

AMERICAN CASUALTY COMPANY OF READING, PA, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
COTTON MERRITT, D.C., Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

This is a dispute over whether American Casualty Company of Reading, PA (Carrier) should be required to reimburse Cotton Merritt, D.C., the health care provider, for several office visits and a Functional Capacity Evaluation. The amount in dispute is \$709. The Administrative Law Judge (ALJ) concludes the services should be reimbursed.

I. DISCUSSION

The Claimant sustained compensable injuries to his neck, shoulder and elbow on _____. He began treatment with Dr. Merritt on March 4, 2002, and reached maximum medical improvement on June 18, 2002.

At dispute in this case are visits by the Claimant to Dr. Merritt's office on June 12, August 14, August 22, August 26, and September 3, 2002, and a Functional Capacity Evaluation (FCE) conducted July 17, 2002. Dr. Merritt billed the Carrier for the office visits (CPT Codes 99213 and 99214) and FCE (CPT Code 97750). After the Carrier denied reimbursement on the basis that the visits and FCE were not medically necessary, Dr. Merritt filed a Medical Dispute Resolution Request with the Texas Workers' Compensation Commission (the Commission). The Commission referred the matter to an Independent Review Organization (IRO), which ruled in Dr. Merritt's favor. On June 18, 2003, the Commission's Medical Review Division (MRD) sent the Carrier its Findings and Decision in accordance with the IRO decision. The Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on July 1, 2003.¹

Adequate and timely notice of the hearing was sent to the parties July 29, 2003. The hearing was convened September 30, 2003, at SOAH's hearing rooms in Austin, Texas. A representative of the Carrier participated in the hearing, as did Dr. Merritt. The hearing was adjourned the same day.

¹Dr. Merritt had also requested reimbursement for office visits on July 1 and July 25, 2002. The IRO denied reimbursement for those visits. Because Dr. Merritt did not request a hearing at SOAH regarding those two visits, they are not at issue in this case.

The evidence on the issue of medical necessity consisted of Dr. Merritt's testimony, the IRO decision, and peer reviews by Aaron L. Combs, M.D., P.A., and W. Bryan Woods, D.C.

Both Dr. Combs and Dr. Woods believed additional or ongoing care was not reasonable after the passage of so much time. In their opinion, such additional care would need to be justified in writing; neither found any justification in the record. Neither doctor found additional treatment had produced measurable or objective improvement in the Claimant.

The IRO decision observed that relief care beyond maximum medical improvement is acceptable if it meets four criteria: (1) it should demonstrate a decrease in pain of lasting quality; (2) it should demonstrate a decrease in pain medication; (3) it should demonstrate increase functional abilities, including range of motion; and (4) it should help the claimant to retain gainful employment.

According to the IRO, the office visits fulfilled those criteria. The reviewer also noted that the Claimant was experiencing periodic exacerbation of his symptoms and was in need of relief care, as evidenced by the fact he received epidural steroid injections on June 28 and September 6, 2002. The reviewer concluded that the treatment provided the Claimant was not excessive.

Dr. Merritt testified the office visits at issue met the requirements set out for their respective CPT codes. He stated that on each occasion, the Claimant had contacted him about flare-ups in his condition, whereupon Dr. Merritt had either treated him or referred him for additional treatment.

Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

The ALJ concludes the Carrier did not meet that burden of proof. Dr. Combs' and Dr. Woods' peer reviews discussed general guidelines for treatment, but did not directly refute the need for evaluation or pain relief for the Claimant. The IRO decision and Dr. Merritt's testimony were more credible than the peer reviews, because they more directly and thoroughly addressed the Claimant's medical situation. Therefore, the ALJ finds that the services at issue were medically necessary and concludes the Carrier should be required to reimburse Dr. Merritt for them.

II. FINDINGS OF FACT

1. The Claimant sustained compensable injuries to his neck, shoulder and elbow on ____
2. The Claimant began treatment with Dr. Merritt on March 4, 2002, and reached maximum medical improvement on June 18, 2002.
3. The Claimant visited Dr. Merritt's office on June 12, August 14, August 22, August 26, and September 3, 2002, and received a Functional Capacity Evaluation (FCE) July 17, 2002.
4. Dr. Merritt billed the Carrier for the office visits (CPT Codes 99213 and 99214) and FCE (CPT Code 97750).

5. The amount in dispute is \$709.
6. After the Carrier denied reimbursement on the basis that the visits and FCE were not medically necessary, Dr. Merritt filed a Medical Dispute Resolution Request with the Texas Workers' Compensation Commission (the Commission).
7. The Commission referred the matter to an Independent Review Organization (IRO), which ruled in Dr. Merritt's favor.
8. On June 18, 2003, the Commission's Medical Review Division (MRD) sent the Carrier its Findings and Decision in accordance with the IRO decision.
9. The Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on July 1, 2003.
10. Notice of the hearing was sent to the parties July 29, 2003.
11. 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.
12. The hearing was convened September 30, 2003, at SOAH's hearing rooms in Austin, Texas. A representative of the Carrier participated in the hearing, as did Dr. Merritt. The hearing was adjourned the same day.
13. Dr. Combs' and Dr. Woods' peer reviews discussed general guidelines for treatment, but did not directly refute the need for evaluation or pain relief for the Claimant.
14. The IRO decision and Dr. Merritt's testimony were more credible than the peer reviews, because they more directly and thoroughly addressed the Claimant's medical situation.
15. The services at issue were medically necessary.

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. Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. The Carrier did not meet its burden of proving that Dr. Merritt should not be reimbursed for

the services in dispute.

5. Pursuant to TEX. LAB. CODE ANN. §413.031, the Carrier should reimburse Dr. Merritt \$709, plus interest, for the services in dispute.

ORDER

IT IS, THEREFORE, ORDERED that American Casualty Company of Reading, PA, shall reimburse Cotton Merritt, D.C., \$709, plus interest, for the services in dispute in this proceeding.

SIGNED on November 18, 2003.

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