SOAH DOCKET NO. 453-03-4447.M5
TWCC MR NO. M5-03-1685-01

SUHAIL S. AL-SAHLI, D.C.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
UNIVERSITY OF TEXAS SYSTEM	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is a dispute over whether reimbursement is appropriate for treatment rendered to ___ (Claimant) by Suhail S. Al-Sahli, D.C. (Provider), between June 28, 2002, and January 3, 2003. Provider sought reimbursement from University of Texas System (Carrier) in the amount of $8,269.00 for treatment rendered to Claimant, which Carrier denied. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the recommendation of the Independent Review Organization (IRO) that held Provider was not entitled to any reimbursement. In this Order, the Administrative Law Judge (ALJ) concludes Provider is not entitled to any 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 January 29, 2004, before the State Office of Administrative Hearings (SOAH) with Steven M. Rivas, ALJ, presiding. Provider appeared and represented himself. Carrier appeared and was represented by Bradley McClellan, attorney.

II. DISCUSSION

A. Background Facts

Claimant sustained a compensable back injury on ___. Claimant was diagnosed with a lumbar sprain/strain and was initially prescribed medication to treat her injury. An MRI examination performed on October 25, 2001, revealed no findings of pathology. In January 2002, Claimant began treatment with Provider. The disputed services began on June 28, 2002, and consisted of therapeutic exercises, myofascial release, tissue mobilizations, office visits, and manipulations. Provider billed Carrier for the treatment rendered, which Carrier 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 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.

C. Evidence and Analysis

Provider offered insufficient evidence that the treatment rendered to Claimant was medically necessary. In addition to the negative results of Claimant's MRI, Claimant also exhibited no evidence of peripheral neuropathy on an EMG examination that was performed on May 16, 2002.

Prior to the disputed dates of service, Claimant had been under Provider's care for at least three months. During those three months, Provider administered the same type of therapy procedures that are now in dispute. Even though the disputed dates of service in this matter begin on June 28, 2002, the record indicated that Provider had administered the same type of physical therapy procedures (myofascial release and manipulations) since January 2002.

On March 13, 2002, Claimant complained of low back pain, and continued to make similar complaints throughout Provider's treatment until January 3, 2003. On some office visits, Claimant complained of additional symptoms like radicular pain and back spasms.

Carrier argued that Provider's ongoing treatment was not medically necessary due to the lack of objective findings on Claimant's diagnostic test. Additionally, Carrier pointed out Provider's own testimony that a typical back sprain/strain takes only six-to-ten weeks healing time.

Provider's testimony was not convincing. When asked why he continued treating Claimant for several months for a sprain/strain, Provider would not give a specific answer, but instead repeatedly sought clarification for phrases like "same type of procedures" and "daily basis." Provider's closest semblance to a straight answer was that "you cannot apply a fixed book on everybody because there are other factors involved beyond the doctor's control like the preauthorization process." This statement eludes to the possibility that Claimant might have had extraordinary circumstances that caused the treatment to be prolonged. However, Provider did not submit any documents or provide any testimony that established this was the case. Provider's inability to state even a general reason why the treatment was ongoing does not bode well for Provider, given his testimony that the time-frame for treating a sprain/strain is typically six-to-ten weeks.

Furthermore, Claimant started her treatment with Provider in January 2002, with complaints of low back pain, which persisted throughout the disputed dates of service even though Claimant's diagnosis had not changed. Provider disagreed with the diagnosis, but offered no evidence to the contrary. Apparently, Claimant experienced no relief from her back pain even after more than 60 weeks of treatment. Provider offered insufficient evidence as to why this was the case considering the MRI and EMG results negative. Therefore, the ALJ finds that Provider has not proven by a preponderance of the evidence that the treatment rendered was medically necessary.

Based on the evidence presented at the hearing, the ALJ believes the treatment rendered to Claimant over the disputed dates of service was not medically necessary because there was insufficient evidence presented that the treatment was rendered in accordance with the Act § 408.021(a).

III. FINDINGS OF FACT

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

2. Claimant was diagnosed with a back sprain/strain and was initially treated with medication for her injury.

3. On October 25, 2001, Claimant underwent an MRI examination, which revealed no findings of pathology.

4. In January 2002, Claimant began treatment with Suhail S. Al-Sahli, D.C. (Provider), complaining of low back pain.

5. Provider began treating Claimant with therapeutic procedures such as myofascial release, and manipulations.

6. Between June 28, 2002, and January 3, 2003, Provider rendered physical therapy treatment to Claimant, and requested $8,269.00 reimbursement from University of Texas System (Carrier), which Carrier denied as not medically necessary.

7. 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.

8. The dispute was referred to an Independent Review Organization (IRO), which upheld Carrier's denial of reimbursement.

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

10. Notice of the hearing was sent August 19, 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 convened and closed on January 29, 2004, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Provider appeared and represented himself. Carrier appeared and was represented by Bradley McClellan, attorney.

13. The typical recovery time for a lumbar sprain/strain is six-to-ten weeks.

14. Claimant's diagnostic tests revealed no findings of pathology.

15. Claimant's treatment lasted more than 60 weeks.

16. Provider continued to administer the same type of therapeutic procedures to Claimant throughout the treatment period.

17. Claimant did not experience any improvement following the treatment rendered by Provider.

18. Claimant's diagnosis did not change throughout the treatment period.

19. Claimant's ongoing treatment for a lumbar sprain/strain from June 28, 2002, through January 3, 2003, was not justified.

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. Provider 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 Provider, 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. Provider has failed to show, by a preponderance of the evidence, that the treatment Provider rendered to Claimant was medically necessary for the dates in dispute.

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

ORDER

IT IS, THEREFORE, ORDERED that Provider, Suhail Al-Sahli, D.C., is not entitled to receive any reimbursement from Carrier, University of Texas System, for the treatment it rendered to Claimant from June 28, 2002, through January 3, 2003.

SIGNED March 26, 2004.

_____

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