provider for post-operative physical therapy to assist in her recovery.
6. Claimant received physical therapy from Provider between July 30 and October 23, 2002.
7. Dr. Evans saw Claimant on September 26, 2002, after she had received two months of physical therapy from Provider. At that time, Dr. Evans specifically prescribed additional physical therapy, resulting in a third month of treatment.
8. Up to 36 visits is generally accepted for physical therapy treatment in a situation such as that presented in Claimant's case.
9. In total, Provider rendered 32 treatments to Claimant after her second surgery.
10. Claimant had not shown enough improvement after the first two months of physical therapy to justify stopping the therapy at that time. Claimant continued to have limited movement in her shoulder, continued to experience numbness in her arm, and was engaged in physical therapy exercises that could not be performed at home.
11. At issue in this proceeding are dates of service of September 13, 2002, and October 7, 9, 14, 16, 18, 21, 22, and 23, 2002. The total amount billed and in dispute is \$832.
12. Carrier denied reimbursement for the services, contending they were not medically necessary.
13. 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).
14. MRD denied reimbursement on May 14, 2003, based on the IRO physician reviewer's determination that the services in issue were not medically necessary.

15. On May 30, 2003, Provider requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
16. Notice of the hearing was sent by the Commission to all parties on July 2, 2003.
17. On November 13, 2003, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Provider appeared through its designated representative, Sue Simmerman. Carrier appeared through its attorney, Dan Kelley. The hearing concluded and the record closed that same day.

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 the services in issue provided to Claimant between September 13, 2002, and October 23, 2002 were medically necessary for treatment of Claimant's compensable injury. TEX. LAB. CODE ANN. §§ 408.021(a)(1-3) and 401.011(19).
7. Carrier is liable to reimburse Provider the sum of \$832 for the treatments provided to Claimant between September 13, 2002, and October 23, 2002

ORDER

IT IS, THEREFORE, ORDERED that American Home Assurance Company reimburse Cleburne Physical Therapy & Fitness Center the sum of \$832 plus interest for the treatments provided to Claimant between September 13, 2002, and October 23, 2002.

SIGNED November 21, 2003.

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