

CENTRAL DALLAS REHAB, § BEFORE THE STATE OFFICE
Petitioner §
§
VS. § OF
§
ROYAL & SUN ALLIANCE, §
Respondent § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Central Dallas Rehab (Central) appealed a Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) order agreeing with an Independent Review Organization (IRO) determination that certain chiropractic services provided to an injured worker from July 29, 2002, through December 24, 2002, were medically unnecessary. Royal & Sun Alliance (Royal) had previously denied the request. This decision concludes, based on a preponderance of the evidence, that the care was necessary through September 10, 2002, but that services after that date (consisting of office visits) were unnecessary.

I. PROCEDURAL HISTORY

A hearing in this matter was convened on October 23, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Austin, Texas. The hearing was left open until October 30, 2003, for Central to submit an amended table of disputed services.¹ Central was represented at the hearing by Attorney Scott C. Hilliard. Attorney Tommy Lueders represented Royal. The hearing record closed on October 30, 2003.

Because there are no notice or other jurisdiction issues, those matters are addressed in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

1. Background

The Claimant suffered an at-work injury on _____, when she slipped and fell on a slick floor, landing on her hands/wrists and knees and twisting her back, knees, and neck. She first went to Lakeview Medical & Rehab Center, where she was treated until late July 2002 by Glen Felch, D.C., under the direction of Ronald Anderson, D.O. She presented to Central on July 29, 2002, and received a variety of services through September 10, 2002. Care after that date consisted of weekly office visits through December 24, 2002.

The disputed services can be categorized as follows: an initial office visit dated July 29, 2002 (CPT code 99204); office visits from July 30, 2002, through September 10, 2002 (CPT code 99213);

¹ The table is entered into evidence as Exhibit 4.

physical therapy consisting of therapeutic exercises to develop strength and endurance, range of motion, and flexibility (CPT code 97110), joint mobilization (CPT code 97265), myofascial release/soft tissue mobilization (CPT code 97250), and neuromuscular re-education of movement, balance, coordination, kinesthetic sense, posture, and proprioception (CPT code 97112); physical performance tests or measurements (CPT code 97750) and developmental testing (CPT code 95851); a work status report to the Commission (CPT code 99080-73); office visits after September 10, 2002 (CPT code 99213); and December 17 and 24, 2002, office visits that did not require the presence of a physician (CPT code 99211).

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) 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. The employee is specifically entitled to health care 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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

As Appellant, Royal had the burden of proof.²

2. Analysis

The ALJ concludes the weight of medical evidence is that chiropractic services provided on and before September 10, 2002, were medically necessary. Evidence from most of the doctors who actually examined the Claimant indicated that conservative care in August and early September was reasonable and necessary. However, the only evidence supporting the need for continued weekly office visits after September 10 was from the Claimant's treating chiropractor, Dr. Krejci. The ALJ concludes that Central did not prove the post-September 10 offices visits were reasonable.

On July 25, 2003, Dr. Anderson, who supervised the Claimant's treatment by Dr. Felch immediately before she saw Dr. Krejci, recommended physical medicine three times a week for six weeks.³ On July 26, 2003, he said it is not uncommon for injuries like the Claimant's to take six to twelve months of treatment to provide every opportunity for physiologic regrowth and recovery. On that date, he recommended continued physical therapy.⁴

In a referral from Dr. Anderson, Melvin Manning, M.D., of the Texas Sports Medicine and Orthopedic Group, said on July 31, 2002, that the Claimant should resume conservative chiropractic care with Dr. Felch.⁵

²28 TEX. ADMIN. CODE ' 148(h).

³Ex. 3 at 342.

⁴Ex. 3 at 337.

⁵ Ex. 3 at 327.

The Claimant's treating physician, Crawford Sloan, M.D., referred the Claimant to Dr. Krejci. On August 30, 2002, Dr. Sloan said the Claimant should continue with physical therapy and physical rehabilitation.⁶

On August 5, 2002, James Laughlin, D.O., examined the Claimant and recommended an intra-articular injection to the right knee and bilateral trigger point injections to the lumbar spine. He said the injections "in conjunction with continued conservative care could facilitate the patient's progress and assist in returning the patient to more active status, thus enhancing the patient's treatment outcome potential. This should expedite the patient reaching MMI status."⁷ On August 19, 2002, Dr. Laughlin gave the Claimant six trigger point injections. He then referred her back to Dr. Krejci "for further conservative care."⁸

Dr. Krejci testified extensively that the services he provided were medically necessary. In response to a peer review opinion that the Claimant needed pain management, he said he recommends pain management only if other care fails. He indicated that a magnetic resonance imaging (MRI) done on August 28, 2003,⁹ eight days after the peer review, confirmed his original diagnosis. He said joint mobilization and traction would help free restrictions and infuse nutrients to injured joints and that myofascial release helps break up restrictions. He pointed out that the Claimant sustained injuries in numerous areas and her movement was restricted in some areas. He cited range of motion (ROM) comparisons of the Claimant's knees showing improvement.^{10 11}

To support its case, Royal relied on an Independent Medical Evaluation by Charles E. Graham, M.D.,¹² and paper reviews by an IRO doctor¹³ and an August 20, 2002, peer review by R. A. Buczek, D.O., D.C.¹⁴ Dr. Graham's extensive evaluation was Royal's most persuasive evidence. He concluded that chiropractic treatment three times a week for three weeks would have been adequate to start the Claimant on a home exercise program.¹⁵ He said anything beyond that would tend to addict the Claimant to the medical care and not contribute to recovery. In his opinion, she had a lumbar strain/sprain that should have cleared up in six to eight weeks and pre-existing

⁶ Ex. 3 at 415.

⁷ Ex. 1 at 166.

⁸ Ex. 3 at 329.

⁹ Ex. 1 at 158.

¹⁰ Ex. 1 at 175, 304.

¹¹ He said his August 2, 2002, CPT code 99083-73 charge was for a Commission required status report.

¹² Ex. 1 at 131-140.

¹³ Ex. 2 at 6-11.

¹⁴ Ex. 1 at 167-170.

¹⁵ The Claimant had received chiropractic treatment from Dr. Felch for several weeks before presenting to Dr. Krejci.

degenerative disc disease that was aggravated by her injury.¹⁶

The IRO review doctor said he did not believe the office visits were medically necessary because the services appear to be a duplication of care provided before the Claimant saw Dr. Krejci. The IRO doctor's concern with other treatments seems to be at least in part due to lack of documentation. Overall, he said the services were not medically necessary because they duplicated services the Claimant received before she saw Dr. Krejci.

Dr. Buczek's opinion was that chiropractic treatment was unnecessary because the Claimant's symptoms had worsened from "months" of spinal manipulation and passive therapy. He would have permitted up to four weeks of active modalities from the time of her injury. He concluded that pain management was the best solution if no surgical lesion were identified.¹⁷

Overall, the evidence from several treating doctors was more convincing than Dr. Graham's opinion that chiropractic intervention beyond three weeks was unnecessary and the paper-review opinions from the IRO physician and Dr. Buczek. No less than five doctors who saw the Claimant said the treatment was reasonable.

As indicated above, the ALJ concluded that the once-a-week post-September 10 office visits were not shown to be necessary. Dr. Krejci testified he continued to manage the Claimant's care and to refer her to other physicians. However, Royal cited several of Dr. Krejci's reports to show he did not change his subjective/objective findings over time. Both Dr. Graham and the IRO doctor believed continued care was not supportable. Even assuming some of the office visits might have been indicated, there was no evidence to show how many. Overall, because Dr. Krejci's testimony on the necessity of the post-September 10 office visits is unsupported by other medical opinions, the ALJ concludes that Central did not carry its burden of proving they were reasonable and necessary.

IV. FINDINGS OF FACT

1. The Claimant suffered an at-work injury on _____, when she slipped and fell on a slick floor, landing on her hands/wrists and knees and twisting her back, knees, and neck.
2. The Claimant first presented to Lakeview Medical & Rehab Center, where she was treated until late July 2002 by Glen Felch, D.C., under the direction of Ronald Anderson, D.O.
3. The Claimant presented to Central Dallas Rehab on July 29, 2002, and received a variety of services through September 10, 2002.
4. The disputed services can be categorized as follows: an initial office visit dated July 29, 2002 (CPT code 99204); office visits from July 30, 2002, through September 10, 2002 (CPT code 99213); physical therapy consisting of therapeutic exercises to develop strength and endurance, range of motion, and flexibility (CPT code 97110), joint mobilization (CPT code 97265), myofascial release/soft tissue mobilization (CPT code 97250), and neuromuscular

¹⁶ Ex. 1 at 140.

¹⁷ Ex. 1 at 167-168.

reeducation of movement, balance, coordination, kinesthetic sense, posture, and proprioception (CPT code 97112); physical performance tests or measurements (CPT code 97750) and developmental testing (CPT code 95851); a work status report to the Commission (CPT code 99080-73); office visits after September 10, 2002 (CPT code 99213); and December 17 and 24, 2002, office visits that did not require the presence of a physician (CPT code 99211).

5. Care after September 10, 2003, consisted of weekly office visits until December 24, 2002.
6. The Claimant sustained injuries in numerous areas and had restricted movement in some areas.
7. Chiropractic care for six weeks from the time Central Dallas Rehab first saw the Claimant on July 29, 2002, would be useful to provide her with an opportunity for physiologic regrowth and recovery.
8. Chiropractic care for six weeks from the time Central Dallas Rehab first saw the Claimant on July 29, 2002, was reasonable to help facilitate her progress, assist her in returning to a more active status, and expedite her reaching maximum medical improvement status.
9. Chiropractic care for six weeks from the time Central Dallas Rehab first saw the Claimant on July 29, 2002, was reasonable to help to see if the Claimant could avoid therapy such as pain management.
10. Chiropractic care for six weeks from the time Central Dallas Rehab first saw the Claimant on July 29, 2002, was reasonably required by the nature of her injury.
1. There was insufficient evidence to conclude that once-a-week office visits after September 10, 2002, was reasonable to help in treating the Claimant's condition.
2. There was insufficient evidence to determine whether or how often less frequent office visits after September 10, 2003, would have been appropriate to treat the Claimant.
3. There was insufficient evidence to conclude that once-a-week office visits after September 10, 2002, were reasonably required by the nature of the Claimant's injury.
4. Central Dallas Rehab requested a hearing not later than the 20th day after it received notice of the independent review organization decision.
5. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
6. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. '413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. '2001.052.
3. Central Dallas Rehab has the burden of proof. 28 TEX. ADMIN. CODE ' 148.21(h).
4. The care provided by Central Dallas Rehab to the Claimant on and before September 10, 2002, was medically necessary. TEX. LAB. CODE ANN. " 401.011 and 408.021.
5. Central Dallas Rehab did not prove that the care it provided after September 10, 2002, through December 24, 2002, was medically necessary. TEX. LAB. CODE ANN. " 401.011 and 408.021.

ORDER

IT IS, THEREFORE, ORDERED that Royal and Sun Alliance pay for the care provided by Central Dallas Rehab to the Claimant on and before September 10, 2002.

IT IS ORDERED FURTHER that Royal and Sun Alliance is not required to pay for the care Central Dallas Rehab provided to the Claimant after September 10, 2002, through December 24, 2002.

SIGNED December 1, 2003.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**