SOAH DOCKET NO. 453-03-4134.M5
MDR NO. M5-03-1612-01

LEGION INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	
	§	
PATRICK DAVIS, D.C.,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is a dispute over whether reimbursement is appropriate for physical therapy modalities rendered to ___ (Claimant) by Patrick Davis, D.C. (Provider), between May 23, 2002, through August 14, 2002. Provider sought reimbursement from Legion Insurance Company (Carrier) for the treatment rendered to Claimant, which Carrier denied as not medically necessary. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the findings of an Independent Review Organization (IRO) that held Provider was entitled to reimbursement. In this Order, the Administrative Law Judge (ALJ) concludes Provider is not entitled to reimbursement.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of facts and conclusions of law without further discussion here.

A hearing convened and closed on November 13, 2003, before the State Office of Administrative Hearings (SOAH) with ALJ Steven M. Rivas presiding. Carrier appeared and was represented by Steve Tipton, attorney. Provider appeared and represented himself.

II. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ___. Subsequently, Claimant sought treatment from Provider and was initially treated with conservative physical therapy in order to prevent invasive procedures, but the pre-operative therapy failed to provide any significant pain relief to Claimant. On April 22, 2002, Claimant underwent back surgery. Following Claimant's back surgery, Provider recommended and administered several weeks of physical therapy from May 23, 2002, through August 14, 2002, and sought reimbursement from Carrier, which was denied as not medically necessary.

B. 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, the Act, as noted in § 408.021, 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. Under the same statute, the employee is 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.

3. Evidence and arguments

Carrier's main argument was that Provider offered insufficient evidence of the services rendered to Claimant. Carrier acknowledged Provider billed for certain services under various CPT codes but argued the services rendered were not sufficiently explained or outlined in the billing documents.

4. Analysis and Conclusion

Provider is not entitled to reimbursement because it failed to sufficiently demonstrate the treatment rendered was medically necessary. Additionally, the treatment rendered to Claimant was not sufficiently presented in any of the documentation presented at the hearing through live testimony or documentary evidence. Furthermore, Provider's summarization of the treatment rendered was not sufficiently detailed so as to allow the ALJ an opportunity to decide whether the treatment was medically necessary. Carrier had the burden of proof in this matter but in the ALJ's opinion, it is unreasonable to compel Carrier to prove the treatment was not medically necessary, when the treatment itself is, in effect, absent from the record.

Provider testified the services were medically necessary in order to assist Claimant in his post-operative therapy. At the hearing, Provider offered testimony regarding some of the services rendered to Claimant and summarized the documentation that was forwarded to the IRO. However, the only evidence to support Provider's position was three progress reports and requests for additional treatment written by Provider that was contained in Carrier's submission of additional documents. Each progress report outlined Claimant's injury and subjective complaints, and noted Claimant had received a "fair and reasonable course of pre-operative physical medicine rehabilitation."[1] The reports also indicated Claimant required "one month of post-surgical recovery and stabilization *without* physical medicine rehabilitation."[2] In addition to the progress reports, Carrier also submitted a table of disputed services, which outlined the dates of service, the CPT codes, and the amount billed. Carrier argued that none of the documentation presented at the hearing sufficiently outlined Provider's course of treatment, Claimant's progress, or further treatment recommendations.

Under § 408.021(a), medical necessity exists were the treatment rendered cures or relieves the effects of the compensable injury; promotes recovery; or enhances the employee's ability to obtain employment. In this case, the ALJ is unable to determine whether the Carrier proved medical necessity did not exist because there is no starting point with which to cultivate such an opinion in the absence of treatment reports. Without a reference point of where to begin to determine medical necessity, the ALJ cannot properly deliberate on the existence of medical necessity. Although the Carrier has the burden of proof in this hearing, the Provider is always the party with the burden of outlining a sufficient basis for seeking reimbursement. In this case, the Provider, in neglecting to

[1]Medical report written by Provider citing the conclusion of John Milan, M.D. This conclusion is contained in each report dated June 21, July 19, and August 14, 2002.

[2]*See Id.*

provide sufficient documentation of the treatment rendered, failed to lay a sufficient foundation of a dispute. For the foregoing reasons, the ALJ concludes Provider is not entitled to reimbursement.

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable back injury on ___.

2. Patrick Davis, D.C. (Provider), treated Claimant for his back injury with conservative physical treatment in order to prevent a surgical procedure.

3. The conservative treatment failed to reduce Claimant's back pain, and on April 22, 2002, Claimant underwent back surgery.

4. Following Claimant's surgery, Provider administered post-operative therapy to Claimant from May 23, 2002, through August 14, 2002.

5. Provider billed Legion Insurance Company (Carrier) for the treatment rendered, but the claim was denied as not medically necessary.

6. Provider filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the treatment rendered to Claimant.

7. The dispute was referred to an Independent Review Organization (IRO), which found Provider was entitled to reimbursement.

8. Carrier timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH).

9. Notice of the hearing was sent August 4, 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.

10. The hearing convened and closed on November 13, 2003, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Carrier appeared and was represented by Steve Tipton, attorney. Provider appeared and represented himself.

11. Provider summarized the treatment rendered to Claimant but did not offer any documentation to support the treatment rendered.

12. Provider presented insufficient evidence that the treatment in dispute was medically necessary to treat Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq*.

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 request for hearing as specified by 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052, and 28 TEX. ADMIN. CODE § 148.4.

5. The Carrier, as Petitioner, has the burden of proof in this matter under 28 TEX. ADMIN. CODE § 148.21(h).

6. Under TEX. LAB. CODE ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

7. Because the scope and nature of Claimant's treatment was not sufficiently established in this matter, the ALJ is unable to find the treatment in question was medically necessary under § 408.021(a).

8. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement for the treatment rendered to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Patrick Davis, D.C., is not entitled to reimbursement from the Carrier, Legion Insurance Company, for the treatment rendered to Claimant from May 23, 2002, through August 14, 2002.

SIGNED January 9, 2004

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