

DOCKET NO. 453-03-4015.M5
MDR Tracking No. M5-03-2100-01

BENJAMIN SKELTON, D.C.,
Petitioner

BEFORE THE STATE OFFICE

v.

OF

INSURANCE COMPANY OF STATE
OF PENNSYLVANIA,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Benjamin Skelton, D.C. (Petitioner), sought to reverse the decision by an Independent Review Organization (IRO) that the treatment rendered to the injured worker, ___ (Claimant), which consisted of passive physical therapy modalities provided under the supervision of a chiropractor, was not medically necessary. This decision agrees with the IRO, finding the services were not medically necessary and should not be reimbursed.

I. PROCEDURAL HISTORY

Barbara C. Marquardt, Administrative Law Judge (ALJ), convened the hearing on November 6, 2003. Insurance Company of the State of Pennsylvania (Carrier) was represented by attorney Allain P. Collins. Petitioner appeared telephonically and represented himself. The hearing concluded and the record closed on the same date.

II. DISCUSSION

A. Background

The Injury and Course of Treatment

On ___, the 43 year old Claimant (a machine operator) was lifting sheet metal weighing 150 pounds onto a rack, when he injured his right shoulder. Originally, the Claimant was diagnosed as having right shoulder strain, and he was treated with medication and returned to light duty work.

The Claimant began treatment with Dr. Skelton on April 22, 2002, and Dr. Skelton found that he

had a neck injury with radiculopathy. Dr. Skelton referred him to Frank Morrison, M.D., who performed an EMG (electromyogram). Dr. Morrison found the Claimant had radiculopathy of the

C5 nerve root, and that the nerve root was causing the shoulder problems. Next, Dr. Skelton referred the Claimant to a pain management doctor, Charles Willis, M.D. Dr. Willis found the Claimant had both a shoulder strain and a neck C5 radiculopathy.

Dr. Willis determined as of May 9, 2002, that the Claimant's condition had actually worsened. He ordered an MRI and referred the Claimant back to Dr. Skelton for further therapy.

An MRI on June 14, 2002, demonstrated that the cervical spine, which had some disc bulging, was not inconsistent with the general population. The Claimant saw an orthopedic surgeon on October 1, 2002, who put him on medication and shoulder exercises while a pre-surgical work up was underway. On October 15, 2002, Dr. Morrison noted the Claimant's condition was worsening, because he displayed posterior deltoid atrophy.

Ultimately, the Claimant had surgery on January 22, 2003, to repair a torn rotator cuff . The surgeon found this caused significant improvement, and he did not mention continuing C5 neuropathy.

The Contested Treatment

The contested services (totaling to \$2,059 in dispute), which were given between October 24 and December 23, 2002,¹ included: myofascial release, joint mobilization, kinetic activities, physical performance test, electrical stimulation, office visits, and therapeutic procedure. The Claimant had received similar treatments by Petitioner in some 56 prior office visits.

During the contested period, the Claimant was also receiving oral analgesics (anti-inflammatory drugs and narcotics) and shoulder injections. Additionally, he was doing home exercises for his shoulder that were prescribed by his orthopedic surgeon.

The medical records do not show that the Claimant improved at all during the contested period **B** either by increased range of motion or some other objective measure, or by a documented decrease in pain levels.

¹According to Carrier's letter dated June 4, 2003, it chose to pay for charges related to treatments given on December 30, 2002, which were originally part of this contested case.

The IRO Decision

The IRO decision was written by a chiropractic doctor (Reviewer). The Reviewer stated that current chiropractic treatment standards dictate that injuries like the Claimant's be given a two-week trial of chiropractic care. If that does not produce improvement, an additional trial with different chiropractic procedures is warranted. At that point, the chiropractor should seek a second opinion. Thus, Dr. Skelton's care through the time he referred the Claimant to Dr. Willis was appropriate.

However, when Dr. Willis found the Claimant's condition had worsened, it was inappropriate for Dr. Skelton to resume giving the same types of treatment. The fact that those additional treatments did not cause any change in the Claimant's condition, plus the fact that surgery ultimately relieved his problems, caused the Reviewer to conclude that Dr. Skelton's therapy was not medically necessary.

B. Petitioner's Evidence & Arguments

In essence, Dr. Skelton testified that he treated the Claimant over the contested time period because he had significant shoulder and neck pain. Dr. Skelton opined that if the Carrier had recognized the cervical component of the Claimant's injury, the course of treatment might have been different.

Dr. Skelton testified he treated the Claimant to relieve his pain and keep him healthy prior to surgery and to halt further deterioration of his posterior deltoid muscle. He stated this was one of the most unusual patients he had treated in 11 years.

C. Carrier's Evidence & Arguments

Bill W. Timberlake, D.C., did two peer reviews concerning this case and also testified at the hearing. Dr. Timberlake first issued an opinion on July 26, 2002, and at that point he found there was not sufficient documentation to show there was a neck injury caused by the Claimant's ____ trauma. He also found that Dr. Morrison's findings of radiculopathy were not reasonably related to the work injury for a number of reasons. First, there would have been immediate symptoms of a neck injury, if that injury eventually caused radiculopathy. Instead, only the shoulder injury was obvious, as confirmed by an MRI showing fluid and cystic findings consistent with shoulder strain. Second, the disc bulging shown on the cervical spine MRI was not unusual for a 43-year-old male.

On February 23, 2003, Dr. Timberlake did a second peer review. Based on the failure of Dr.

Willis's conservative treatment with pain control, he found there was reasonable necessity for a ten-week, intensive program with clinical chiropractic and physical therapy treatment for the Claimant through July 7, 2002. However, he found treatment beyond that point was not reasonable, because there was no documentation quantifying the efficacy of the treatment.

At the hearing, Dr. Timberlake noted that the Claimant had made 56 office visits to Dr. Skelton prior to the contested services in this case. That, in his opinion, was overutilization. He testified that such a patient should have been transitioned to a home exercise program, which would have helped him avoid chronicity and dependence on the medical system.

As to Dr. Skelton's and Dr. Morrison's claim that the injury caused posterior deltoid atrophy (related to a C5 injury), Dr. Timberlake testified the doctors had found that atrophy by the first week in April. The muscle would not have atrophied that quickly, if it had been caused by radiculopathy related to the ___ injury. Instead, it suggests to Dr. Timberlake that the atrophy was from another source altogether **B** possibly agenesis, meaning failure of that body part to develop in the first place.

Dr. Timberlake felt the regime (medication and shoulder exercises done at home) instituted by the orthopedic surgeon on October 1, 2002, to ready the Claimant for surgery was reasonable. However, it was unreasonable for the Claimant to be receiving intense, chiropractic modalities at the same time. As to the particular treatments Dr. Skelton gave the Claimant, Dr. Timberlake criticized them as follows:

- (1) *Therapeutic Exercise* **B** full body conditioning, including cycling and using a treadmill. Dr. Timberlake testified that was not necessary to prepare Claimant for surgery. It would not have improved the neck and shoulder condition. It did not require direct contact with a chiropractor and could have been done at home.
- (2) *Electrical Stimulation* **B** Dr. Timberlake stated this is useful in an acute and subacute state. However, prolonged use of this passive modality is not productive and can enhance chronicity.
- (3) *Therapeutic Activities* **B** This includes range of motion activities and other activities in which the patient needs assistance. Dr. Timberlake stated it was not medically necessary or reasonable over a prolonged period.

- (4) *Joint Mobilization and Myofascial Release* **B** These might have been necessary, if Dr. Skelton had documented by objective measures that the Claimant improved over time. However, Dr. Skelton did not do so.

The documentation showed that the Claimant's pain stayed at level 6/10 throughout the contested period of treatment. Dr. Timberlake testified if the treatment had abated the pain, that might have justified it.

D. Analysis & Conclusion

Dr. Skelton failed to carry the burden of proof in this case. He did not refute the point made in the IRO decision (which Dr. Timberlake verified), that chiropractic theory dictates that once a patient has had four weeks of passive therapy it is inappropriate to continue treatment with that same therapy unless objective evidence of improvement is documented. In fact, he pointed to nothing in the record showing that the intensive therapy the Claimant received over the two months improved the Claimant's ability to function or reduced the Claimant's pain level.

Whether or not there was a cervical component to the Claimant's pain, the problem with the treatment is that there is no documentation to show the Claimant received any relief or improvement in his condition from the contested days of passive therapy. Therefore, the treatment was not medically necessary.

III. FINDINGS OF FACT

1. ____, ____, the 43 year old Claimant, was lifting sheet metal weighing 150 pounds onto a rack, when he injured his right shoulder. Originally, the Claimant was diagnosed as having right shoulder strain, and he was treated with medication and returned to light duty work.
2. The Claimant began treatment with Benjamin Skelton, D.C., on April 22, 2002.

1. Dr. Skelton began treating the Claimant with passive chiropractic modalities at that time.
2. Dr. Skelton referred the Claimant to a pain management doctor, Charles Willis, M.D.
3. Dr. Willis determined as of May 9, 2002, that the Claimant's condition had actually worsened. He ordered an MRI and referred the Claimant back to Dr. Skelton for further therapy.
3. The Claimant saw an orthopedic surgeon on October 1, 2002, who put him on pain medication and shoulder exercises to be done at home while awaiting surgery.
4. By October 24, 2002, when the Claimant began the treatment at issue in this case, he had already received similar treatments by Dr. Skelton over a course of 56 visits.
 1. Between October 24 and December 23, 2002, the Claimant was treated with numerous passive therapy modalities, including myofascial release, joint mobilization, kinetic activities, electrical stimulation, office visits, and therapeutic procedure.
 2. During that treatment period, the Claimant's pain level remained at 6/10.
 3. There is no documentation that the Claimant improved in any areas of functioning (either by increased range of motion or some other objective measure) during that time period.
5. Ultimately, the Claimant had surgery on January 22, 2003, to repair a torn rotator cuff . The surgery caused a significant improvement in the Claimant's condition.
6. The therapy referenced in Finding 4 was not medically necessary because: (1) four or more weeks of similar therapy had not yielded any improvement in the Claimant's condition; (2) there was no documented improvement from it, as referenced in Findings 4B and 4C; (3) the Claimant should have been trained to do home exercise to avoid developing chronicity and dependence on the medical system; (4) the orthopedic surgeon's home exercise program was sufficient to prepare the Claimant for surgery; and (5) the result referenced in Finding 5 indicates more aggressive care, and not passive therapy, was needed to improve the Claimant's condition.

IV. CONCLUSIONS OF LAW

1. The Texas Workers=Compensation Commission has jurisdiction to decide the issues presented pursuant to the Texas Workers=Compensation Act (the Act), TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to ' 413.031 of the Act and TEX. GOV'T CODE ch. 2003.
3. An employee who sustains a compensable injury is entitled to health care that relieves the effects naturally resulting from the injury, promotes recovery, and enhances the ability to return to or retain employment. Act ' 408.021.
4. As referenced in Findings 4 and 6, the passive therapy Claimant received did not reduce his pain or promote his recovery. It was not medically necessary.
5. Based on the foregoing, the appeal should be denied. Act ' 408.021.

ORDER

IT IS ORDERED that the decision of the Independent Review Organization is affirmed, and the Insurance Company of the State Of Pennsylvania is not required to pay Benjamin Skelton, D.C., for the October 24 - December 23, 2002 treatments.

SIGNED December 18, 2003.

**BARBARA C. MARQUARDT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**