

DOCKET NO. 453-03-3683.M5
MRD No. M5-03-1122-01

CENTRAL DALLAS REHAB,	§	BEFORE THE STATE OFFICE
Petitioner,	§	
	§	
VS.	§	OF
	§	
CONTINENTAL CASUALTY	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves a dispute over therapy and testing provided the workers' compensation claimant (Claimant) by Central Dallas Rehab (CDR). The amount in dispute is \$9,060. The Administrative Law Judge (ALJ) finds CDR is entitled to additional reimbursement of \$2,298, plus applicable interest.

I. Discussion

The Claimant fractured his ankle on _____. After a period in which the injury was immobilized, he began active and passive physical therapy treatments at Central Dallas Rehab (CDR), under the care of Ted Krejci, D.C.

The Carrier, Continental Casualty Company (Continental), paid for the Claimant's treatments for four weeks, beginning April 11, 2002. It refused to pay for treatments provided from May 10, 2002, through July 26, 2002, and for nerve conduction velocity testing, on the grounds that those treatments and testing were not medically necessary. It also refused to pay for range-of-motion testing on April 12, 2002, and two other dates.

CDR filed a timely request for Medical Dispute Resolution. The Independent Review Organization (IRO) found against CDR on April 1, 2003, and the Medical Review Division of the Texas Workers' Compensation Commission (the Commission) issued a decision to that effect on May 12, 2003. On May 30, 2003, CDR filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The hearing was convened September 11, 2003, with the undersigned ALJ presiding. Representatives of CDR and Continental participated in the hearing, which was adjourned the same day.

Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

Dr. Krejci, who testified at the hearing, did not address the need for the nerve conduction studies. The ALJ finds those studies were not shown to be medically necessary.

Continental denied reimbursement for range-of-motion testing on April 12, 2002, because, in its view, that testing should have been incorporated into a functional capacity evaluation (FCE)

conducted at the same time.¹ Dr. Krejci's testimony did not refute that rationale. The ALJ concludes CDR did not meet its burden regarding that testing.

The primary dispute is over the medical necessity of treatments and testing provided by CDR on and after May 10, 2002.

Several health care providers either examined the Claimant or reviewed this file. The consensus was that the Claimant should have been treated by immobilization of the injury, to allow the injury to heal, followed by some period of therapy. The Claimant's injury was indeed immobilized before he began therapy at CDR in April of 2002. The tests that had been conducted at that time indicated the fracture had healed. After it did not respond to treatment as rapidly as expected, however, the Claimant underwent an MRI on June 3, 2002, which showed an additional fracture. The presence of that fracture was a complicating factor in the Claimant's treatment and in the resolution of this case.

Of the testimonies and written reviews presented, the ALJ found those of David Quinn, D.C., James F. Hood, M.D., Michael Bhatt, D.C., the IRO reviewer, and Dr. Krejci himself to be the most germane to the issue of whether the treatments in question were medically necessary. Although Crawford Sloan, M.D., recommended continued treatment several times, his report did not provide any rationale. Fernando Mallou, M.D., who performed a designated doctor examination on July 8, 2002, determined the Claimant had not reached maximum medical improvement, pending more rehabilitation and possible work hardening. He did not recommend a specific course of treatment. James F. Laughlin, D.O., who examined the Claimant on May 20, 2002, stated the Claimant could go "full speed on his rehabilitation," without elaborating on what that rehabilitation might be.

Dr. Quinn conducted a peer review analysis on May 9, 2002. Dr. Quinn found Dr. Krejci's care to be excessive. He recommended two weeks of passive care for the Claimant's injuries.

Dr. Hood, an orthopedic surgeon, reviewed the Claimant's file on May 20 and again on November 11, 2002. In his earlier report, in which the most recent document he had seen was from March 28, 2002, he recommended four to six weeks of supervised therapy, with a transition to home exercises. In his later report, he reiterated his opinion regarding the maximum amount of therapy needed, and stated the additional treatment provided by CDR was unnecessary. Dr. Hood did not mention the additional fracture found on June 3, 2002.

Dr. Bhatt testified that four weeks of therapy should have been sufficient for the Claimant, though he agreed that an additional two weeks might be justified. He testified that the number of treatments each week was excessive. CDR at first treated the Claimant five days a week, then four days a week; Dr. Bhatt stated three times a week should have been sufficient. He further testified that some of the treatments were contraindicated if the Claimant's ankle was swollen, as the records indicated. He also stated that testing should have been conducted earlier if there was concern about the ankle healing properly. Dr. Bhatt disagreed with the peer reviewer's recommendation of only two weeks of passive care.

¹Continental denied reimbursement for later range-of-motion testing, on May 17 and June 20, 2002, as medically unnecessary.

The IRO reviewer also believed therapy for six weeks, three times a week, should have been sufficient, followed by self-directed home care. The IRO reviewer did not address the issue of the additional ankle fracture.

Dr. Krejci testified he had a clear treatment plan that consisted first of passive care, working toward active care. He stated the Claimant had shown a steady increase in strength until he reached maximum medical improvement. Dr. Krejci asserted the treatments and tests provided by CDR were medically necessary and had, in fact, substantially improved the Claimant's medical condition.

The ALJ finds that the usual course of treatment for an injury of the type sustained by the Claimant is four to six weeks of therapy, followed by a home exercise program. Continental paid for only four weeks of treatment. The ALJ finds the evidence supports the necessity of two additional weeks of treatment. Because a normal course of treatment can last six weeks, the evidence does not support Dr. Bhatt's assertion that CDR should have known to re-test the Claimant's ankle earlier.

Although Dr. Bhatt testified treatment should have been provided only three times a week, Continental paid for at least four visits per week during the first four weeks of treatment. During the fifth and sixth weeks, the Claimant visited CDR four times a week. The ALJ finds it was reasonable for CDR to provide treatment four times a week during that period. The ALJ also finds the range-of-motion testing on May 17, 2002, during that period, was reasonable.

This case is complicated by the fact that the additional fracture was discovered on June 3, 2002. That fracture delayed the Claimant's recovery and would have required some additional treatment. The record does not show, however, that CDR's treatment plan was altered by the discovery of the additional fracture. The testimony did not indicate that the additional treatment provided by CDR was appropriate or necessary for the Claimant's revised situation. The ALJ concludes CDR did not meet its burden of proving the medical necessity of any additional treatment or testing beyond six weeks.

The Table of Disputed Services provided in CDR Ex. 1 shows CDR provided and billed \$2,298 in services in the fifth and sixth weeks of treatment. The ALJ concludes Continental should reimburse CDR that amount, plus applicable interest.

II. Findings of Fact

1. The Claimant fractured his ankle on ____.
2. After a period in which the injury was immobilized, the Claimant began active and passive physical therapy treatments at Central Dallas Rehab (CDR), under the care of Ted Krejci, D.C.
3. The Carrier, Continental Casualty Company (Continental), paid for the Claimant's treatments for four weeks, beginning April 11, 2002.
4. Continental refused to pay for treatments provided from May 10, 2002, through July 26, 2002, and for nerve conduction velocity testing, on the grounds that those treatments and testing were not medically necessary. It also refused to pay for range-of-motion testing on April 12, 2002, and two other dates.

5. CDR filed a timely request for Medical Dispute Resolution.
6. The Independent Review Organization (IRO) found against CDR on April 1, 2003, and the Medical Review Division of the Texas Workers' Compensation Commission (the Commission) issued a decision to that effect on May 12, 2003.
7. On May 30, 2003, CDR filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was provided to all parties July 8, 2003.
9. 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.
10. The hearing was convened September 11, 2003, with the undersigned ALJ presiding. Representatives of CDR and Continental participated in the hearing, which was adjourned the same day.
11. The nerve conduction studies were not medically necessary.
12. The range-of-motion testing on April 12, 2002, should have been incorporated into a functional capacity evaluation (FCE) conducted at the same time.
13. The usual course of treatment for an injury of the type sustained by the Claimant is four to six weeks of therapy, followed by a home exercise program.
14. Two additional weeks of treatment, beyond the four weeks that Continental reimbursed, were medically necessary.
15. Because a normal course of treatment can last six weeks, CDR should not necessarily have known to re-test the Claimant's ankle earlier.
16. Continental paid for at least four visits per week during the first four weeks of treatment.
17. During the fifth and sixth weeks, the Claimant visited CDR four times a week.
18. It was reasonable for CDR to provide treatment four times a week during the fifth and sixth weeks.
19. The range-of-motion testing on May 17, 2002, was reasonable.
20. From May 10, 2002, through May 24, 2002, CDR provided therapy and testing to the Claimant in the amount of \$2,298.
21. The additional fracture discovered on June 3, 2002, delayed the Claimant's recovery and would have required some additional treatment.

22. CDR's treatment plan was not altered by the discovery of the additional fracture.
23. The additional therapy and testing provided by CDR, beyond the first six weeks, were not medically necessary for the Claimant's revised situation.

III. Conclusions of Law

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. CDR should not be reimbursed for the range-of-motion testing it provided the Claimant on April 12, 2002, pursuant to TEX. LAB. CODE ANN. §408.021.
5. CDR should not be reimbursed for the nerve conduction velocity testing it provided the Claimant, pursuant to TEX. LAB. CODE ANN. §408.021.
6. CDR should be reimbursed for therapy and testing it provided the Claimant from May 10 through May 24, 2002, pursuant to TEX. LAB. CODE ANN. §408.021.
7. CDR should not be reimbursed for therapy and testing it provided the Claimant after May 24, 2002, pursuant to TEX. LAB. CODE ANN. §408.021.
8. Continental should reimburse CDR \$2,298, plus applicable interest, for therapy and testing conducted from May 10, 2002, through May 24, 2002, pursuant to TEX. LAB. CODE ANN. §408.021.

ORDER

IT IS, THEREFORE, ORDERED that Continental Casualty Company shall reimburse Central Dallas Rehab \$2,298, plus interest, for therapy and testing provided the Claimant from May 10, 2002, through May 24, 2002. Continental Casualty Company shall not be required to reimburse Central Dallas Rehab for any other services that are the subject of this dispute.

SIGNED on November 7, 2003.

HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS