

SOAH DOCKET NO. 453-03-3888.M5
MDR No. M5-03-1365-01

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Petitioner**

V.

**CENTRAL DALLAS REHAB,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over the medical necessity of \$5,865.00 in services rendered to a workers' compensation claimant (Claimant) by Central Dallas Rehab (CDR) from April 10, 2002, through August 26, 2002. The Administrative Law Judge (ALJ) finds the services through June 20, 2002, were medically necessary, but those provided afterwards were not. He concludes the Petitioner, Liberty Mutual Fire Insurance Company (LMFIC), should reimburse CDR \$5,481.00, plus interest, for the medically necessary services.

I. DISCUSSION

The Claimant sustained a compensable back injury on _____. The Claimant was treated elsewhere for a month, first visited CDR March 15, 2002, and began chiropractic treatments March 18, 2002. LMFIC, the workers' compensation carrier, declined to pay for one treatment on March 18, 2002, and for any treatments after April 10, 2002, based on a peer review that considered those treatments not to be medically necessary.¹

CDR filed a timely request for medical dispute resolution for services rendered from March 18 through October 28, 2002. On June 6, 2003, the independent review organization (IRO) found that the treatments from March 18 through September 2, 2002,² were medically necessary, but the subsequent treatments were not. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued a decision in accordance with the IRO findings on June 13, 2003.

LMFIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on June 23, 2003.³ After adequate and timely notice was sent to the parties, the hearing was held October 6, 2003, before ALJ Henry D. Card. Both LMFIC and CDR were represented by counsel at the hearing. The hearing was adjourned the same day, but the record remained open for

¹ LMFIC no longer disputes the March 18, 2002, treatment.

² Although the IRO decision used September 2, 2002, as the cut-off date for necessary services, the last service date in dispute in this case is August 26, 2002.

³ CDR did not request a hearing; therefore, the treatments provided after September 2, 2002, were not in issue at SOAH.

the parties to prepare a file a corrected table of disputed services and for CDR to indicate whether it objected to LMFIC's proffered Exhibit 2. On October 9, 2003, the parties filed the corrected table as Petitioner's Exhibit 4 and stated CDR had no objection to Petitioner's Exhibit 2. Those two exhibits are admitted by this Decision and Order.

The following services provided by CDR are in dispute:

<u>CPT Code</u>	<u>Description</u>
99213MP	Office Visit for established patient including manipulation
97265	Joint mobilization; osteopathic manipulation
97250	Myofascial release
97122	Physical therapy; one area; traction/manipulation
97110	Therapeutic procedure

Kevin Tomsic, D.C., testified for LMFIC that a normal trial of care for the conservative treatments at issue is thirty days. If the patient does not improve, according to Dr. Tomsic, that course of treatment should be discontinued. If the patient does improve, three months of conservative care may be warranted. In Dr. Tomsic's opinion, the medical records did not show that the Claimant improved significantly after that initial course of treatment; therefore the services provided after April 10, 2002, were not medically necessary.

Although the IRO decision reached a different conclusion, it also expressed the opinion that conservative chiropractic treatment should have ceased when there was no longer significant change in the patient's condition. Relying on that criterion, the IRO reviewer found the services were necessary through September 2, 2003.

The Claimant's medical records from CDR were admitted into evidence. The records include four Functional Abilities Evaluations of the Claimant, performed on March 15, April 23, May 30, and June 20, 2002. The Claimant showed significant progress on the April 23 and again on the May 30 evaluations, but little if any progress on the June 20 evaluation. Therefore, the record supports continued treatment through that June 20 evaluation, but does not support treatment beyond that date. The ALJ finds the services provided by CDR through June 20, 2002, were medically necessary, but those provided after that date were not. LMFIC should be required to reimburse CDR \$5,481.00, plus interest, for the medically necessary services.

II. FINDINGS OF FACT

1. The Claimant sustained a compensable back injury on ____.
2. The Claimant was treated elsewhere for a month, first visited Central Dallas Rehab (CDR) March 15, 2002, and began chiropractic treatments March 18, 2002.
3. Liberty Mutual Fire Insurance Company (LMFIC), the workers' compensation carrier, declined to pay for one treatment on March 18, 2002, and for any treatments after April 10, 2002, based on a peer review that considered those treatments not to be medically necessary.
4. CDR filed a timely request for medical dispute resolution for services rendered from March 18 through October 28, 2002.

5. On June 6, 2003, the independent review organization (IRO) found that the treatments from March 18 through September 2, 2002, were medically necessary, but the subsequent treatments were not.
6. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued a decision in accordance with the IRO findings on June 13, 2003.
7. LMFIC is no longer disputing the March 18, 2002, treatment.
8. LMFIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on June 23, 2003.
9. Notice of the hearing was sent to the parties July 23, 2003.
10. 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.
11. The hearing was held October 6, 2003, before ALJ Henry D. Card. Both LMFIC and CDR were represented by counsel at the hearing. The hearing was adjourned the same day, and the record was closed on October 9, 2003.
12. The following services provided by CDR from April 10, 2003, through August 26, 2003, are in dispute:

<u>CPT Code</u>	<u>Description</u>
99213MP	Office Visit for established patient including manipulation
97265	Joint mobilization; osteopathic manipulation
97250	Myofascial release
97122	Physical therapy; one area; traction/manipulation
97110	Therapeutic procedure
13. Conservative chiropractic care should be discontinued if the patient is not improving.
14. The Claimant's functional abilities were evaluated on March 15, April 23, May 30, and June 20, 2002.
15. The Claimant showed significant progress on the April 23 and again on the May 30 evaluations, but little if any progress on the June 20 evaluation.
16. The services provided by CDR through June 20, 2002, were medically necessary.
17. The services provided by CDR after June 20, 2002, were not medically necessary.
18. CDR provided \$5,481.00 in disputed services from April 10, 2002, through June 20, 2002.

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. CDR is entitled to reimbursement for the disputed services it provided the Claimant from April 10, 2002, through June 20, 2002, under the standard set out in TEX. LAB. CODE ANN. §408.021.
4. CDR is not entitled to reimbursement for the disputed services it provided the Claimant after June 20, 2002, under the standard set out in TEX. LAB. CODE ANN. §408.021
5. LMFIC should be required to reimburse CDR \$5,481.00, plus interest, for services CDR provided the Claimant from April 10, 2002, through June 20, 2002.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company LMFIC) shall reimburse Central Dallas Rehab (CDR) \$5,481.00 for services provided the Claimant from April 10, 2002, through June 20, 2002. LMFIC shall not be required to reimburse CDR for services provided the Claimant after June 20, 2002, in dispute in this case.

SIGNED December 8th, 2003.

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