

**SOAH DOCKET NO. 453-03-3858.M5
TWCC MDR NO. M5-03-1149-01**

MAIN REHAB & DIAGNOSTICS,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ARCH INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Main Rehab & Diagnostics (Petitioner) appealed the June 3, 2003 Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Envoy Medical Systems, L.L.C., an Independent Review Organization (IRO), on March 26, 2003, denying reimbursement for chiropractic services provided by Petitioner to injured worker ___ (Claimant) from April 11, 2002, through June 25, 2002.¹

The amount in dispute is \$2,424.00. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that the services provided by Petitioner to Claimant from April 11, 2002, through June 25, 2002, were not medically necessary.

The hearing convened on November 5, 2003, with State Office of Administrative Hearings (SOAH) ALJ Ruth Cazares presiding. Petitioner appeared through its counsel, Scott Hilliard. Arch Insurance Company (Respondent) appeared through its counsel, Steve Tipton. Osler Kamath, D.C., testified for Petitioner and Don E. Johnson, M.D., testified on Respondent's behalf. The hearing concluded and the record closed that same day. Neither party objected to notice or jurisdiction. Subsequent to the record closing, the docket was reassigned to SOAH ALJ Howard S. Seitzman who reviewed all of the evidence and the recording of the hearing on the merits.

Claimant suffered a work related injury on ___, while moving a cart. On January 16, 2002, Dr. Kamath began treating Claimant for numbness and tingling in her right fingers and for pain in her neck, right shoulder and right arm. On January 16, 2002, Claimant underwent a radiographic examination that Kenneth J. Ratajczak, M.D., interpreted on January 25, 2002. Dr. Ratajczak found Claimant's right shoulder was normal. On February 22, 2002, Claimant underwent an MRI of her right shoulder. In her February 25, 2002 interpretation of the MRI, Dana A Fuller, M.D., noted a small partial articular surface tear and a small amount of fluid in the subacromial/subdeltoid bursa. Charles Tuen, M.D., conducted a neurodiagnostic study of Claimant's upper limbs on February 26, 2002, and his March 1, 2002 report noted a suspected entrapment or injury to the right Median nerve at the wrist. Crawford Sloan, M.D., examined Claimant on March 28, 2002, prescribed medications and indicated a plan for orthopedic surgery.

¹ In the March 26, 2002 IRO decision, the IRO determined that services provided from March 12, 2002 through April 8, 2002, were medically necessary. That portion of the decision was not appealed and is, therefore, not discussed on this Decision and Order.

On March 7, 2002, Charles T. Whittenburg, D.O., examined Claimant. He remarked that she had no tingling or numbness in her right hand at that time. He recommended continued treatment with anti-inflammatory medications and continued physical therapy for at least a month. On Dr. Whittenburg's May 1, 2002 examination of Claimant, he acknowledged the February 22, 2002 MRI of her right shoulder shows a partial tear of her rotator cuff with impingement. Because her most bothersome symptom was numbness and tingling in her right hand, he recommended a carpal tunnel release of the right wrist. On July 9, 2002, Claimant underwent right shoulder surgery for the rotator cuff tear.

Dr. Kamath treated Claimant on a daily basis for the first two weeks and on a four times a week schedule for the following six weeks, through March 12, 2002. From March 12, 2002, through April 8, 2002, Dr. Kamath saw Claimant on ten occasions. The treatment dates in issue are April 11, 15, 17, 19, 22, 26, 29, 2002; May 3, 7, 9, 15, 22, 28, 2002; and June 4, 11, 18, and 25, 2002. During Claimant's April 2002 and May 3, 2002 visits, Petitioner administered therapeutic treatment and exercises. Claimant's visits on May 7, 9, 15, 22, 28; and June 4, 11, 18, and 25, 2002, were office visits only with no therapy or treatments. Dr. Kamath testified that the treatments and exercises ended on May 3, 2003, because Claimant was then considered a surgical candidate. Dr. Kamath also testified that the office visits commencing May 7, 2002, were essentially for comforting Claimant.

The only issue in this proceeding is whether Petitioner's services from April 11, 2002, through June 25, 2003, were medically necessary. Petitioner had the burden of proof. Petitioner failed to prove that the office visits from May 7, 2002, through June 25, 2002, were medically necessary. As to the visits and treatments between April 11, 2002, and May 3, 2002, the testing showed by the beginning of March 2002, that the claimant had a tear in her right shoulder and a suspected carpal tunnel of the right wrist. Dr. Whittenburg's March 7, 2002 recommendation, after reviewing the test results, was to continue anti-inflammatory medications and physical therapy for approximately one month to see if Claimant's symptoms were relieved. Dr. Sloan, on March 28, 2002, apparently believed Claimant was a candidate for surgery. Petitioner's medical records reflect that Claimant's symptomology prior to and after April 11, 2002, was unchanged and that her condition also remained unchanged. The testing conducted by Petitioner shows no demonstrable improvement in Claimant's condition or relief of symptomology. The record shows no attempt by Petitioner to consider the lack of improvement in Claimant's condition or the lack of change in symptomology and a plan to adjust the therapeutic regimen. Petitioner failed to demonstrate by a preponderance of the evidence that the services provided to Claimant between April 11, 2002, and May 3, 2002 were medically necessary.

Petitioner is not entitled to reimbursement for services provided Claimant between April 11, 2002, and June and 25, 2002.

II. FINDINGS OF FACT

1. ____ (Claimant) suffered a work related injury on ____, while moving a cart.
2. On January 16, 2002, Osler Kamath, D.C., of Main Rehab & Diagnostics (Petitioner) began treating Claimant for numbness and tingling in her right fingers and for pain in her neck, right shoulder and right arm.

3. On February 22, 2002, Claimant underwent an MRI of her right shoulder and Dana A Fuller, M.D., noted a small partial articular surface tear and a small amount of fluid in the subacromial/subdeltoid bursa.
4. Charles Tuen, M.D., conducted a neurodiagnostic study of Claimant's upper limbs on February 26, 2002 and his March 1, 2002 report noted a suspected entrapment or injury to the right Median nerve at the wrist.
5. Crawford Sloan, M.D., examined Claimant on March 28, 2002, prescribed medications and indicated a plan for orthopedic surgery on Claimant.
6. On March 7, 2002, Charles T. Whittenburg, D.O., examined Claimant.
7. Dr. Whittenburg recommended continued treatment with anti-inflammatory medications and continued physical therapy for at least a month.
8. On Dr. Whittenburg's May 1, 2002 examination of Claimant, he noted the February 22, 2002 MRI of her right shoulder showed a partial tear of her rotator cuff with impingement and that her most bothersome symptom was numbness and tingling in her right hand.
9. On July 9, 2002, Claimant underwent right shoulder surgery for the rotator cuff tear.
10. Dr. Kamath treated Claimant on a daily basis for the first two weeks and on a four times a week schedule for the following six weeks, through March 12, 2002.
11. From March 12, 2002, through April 8, 2002, Dr. Kamath saw Claimant on ten occasions.
12. The treatment dates in issue are April 11, 15, 17, 19, 22, 26, 29, 2002; May 3, 7, 9, 15, 22, 28, 2002; and June 4, 11, 18, and 25, 2002.
13. Claimant's visits on April 11, 15, 17, 19, 22, 26, 29, 2002, and on May 3, 2002, were for therapeutic treatment and exercises.
14. Claimant's visits on May 7, 9, 15, 22, 28, 2002; and June 4, 11, 18, and 25, 2002, were office visits only with no therapy or treatments.
15. The treatments and exercises ended on May 3, 2003, because Claimant was then considered a surgical candidate.
16. The testing conducted by Petitioner showed no demonstrable improvement in Claimant's condition or relief of symptomology.
17. Arch Insurance Company (Respondent) denied Petitioner reimbursement for the services provided Claimant between April 11, 2002, and June 25, 2002, as not medically necessary.
18. The Texas Workers' Compensation Commission (Commission) acting through Envoy Medical Systems, L.L.C., an Independent Review Organization (IRO), found that the services provided by Petitioner between April 11, 2002, and June 25, 2002, were not medically necessary for the treatment of Claimant.

19. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
20. The hearing convened on November 5, 2003, with SOAH Administrative Law Judge (ALJ) Ruth Casarez presiding. Petitioner appeared through its counsel, Scott Hilliard. Respondent appeared through its counsel, Steve Tipton. The hearing concluded and the record closed that same day.
21. Subsequent to the record closing, the docket was reassigned to SOAH ALJ Howard S. Seitzman who reviewed all of the evidence and the recording of the hearing on the merits.
22. The amount in dispute is \$2,424.00, plus any applicable interest.

III. 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. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Petitioner failed to prove by a preponderance of the evidence that the services it provided to Claimant from April 11, 2002, through June 25, 2002, were medically necessary.

ORDER

THEREFORE IT IS ORDERED that Main Rehab & Diagnostics is not entitled to reimbursement from Arch Insurance Company for charges associated with services provided to injured worker ___ from April 11, 2002, through June 25, 2002.

SIGNED January 5, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**