

DOCKET NO. 453-03-4084.M5
MRD TRACKING NO. M5-03-1984-01

TEXAS MUTUAL INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
Petitioner	§	
V.	§	OF
	§	
CENTRAL DALLAS REHAB,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission ordering reimbursement to Central Dallas Rehab (Provider) for sessions of physical medicine and also office visits with treatments that Provider administered to ___ (Claimant) from August 21, 2002, through November 11, 2002.¹ The MRD concluded that the array of physical medicine modalities were medically necessary to treat Claimant throughout that period.

Based on the evidence submitted, Carrier met its burden of proof to show that treatments provided after August 25, 2002, were not reasonably required or medically necessary to treat Claimant. However, Carrier failed to show that treatments before that date were not necessary to aid Claimant recover from a lumbar and cervical sprain/strain.

The hearing in this matter convened on February 4, 2004, in Austin, Texas, with Administrative Law Judge (ALJ) Cassandra Church presiding. The record closed that day. Provider was represented by Scott C. Hilliard, attorney. Carrier was represented by Katie M. Kidd, attorney. The Commission did not participate in the hearing.

I. DISCUSSION

On ___, Claimant injured his head and back when the ditch in which he was working collapsed. The falling dirt either covered him or pushed him into the ditch wall. Before the period of chiropractic care at issue, Claimant had been treated conservatively with pain medication, muscle relaxants, and physical therapy. Although there was some disagreement on the appropriate diagnosis, all doctors examining Claimant agreed that he suffered sprain/strain injury to both his lower back and neck.² An X-ray taken on the date of the injury showed there had been no injury to

¹ At the hearing, Carrier withdrew its protest of reimbursement ordered for office visits on September 11, 18, and 25, on October 23, and on November 11, 2002.

² On September 18, 2002, Crawford Sloan, M.D., expanded his diagnosis beyond lumbar strain to lumbar disc disease and lumbar herniated disc with radiculitis of the left leg. In late September he suggested epidural injections and an orthopedic consultation for surgery, but dropped those recommendations in October. On August 20, 2002, Claimant had reported radiating pain to his right leg, which was the first report that Claimant had made of leg pain.

either the bones of the spine or to soft tissue in the spine area. Carrier Exhs. 6-9, Provider Exh. 1, pp. 4-7.

Provider contended that the treatments it provided were all necessary to treat Claimant's spine injury, particularly persistent pain, and to prepare him to return to work at a heavy demand level. Provider conducted sessions of supervised therapeutic activities and also administered myofascial release, traction, spine manipulations, and joint mobilization. Provider argued that it provided therapeutic activities tailored for Claimant and that a staff member did supervise his performance of them one-on-one. Provider asserted the fact that Claimant later participated in a work hardening program demonstrated the need for the therapy. Provider Exh. 1, p. 3.

Carrier contended that the prolonged, multiple treatments were not necessary as the sprain/strain injury to Claimant's lower back was a type of injury which would either resolve on its own or require only a short course of care immediately after the injury to treat appropriately. Carrier further contended that there was no medical evidence supporting the need for one-on-one sessions of physical therapy, or for the dispensing of a TENS unit at a time when Claimant showed reduced pain levels. Nicholas Tsourmas, M.D., and David Alvarado, D.C., both concluded that Claimant's compensable injury was not severe enough to warrant several months of treatment with the physical modalities that Provider used.

The most persuasive evidence in this case were the indicators of Claimant's condition as it had evolved by the end of August 2002, a month after the injury. Taken as whole, these evaluations show that Claimant had returned to a nearly-normal condition. Specifically, Claimant showed low levels of pain in August and a normal range of motion, and only moderate levels of pain even on a strength test. MRIs of both Claimant's neck and back showed unremarkable conditions and electrodiagnostic testing during that period showed fundamentally normal nerve conduction to Claimant's legs. Based on this evidence, Carrier met its burden to show that the intense array of treatments Provider administered for an additional three months was not reasonable or medically necessary to treat the compensable injury.

Carrier failed to show that dispensing a TENS unit in late August 2002 was not a reasonable way to assist Claimant manage his pain. Evidence in the record showed the TENS unit reduced the levels of pain medication Claimant used.

II. FINDINGS OF FACT

1. On ____, ____ (Claimant) injured his lower back and neck when a ditch in which he was working collapsed.
2. Texas Mutual Insurance Company (Carrier) was the responsible insurer.
3. Claimant initially reported pain in the back of his head and lower back, as well as headaches.
4. On ____, Ted Krejci, D.C., Claimant's treating doctor, diagnosed Claimant as having lumbosacral sprain, but also diagnosed disc disorder with myelopathy, nerve root compression, cervical disc disorder with myelopathy, and lumbar facet syndrome.

5. On ____, Claimant had no injury to the bones of the spine or to soft tissue surrounding the spine. Claimant had minimal degenerative joint disease and some straightening (hypolordosis) of the spine attributed to muscle spasms.
6. An MRI examination of Claimant's lumbar spine taken on August 20, 2002, showed no injury to the spine. It showed minimal degenerative disc and facet disease at the L3-L4, L4-L5, and L5-S1 levels.
7. On August 20, 2002, showed Claimant's thoracic spine was normal.
8. On July 31, 2002, and August 4, 2002, Crawford Sloan, M.D., diagnosed Claimant as having cervical and lumbar sprain/strain. He recommended conservative care.
9. On August 19, 2002, Claimant was suffering from lumbar strain.
10. By August 2, 2002, Claimant's spinal range of motion (ROM) was normal.
11. On August 22, 2002, Provider provided Claimant with a TENS unit for pain control. Claimant decreased his use of medication by use of the TENS unit.
12. In strength testing administered on August 20, 2002, Claimant experienced pain in performing some but not all of the tasks evaluated, with pain levels of between 3 to 5, on a 10-point scale.
13. In all examinations between August 5 and 22, 2002, Claimant had pain levels of 1, on a 10-point scale.
14. On August 20, 2002, Claimant reported radiating pain to his right leg. This was the first report of pain to his leg.
15. At no time during the treatment period did Claimant show problems with his gait or display an inability to walk.
16. On September 17, 2002, the motor nerve conduction in both legs to be normal, although there was a suggestion of some nerve root or sensory pathway dysfunction at the L5-S1 level.
17. Between August 21, 2002, through November 11, 2002, Provider administered 21 sessions of one-on-one therapeutic procedures, combined in most cases with manual traction of the spine, myofascial release, and joint mobilization.
18. On each date Provider conducted sessions involving therapeutic procedures, Provider billed for one hour of service (four units) for those procedures in addition billing for the companion procedures.
19. On all but one treatment date, Provider billed for an office visit in conjunction with the multiple procedures.
20. On August 22, 2002, Provider administered a sensory nerve test to Claimant.

21. On August 21, 2002 Provider administered a physical performance test to Claimant and prepared a report on the test results.
22. Between August 21, 2002, and November 11, 2002, Claimant was treated with various medications, including Soma, Vicodin, and Bextra.
23. On September 23, 2002, James E. Laughlin, D.O., diagnosed Claimant as having lumbar sprain and spondylosis of the lumbar spine
24. Carrier denied payments for all treatments that Provider administered from August 21, 2002, through November 11, 2002, on the basis they were not medically necessary.
25. Provider appealed the Carrier's denial of reimbursement to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
26. On June 18, 2003, based on the review by an Independent Review Organization (IRO), Maximus, the MRD ordered Carrier to reimburse Provider for all treatments and services provider rendered for Claimant from August 21, 2002, through November 11, 2002.
27. On July 7, 2003, Provider requested a hearing on the MRD decision.
28. On July 29, 2003, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted. The case was continued on motion of the parties.
29. Administrative Law Judge Cassandra Church conducted a hearing on the merits of this case on February 4, 2004, and closed the record that day.

III. CONCLUSIONS OF LAW

1. 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 TEX. LAB. CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Carrier, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE § 148.21(h).
5. Carrier met its burden of proof to show that treatments, including testing and office visits, provided after August 25, 2002, were not reasonably required or medically necessary to treat or relieve the effects of or promote Claimant's recovery from a compensable injury within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

6. Treatments which Provider administered between August 21, 2003, and August 25, 2002, including testing, office visits, and dispensing of a TENS unit, were medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

ORDER

IT IS ORDERED that Texas Mutual Insurance Company reimburse Central Dallas Rehab for all treatments, office visits, and testing administered on behalf of Claimant between August 21, 2002, and August 25, 2002, and for the TENS unit dispensed on August 22, 2002.

All other claims by Central Dallas Rehab for reimbursement after August 25, 2002, are hereby denied.

SIGNED March 29, 2004.

**CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**