

CONTINENTAL CASUALTY COMPANY,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
	§	
v.	§	OF
	§	
	§	
MAIN REHAB AND DIAGNOSTIC Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Continental Casualty Company (Petitioner) appealed some of the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through ____, an Independent Review Organization (IRO), granting Respondent reimbursement for certain chiropractic services. Both Main Rehab and Diagnostic (Respondent) and Petitioner agree that the scope of this appeal is limited to those services the IRO deemed as medically necessary. This decision grants part of the relief sought by Petitioner.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues regarding notice of the hearing. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened October 15, 2003, at the Hearings Facility of the State Office of Administrative Hearings (SOAH) before SOAH Administrative Law Judge (ALJ) Stephen J. Pacey. The Respondent appeared by telephone represented by Attorney Scott Hilliard. Petitioner was represented by Attorney Phong Phan. The Commission did not appear. After receipt of evidence, the record was closed the same day.

II. EVIDENCE AND BASIS FOR DECISION

Carrier denied reimbursement based on Code V, "unnecessary treatment based on a peer review." Commission Rule set out at 28 TEX. ADMIN. CODE (TAC) § 133.304 (c) requires the Carrier to specifically state the reasons for denial of payment. William Defoyd D.C. testified for Petitioner. His testimony will be limited to the items noted in the peer review.

The peer review and Dr. Defoyd's testimony sufficiently indicated that the documents supporting the treatment plan of joint mobilization (myofascial release)¹

¹ CPT Code 97250 with date of service May 28, 2003.

and therapeutic activity² were generic in nature and did not reflect that the patient was improving with treatment. Petitioner proved by a preponderance that the treatments were not medically necessary. In addition, the peer review reflected that the treatment plan was not adequately documented, and Dr. Defoyd testified that the office visits³ were not properly documented because the documentation did not contain up-dated histories or show medical decision-making. He testified that the notes concerning the office visits were almost identical and did not contain objective findings. Petitioner proved the office visits were not medically necessary.

The peer review indicated that further treatments were not necessary, but it failed to address further testing. Petitioner denied reimbursement based on the peer review for the following tests: sensory testing (CPT Code 95094-WP) performed May 28, 2002; range of motion study (CPT Code 95851) performed June 24, 2003; physical performance test (CPT Code 97750-MT) performed June 25, 2002; and nerve conduction studies with H-wave and F-wave (CPT Codes 95900-27, 05904-27, 95935-27, and 95935-27) performed on July 12, 2002. As the peer review did not address these tests, Petitioner did not prove that the tests were not medically necessary.

III. FINDINGS OF FACT

1. On ____, Claimant M.D. sustained a compensable injury to her left knee and left shoulder when she fell.
2. At the time of the Claimant's compensable injury, Continental Casualty Company (Petitioner) was the workers' compensation insurer for Claimant's employer.
3. During the period of May 28, 2002, through July 12, 2002, Main Rehab and Diagnostic, (Respondent) provided services to the Claimant.
4. The Carrier denied reimbursement for expenses in the amount of \$1,642.00 associated with Respondent's services.
5. The stated bases on the Explanation of Benefits (EOB) for the denials was Code "V," which means "unnecessary based on a peer review."
6. The peer review stated:
 - a. The Claimant's records reveal that she has not had any improvement with the current treatment.
 - b. There are contradicting findings noted in the records.
 - c. The current records do not support the efficacy or the current treatment.
7. The peer review was prepared prior to the disputed services; however, the records concerning the disputed services are substantially the same.

² CPT Code 97110 with dates of service May 28, July 11, and July 12, 2002.

³ CPT Code 99213 with dates of service May 28, July 11, and July 12, 2002.

8. The records concerning the office visits were insufficient because the medical history on each record was almost identical and the subjective and objective findings were not quantified.
9. The records concerning the therapeutic activity were insufficient because there was no description of the exercises nor was there any improvement in the Claimant.
10. The records concerning the joint mobilization were insufficient because there was no description of the part of the body being mobilized nor was there any improvement by the Claimant.
11. Neither the joint mobilization nor the therapeutic activity was medically necessary.
12. The basis for denial for the tests performed on the Claimant was the peer review.
13. The peer review did not mention any tests and was prepared prior to the tests.
14. As the peer review did not mention the tests, it is not a proper explanation of Petitioner's denial of payment for the tests.
15. The Respondent timely requested dispute resolution by the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
16. The IRO ordered reimbursement for some of the services and denied reimbursement for other services.
17. The Petitioner timely appealed the parts of the IRO decision ordering reimbursement.
18. Notice of the hearing was sent August 21, 2003.
19. 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.
20. The hearing was held October 15, 2003.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter 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(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The Petitioner's denial of the disputed services for testing procedures was not in compliance with 28 TAC § 133.304 (h).
6. Petitioner's denial of Respondent's claim for testing procedure reimbursement should be denied.
7. The following tests were medically necessary:
 - a. The sensory test performed May 28, 2002, with a \$192.00 cost of service.
 - b. The range of motion study performed June 24, 2002, with a \$72.00 cost of service.
 - c. The physical performance test performed June 25, 2002, with an \$86.00 cost of service.
 - d. The nerve conduction studies with H-wave and F-wave performed on July 12, 2002, with a \$465.50 cost of service.
8. Petitioner's denial of Respondent's reimbursement claim for office visits, joint mobilization, and therapeutic activity should be sustained

ORDER

Continental Casualty Company shall reimburse Main Rehab and Diagnostic \$815.50 for part of the services in dispute. Continental Casualty Company shall not be required to reimburse Main Rehab and Diagnostic for the remainder of the services.

SIGNED this 3rd day of December 2003.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS