

DOCKET NO. 453-03-3771.M5
MDR Tracking No. M5-03-1647-01

LAWRENCE N. SMITH, D.C.	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
VS.	§	OF
	§	
MESQUITE I.S.D.	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over whether reimbursement is appropriate for treatment rendered to ____ (Claimant) by Lawrence Smith, D.C. (Provider), between July 22, 2002, and July 29, 2002. Provider sought reimbursement from Mesquite I.S.D. (Carrier) for treatment rendered to Claimant, which Carrier denied as not medically necessary. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the findings of an Independent Review Organization (IRO) that held Provider was not entitled to reimbursement. In this Order, the Administrative Law Judge (ALJ) concludes Provider is not entitled to reimbursement.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of facts and conclusions of law without further discussion here.

A hearing convened and closed on September 15, 2003, before the State Office of Administrative Hearings (SOAH) with Steven M. Rivas, ALJ, presiding. Provider appeared and represented himself. Carrier appeared and was represented by William Weldon, attorney.

II. DISCUSSION

1. Background Facts

Claimant was employed as a school bus driver and sustained a compensable injury on ____, when she slipped on a wet step of a school bus. As part of her treatment, Claimant was referred to Provider on March 15, 1997. Provider treated Claimant for a year before releasing her from care. In July 2002, Claimant returned to Provider's office complaining of back pain. Provider treated Claimant from July 22, 2002, though July 29, 2002, and requested reimbursement from Carrier. Reimbursement was denied as not medically necessary.

B. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, the Act, as noted in § 408.021, provides 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. Under the same statute, the employee is entitled to health care that cures

or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

3. Evidence and Arguments

Carrier's main argument was that Claimant had already been treated by Provider in 1997-1998, and after four years of no contact, she returned for further treatment. Provider testified Claimant appeared in his office complaining of severe back pain in 2002, and because of that, he treated Claimant for her back pain. Now, Provider argues, he is entitled to reimbursement for the treatment he rendered.

Carrier further argued, there is no evidence as to why Claimant was experiencing severe back pain in 2002, and that no evidence suggests it was because of Claimant's compensable injury. Additionally, Carrier pointed out that none of Provider's records indicate a reason for the flare up after her _____ injury. Provider did not offer much testimony but asserted the records "speak for themselves."

A close look at the records sheds no light on the cause of Claimant's severe back pain four years after she last underwent treatment for her compensable injury. In fact, the records are not clear about the facts of Claimant's compensable injury. A Chiropractic Record Review conducted by Argus Service Corporation on March 7, 2002, states "it was quite confusing to determine what actually were the compensable injuries sustained by (Claimant) on ____." ¹ In another report performed by Argus, there is mention that Claimant may have sustained a prior back injury. ²

The remaining records merely document that the treatment in dispute was rendered. There is no documented evidence that Claimant's back pain was the result of her compensable in _____. Furthermore, Provider did not offer any testimony regarding the medical necessity of the treatment rendered. To the contrary, Provider admitted he did not know why Claimant came back, but only that "she came back with severe pain."

4. Analysis and Conclusion

The ALJ finds that Provider should not be reimbursed because Provider presented insufficient evidence that the treatment rendered to Claimant was medically necessary to treat her compensable injury of _____. For the foregoing reasons, the ALJ believes Carrier should not be ordered to reimburse Provider for the treatment rendered.

III. FINDINGS OF FACT

1. Claimant _____, suffered a compensable injury on _____.

¹ Provider's Exhibit, page 112. The statement was made in response to a question "was treatment consistent with the diagnosis?" The report was written by Jennifer Douglin, D.C.

² See *Id.* at page 120. The report states "The work/comp questionnaire filled out by the Claimant on _____ indicated that she had a previous back injury that was the result of bending down to get a child's foot out from under the rug on a bus and she could not get back up. The Claimant returned to work after the incident." The report was written by Brad McKechnie, D.C.

2. Lawrence Smith, D.C. (Provider), treated Claimant in 1997-1998.
3. Claimant visited Provider in 2002 complaining of severe back pain. Provider treated Claimant for her back pain from July 22, 2002, through July 29, 2002.
4. Provider billed Mesquite I.S.D. (Carrier) for the treatment rendered, and Carrier denied reimbursement as not medically necessary.
5. Provider filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the treatment rendered to Claimant.
6. The dispute was referred to an Independent Review Organization (IRO), which found Provider was not entitled to reimbursement.
7. Provider timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent August 27, 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 convened and closed on September 15, 2003, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Provider appeared and represented himself. Carrier appeared and was represented by William Weldon, attorney.
11. Provider presented insufficient evidence that the treatment in dispute was medically necessary to treat Claimant's ____ compensable injury.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely filed its request for hearing as specified by 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. The Provider, as Petitioner, has the burden of proof in this matter under 28 TEX. ADMIN. CODE § 148.21(h).

6. Under TEX. LAB. CODE ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery or (3) enhances the ability of the employee to return to or retain employment.
7. Provider did not meet its burden of showing, by a preponderance of the evidence, that the treatment rendered to Claimant was medically necessary.
8. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement for the treatment rendered to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Lawrence Smith, D.C., is not entitled to reimbursement from the Carrier, Mesquite I.S.D., for the treatment it rendered to Claimant from July 22, 2003, through July 29, 2002.

Signed October 16, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE