DOCKET NO. 453-03-3887.M5
MDR Tracking No. M5-02-3100-01

LIBERTY MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
CENTRAL DALLAS REHAB,	§	
Respondent.	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Liberty Mutual Insurance Company (Carrier) appealed the decision of an Independent Review Organization (IRO) that found the treatment (physical therapy, office visits, and work hardening) rendered by Central Dallas Rehab (Provider) over various dates of service was medically necessary. In this decision, the Administrative Law Judge (ALJ) finds that Provider is entitled to $858.00 for services rendered to __(Claimant) on several dates of service.

The hearing convened on September 23, 2003, before Steven M. Rivas, ALJ. Carrier was represented by Kevin Franta, attorney. Provider was represented by Scott Hilliard, attorney. The record remained open until September 30, 2003, for the parties to determine the actual amount in dispute.

I. DISCUSSION

2. Background Facts

Claimant was employed as a construction worker and sustained a compensable back injury on ___. Following his injury, Claimant was treated extensively with physical therapy and work hardening modalities at Provider's facilities. Provider billed Carrier for the entire treatment rendered to Claimant, and Carrier denied payment for several dates of service. Carrier argued some of the services were not preauthorized and others were not medically necessary.

Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission (the Commission). The dispute was sent to an IRO, which held the services rendered were medically necessary. Carrier filed a request for hearing before the State Office of Administrative Hearings.

3. 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, TEX. LAB. CODE ANN. § 408.021(a) provides that 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 statute further states an employee is specifically 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."

Under TEX. LAB. CODE ANN. §401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

A. Evidence

1. Preauthorization

Carrier denied payment for physical therapy performed on October 26, 2001, and November 1, 2001, because it contended Provider had not received preauthorization to perform any services on those dates. In support of its position, Carrier offered a preauthorization approval letter that stated preauthorization was granted for 12 physical therapy sessions to be performed over four weeks beginning September 27, 2001, and ending October 25, 2001. Therefore, Carrier asserted Provider had not received preauthorization for the physical therapy sessions on October 26, 2001, and November 1, 2001.

Provider's response was two-fold. First, according to Claimant's treating doctor, Laurent Pelletier, D.C., the therapy session on September 27, 2001, did not require preauthorization because it was performed within the first eight weeks of treatment. Carrier did not present any evidence to the contrary. Second, Provider pointed out the preauthorization request was initiated on September 26, 2001, and the approval letter for the request was dated October 2, 2001. Even though the letter indicated the period would start on September 27, 2001, Provider argued the preauthorization period should have started on October 2, 2001, because Provider asserted it could not have possibly known the preauthorization period started on September 27, 2001, five days before the date of the approval letter. Dr. Pelletier also testified it is very unusual that a Carrier would "backdate" an approval letter in the manner that was done in this case.

Following October 2, 2001, the record indicates Provider administered 12 sessions of physical therapy for Claimant.[1] Provider asserted the 12 dates of service in dispute were performed in compliance with the approval letter, and were appropriately preauthorized.

2. Office visits

Carrier denied reimbursement for seven office visits billed under CPT Code 99213 as not medically necessary.[2] Carrier's witness, Thomas Sato, D.C., testified that an office visit billed as CPT Code 99213 must consist of two of the following: an expanded problem focused history, an expanded problem focused examination, and a medical decision of low complexity.[3] Dr. Sato testified it was not necessary for Provider to conduct an expanded evaluation of Claimant's "history"

[1]Following 10/2/2001, Provider administered physical therapy on 10/3/2001, 10/5/2001, 10/8/2001, 10/10/2001, 10/12/2001, 10/15/2001, 10/17/2001, 10/19/2001, 10/22/2001, 10/24/2001, 10/26/2001, and 11/1/2001.

[2]The office visits in dispute were performed on 10/30/01, 11/5/01, 11/19/01, 11/29/01, 12/20/01, 12/27/01, 1/8/02.

[3]The Commission's Medical Fee Guideline.

on each office visit, unless Claimant reported a significant change in condition. Dr. Sato further stated the record indicates Claimant's condition remained consistent throughout the dates of service in dispute, with no significant change. On cross-examination, Dr. Sato admitted it was important for the treating doctor to monitor how the patient is progressing with treatment, if at all. Dr. Sato also admitted it was important for a treating doctor to know what is happening in a patient's life, physically and emotionally, as it relates to the patient's treatment.

In addition, Carrier argued the billed office visits were not medically necessary because Claimant was participating in a work hardening program in conjunction with some of the office visits in dispute. According to the record, the work hardening program began on December 4, 2001, and consisted of 11 sessions through January 9, 2002. Carrier argued Provider should not be reimbursed for office visits during the time period Claimant was participating in a work hardening program, because a typical work hardening program has a built-in evaluation component for each session. Therefore, Carrier asserted there was no need for a separate evaluation and examination in addition to the evaluations performed at the work hardening sessions.

However, Dr. Pelletier testified it was important to perform separate office visit evaluations on Claimant in order to assess Claimant's condition as he progressed through the work hardening program. Furthermore, Dr. Pelletier pointed out that under the Commission's Spine Treatment Guideline (STG) the role of the treating doctor is to ensure that all services are appropriate and related to the compensable injury.[4] Additionally, under the STG, Dr. Pelletier asserted the treating doctor should ensure that all treatment rendered to a claimant is necessary and/or effective, and of appropriate quality.[5] Provider asserted it performed the disputed office visits in compliance with the STG, and therefore, should be reimbursed accordingly.

3. Work hardening

As noted above, Claimant attended 11 work hardening sessions beginning on December 4, 2001. Carrier denied payment for the last three sessions that were done on January 7, 2002, January 8, 2002, and January 9, 2002, and the third functional capacity evaluation (FCE). Carrier denied reimbursement as not medically necessary for the three sessions because the record indicated Claimant's condition had not improved after the first eight work hardening sessions. In support of its position, Carrier addressed the results of all three functional capacity evaluations FCEs administered to Claimant on October 2, 2001, December 2, 2001, and January 8, 2002. Carrier also pointed out Provider had performed three office visits with Claimant during the time period that Claimant was involved in the work hardening program. Carrier argued that Provider should have known the work hardening program was not working because, as Provider asserted, each office visit consisted of an expanded examination of Claimant.

The first FCE indicated Claimant's required job level was "heavy." Having a "heavy" job level classification means Claimant occasionally lifts 100 lbs., frequently lifts 50 lbs., and

[4]The Commission's Spine Treatment Guideline (STG) formerly found at 28 TEX. ADMIN. CODE § 134.1001. The parties acknowledged the STG has been abolished but that it was in effect at the time of Claimant's treatment in dispute.

[5]*See id.*

continuously lifts 20 lbs., during a given work day.[6] The first FCE performed on October 2, 2001, revealed Claimant did not meet the physical conditioning for the job level of "heavy." Claimant met only the physical requirements for a job level rating of "light."

The second FCE performed on December 2, 2001, also indicated Claimant was not able to perform at a "heavy" job level. Carrier asserted the results of the second FCE were practically similar to the first FCE including the finding that Claimant met only the physical requirements for a job level rating of "light." Dr. Sato noted Claimant was able to lift slightly more weight on the second FCE but still not enough to fall into the "heavy" category. On December 4, 2001, two days after the second FCE, Claimant began the work hardening program.

On January 8, 2002, Claimant underwent a third FCE, which again indicated Claimant was not able to perform at his required "heavy" job level.[7] Dr. Sato pointed out the FCE additionally revealed Claimant was unable to lift as much weight as he could on the second FCE. Carrier argued that, at best, Claimant's condition was not improving under the prescribed treatment plan because he never improved beyond a "light" FCE job level. At worst, Carrier asserted, Claimant's condition was worsening under the prescribed treatment plan because he was not able to lift as much weight as he could on the second FCE, despite going through nine complete work hardening sessions.

4. Analysis

Provider is entitled to reimbursement for some of the treatment rendered to Claimant. The 12 therapy sessions administered to Claimant under the Carrier's approval letter should all be reimbursed because Provider administered the requested treatment after it received notice of Carrier's approval. The October 2, 2001, letter indicated Provider was approved to administer 12 therapy sessions beginning September 27, 2001. However, Dr. Pelletier testified Provided did not need preauthorization for the September 27, 2001, session because that date was within the first eight weeks of treatment. Furthermore, the letter was dated after September 27, 2001, which made it impossible for Provider to know the approved 12 sessions were to begin before October 2, 2001. Carrier reimbursed Provider for the first 10 sessions, but denied payment for the final two sessions on October 26, 2001, and November 1, 2001. Provider should be reimbursed $261.00 for each session.

The disputed office visits for Claimant should also be reimbursed at $48.00 per visit because it was important for Claimant's treating doctors to monitor Claimant's progress, or lack thereof, throughout his ongoing treatment. The records of Claimant's office visits are complete and thorough and more importantly include the applicable elements of CPT Code 99213.

The disputed work hardening sessions and the third FCE should not be reimbursed because the record indicated this treatment offered no relief of Claimant's pain nor did it assist Claimant in performing at his required job level status. The two prior FCEs that were reimbursed by Carrier

[6]U.S. Department of Labor, Dictionary of Occupational Titles, Fourth Edition Supplement, Appendix D, pp 101-102, 1986.

[7]Interestingly, Claimant was in the middle of a work hardening session on January 8, 2002, when Provider had him perform the third FCE. The record indicates Claimant returned to complete the work hardening session following the FCE.

revealed Claimant was not functioning at his required "heavy" job level. Following eight work hardening sessions that were reimbursed by Carrier, Claimant demonstrated he was in worse condition than before the work hardening program began because the third FCE reflected he was unable to lift as much weight as he could on the first two FCEs. Despite several office visits that included expanded evaluations of Claimant's history and condition, Claimant's treating doctors were unable to prescribe a treatment plan that benefitted Claimant. For this reason, the three disputed work hardening sessions and third FCE should not be reimbursed.

II. FINDINGS OF FACTS

1. On ___, Claimant____ sustained a compensable back injury.

2. Claimant underwent extensive treatment for his injury at the facilities of Central Dallas Rehab (Provider), which included physical therapy and work hardening.

3. On September 26, 2001, Provider requested preauthorization for 12 physical therapy sessions from Liberty Mutual Insurance Company (Carrier).

4. Carrier preauthorized the 12 sessions requested by Provider and sent an approval letter to Provider dated October 2, 2001.

5. The letter indicated the preauthorization period would begin on September 27, 2001.

6. Provider was within the first eight weeks of treatment on September 27, 2001, and did not need preauthorization for that date.

7. From October 3, 2001, through November 1, 2001, Provider performed 12 therapy sessions on Claimant.

8. Carrier denied reimbursement for the therapy sessions administered on October 26, 2001, and November 1, 2001.

9. Provider performed seven office visits for Claimant from October 30, 2001, through January 8, 2002, which Carrier denied as not medically necessary.

10. The office visits were performed in order to monitor the progress, or lack thereof, of Claimant.

11. Some of the office visits were performed at a time when Claimant was participating in a work hardening program.

12. A Functional Capacity Evaluation (FCE) performed on Claimant on December 2, 2001, revealed Claimant was not able to physically function at his required job level of "heavy."

13. Claimant began a work hardening program on December 4, 2001.

14. Claimant completed nine work hardening sessions before he performed another FCE on January 8, 2002. This FCE indicated Claimant's physical abilities had worsened because he was unable to lift as much weight as he could for the prior FCE.

15. Carrier denied reimbursement for the FCE performed on January 8, 2003, and the work hardening sessions on January 7, 2002, January 8, 2002, and January 9, 2002.

16. Provider sought reimbursement for the physical therapy sessions, office visits, and work hardening sessions described in Findings of Facts Nos. 8, 9, and 15.

17. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which held the Provider was entitled to full reimbursement.

18. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).

19. Notice of the hearing in this case was mailed to the parties on July 23, 2003. 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.

20. The hearing convened on September 23, 2003, with Administrative Law Judge Steven M. Rivas presiding. Carrier was represented by Kevin Franta, attorney. Provider was represented by Scott Hilliard, attorney.

21. The physical therapy sessions administered to Claimant on October 26, 2001, and November 1, 2001, were performed in compliance with Carrier's approval letter of October 2, 2001, and should be reimbursed by Carrier.

22. Provider should be reimbursed for the office visits it administered to Claimant.

23. The work hardening sessions and FCE that was denied by Carrier should not be reimbursed because they did not improve Claimant's condition nor did they assist Claimant in reaching his required job level.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.

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. Carrier timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.

4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.

5. Carrier had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).

6. The seven office visits performed by Provider were medically necessary to monitor the progress of Claimant.

7. The work hardening sessions on January 7, 2002, January 8, 2002, and January 9, 2002, were not medically necessary for treatment of Claimant's compensable injury because it was evident at this time that Claimant's condition was not improving.

8. The FCE administered to Claimant on January 8, 2002, was not medically necessary for treatment of Claimant's compensable injury.

9. Based on the Findings of Fact and Conclusions of Law, Provider is entitled to $858.00 reimbursement for services rendered to Claimant.

ORDER

IT IS ORDERED THAT the Carrier reimburse Provider $858.00 for services it rendered to Claimant for treatment of Claimant's compensable injury.

SIGNED on November 25, 2003.

_____

STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS