

**SOAH DOCKET NO. 453-04-0625.M5
TWCC MR NO. M5-03-2470-01**

J. TODD WHITEHEAD, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
AMERICAN CASUALTY COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

J. Todd Whitehead, D.C., (Provider) appealed the decision of Envoy Medical Systems, LLC, an independent review organization certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) tracking number M5-03-2470-01, denying reimbursement for medical services provided to the Claimant. This decision orders that American Casualty Company (Carrier) is not required to reimburse the Provider for the amount claimed.

The Administrative Law Judge (ALJ) convened a hearing on January 26, 2004. The hearing was concluded and the record closed that date. The Provider appeared *pro se* via telephone. The Carrier was represented by Shelly Gatlin, attorney.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Provider \$3,330 plus interest for medical services provided between September 6, 2002, and April 8, 2003, and billed under CPT Codes 99204 (new patient office visit), 99080 (special reports), 99090 (analysis of information data stored in computers), 99851 (range of motion testing and report), 97110 (therapeutic exercises), 97750 (physical performance test), 97530 (therapeutic activity), 99213 (office visit for established patient), and 99214 (office visit for established patient). The Carrier argued that the medical services provided to the Claimant were not medically necessary or

reasonably required to treat the compensable injury.

The documentary record in this case consisted of two packets of medical records (Exh. 1 - 101 pages, and Exh. 2 - 289 pages). Also, the Provider testified in his own behalf.

The Claimant suffered a sprain/strain to both the cervical and lumbar areas of the spine on____, when she tripped and fell, hitting her head and lower back on an uncarpeted, concrete floor. Following the fall, she lost consciousness and she continues to suffer from short-term memory loss and confusion. The Claimant sought emergency medical services, which included x-rays and a CT scan. The diagnostic tests revealed that the Claimant's cervical, lumbar, pelvis, and left hip areas were normal. (Exh. 2, pages 11 - 14).

The Claimant was initially treated with physical therapy, injections, and various medications. (Exh. 2, pages 34 - 163). A cervical MRI was unremarkable, and revealed only mild changes at C5 6. (Exh. 2, pages 64 and 109). The physical therapist reported at the conclusion of the therapy sessions that the overall functional status of the Claimant had not changed, that her progress ranged from poor to fair and may have actually deteriorated somewhat, and that her progress was much slower than anticipated. Additional treatment for the Claimant was placed on hold pending completion of a functional capacity examination (FCE) and a review by the Carrier's designated physician. (Exh. 2, page 164).

In an FCE completed on June 4, 2002, the Claimant exhibited postural deficits, gait with stiff neck, decreased bilateral arm swing, decreased cervical active range of motion, decreased upper extremity strength, and ability to lift in the light work category. The therapist believed that the Claimant was a good candidate for either a work hardening or work conditioning program. (Exh. 2, pages 165 - 171).

Dorothy Ann Leong, M.D., was requested by the Carrier to review the Claimant's medical records. On June 3, 2002, Dr. Leong issued a written report stating that the Claimant did not need further treatment and testing. (Exh. 2, pages 172 - 174).

The Claimant was also examined by Gerald Hill, M.D., the TWCC designated doctor. Dr. Hill found that the Claimant had reached maximum medical improvement June 10, 2002, and assigned her an 8% whole body impairment rating. He concluded that the bulge at C5-6 was not significant. (Exh. 2, pages 180 - 185 and 196).

The Claimant continued to experience pain, especially headaches. (Exh. 2, page 193). On September 12, 2002, she began seeing the Provider and receiving chiropractic treatment. Testing determined that the Claimant had 74% neck pain disability and 60% Oswestry chronic lower back pain. (Exh. 2, pages 208 - 212). The Claimant continued with chiropractic treatment and was again tested on October 10, 2002, which showed that she had 72% neck pain disability and 68% Oswestry chronic lower back pain.¹ (Exh. 2, pages 238 - 242). On October 21, 2002, the Claimant reported that she was feeling better overall, and she discontinued treatment.

On February 20, 2003, the Claimant returned to the Provider for further treatment because she was experiencing pain at level nine of ten, with ten being the worst level of pain on the scale. She had been previously released to return to work with restrictions by her treating physician, and was then released from employment. (Exh. 2, page 254 and 255). The Provider continued to treat the Claimant's injury until June 4, 2003, at which time she showed significant improvement. (Exh. 1, page 95).²

Peer reviews were performed by Aaron L. Combs, M.D., and W. Bryan Woods, D.C. Dr. Combs reviewed treatment records and prepared two reports. In the September 27, 2002 report, Dr. Combs stated that additional chiropractic care was not reasonable and necessary. It was his opinion that the Claimant's treatment program had far exceeded the expected healing time-frame.

¹ Dr. Whitehead testified that the actual score on Oswestry scale was 68% on September 12, 2002, and that the Claimant's score stayed the same instead of worsening as indicated by the records.

² The disputed dates of service only go to April 8, 2003, even though the Provider continued to treat the Claimant to at least June 2003.

He concluded that current treatment was not reasonable and medically necessary. (Exh. 2, pages 219 -221). Dr. Combs stated in his November 25, 2002 report that additional and ongoing treatment did not appear to be reasonable and necessary because treatment more than ten months post-injury and five months post-MMI is not consistent with typical recovery time-frames. Additionally, any future treatment should be justified with either new or complex findings. (Exh. 2, pages 245 - 247).

After reviewing the Claimant's medical records, Dr. Woods issued a written report dated September 30, 2002, stating that current treatment, including chiropractic care, was not reasonable and necessary, but that past treatment seemed both medically necessary and related to the injury. (Exh. 2, page 223 - 225) Dr. Woods' opinion remained the same in his subsequent written reports dated November 27, 2002, and January 13, 2003. He stated that the Claimant had suffered a soft tissue injury and that continued chiropractic treatment was not reasonable and necessary, and could even be considered excessive. (Exh. 2, pages 248 - 251)

The Claimant was also assessed by Michael C. Pelfrey, PhD., Psychologist, who found that she had significant elevations in three scales of the Minnesota Multiphasic Personality Inventory-2 test. In his report, Dr. Pelfrey stated that, in the absence of physiological evidence establishing a major physical problem, it would be prudent to interpret the test results as typical of persons who have somatic discomfort and pain and present themselves as physically ill even with no clinical evidence. Additionally, he found that the Cognitive Capacity Screening Exam revealed that the Claimant did not appear to have any problems with short-term memory, intermediate memory, and concentration. Finally, she did well on abstract reasoning ability. (Exh. 2, pages 191 - 194).

The Provider testified that when he first examined the Claimant, she had already reached MMI but had not been returned to work. According to the Provider, the Claimant had a Grade 3 sprain/strain of the cervical spine that radiated down the right arm. He stated that the Claimant had a poor prognosis.

Following an initial treatment period, the Claimant was tested on October 8, 2002, and showed good improvement in grip strength and slight improvement in neck disability index. The

Provider testified that several pain graphs contained in the record showed that the Claimant had received effective treatment. (Exh. 1, pages 96 - 98). Additionally, another graph indicated that the Claimant's physical functioning had greatly improved from his treatment. (Exh. 1, page 99).

It is clear from the evidence that the Claimant was injured and eventually got better more than a year later. It is unclear whether additional treatment helped the Claimant improve or if she improved from the natural healing processes of the body.

After the injury, diagnostic tests revealed that the Claimant had a small, unremarkable bulge at C5-6. She was then treated with physical therapy, various medications, and injections. She failed to get better even though Dr. Combs stated that her treatment far exceeded a typical healing time frame. Both Drs. Combs and Woods believed that chiropractic treatment following the initial sessions of physical therapy was not medically necessary. Dr. Woods stated that further treatment might be considered excessive. Further, in her report dated June 3, 2002, Dr. Leong stated that the Claimant did not need further treatment and testing.

At the conclusion of the physical therapy sessions in May 2002, the Claimant was given an FCE. The therapist stated that the Claimant was a good candidate for a work hardening or work conditioning program in order to meet lifting requirements and for her to return safely to work. Instead, three months later the Claimant sought chiropractic treatment from the Provider.

The Claimant was treated by the Provider from early September 2002, until late October 2002. Any improvement in the Claimant's condition was minimal and she voluntarily suspended treatment. The Claimant re-started treatment with the Provider in February 2003, and finally showed dramatic improvement by June 2003.

Based on the evidence, the ALJ concludes that the treatment provided to the Claimant from September 6, 2002, to April 8, 2003, was not medically necessary and reasonably required to treat the Claimant's injury. While it is true that the Claimant eventually got better, the overwhelming medical evidence established that she did not need additional medical treatment following the initial physical therapy sessions, other than a work hardening or work conditioning program. Testing

showed that any improvement by the Claimant was minimal for the most part until she dramatically improved at the conclusion of treatment. Test results did not support continued chiropractic treatment by the Provider, and the Provider should not be reimbursed for the services delivered to the Claimant.

III. FINDINGS OF FACT

1. On____, the Claimant suffered a compensable injury to the cervical and lumbar areas of the spine. Following the injury, she lost consciousness, had short-term memory loss, and suffered from confusion. The Claimant experienced neck pain and severe headaches.
2. The Claimant's injury is covered by worker's compensation insurance written for the Claimant's employer by American Casualty Company (Carrier).
3. The Claimant was treated with physical therapy, various medications, and injections.
4. At the conclusion of physical therapy, the overall functional status of the Claimant had not changed; her progress ranged from poor to fair and may have actually deteriorated somewhat; and her progress was much slower than anticipated.
5. The Claimant was a good candidate for either a work hardening or work conditioning program.
6. Mary Burgesser, M.D., the Claimant's treating physician, referred her to J. Todd Whitehead, D.C. (Provider) for chiropractic treatment, which was provided from September 6, 2002, to June 2003. Contested dates of service are September 6, 2002, through April 8, 2003.
7. The Provider treated the Claimant's injury and billed its services under CPT Codes 99204 (new patient office visit), 99080 (special reports), 99090 (analysis of information data stored in computers), 99851 (range of motion testing and report), 97110 (therapeutic exercises), 97750 (physical performance test), 97530 (therapeutic activity), 99213 (office visit for established patient), and 99214 (office visit for established patient).
8. The Carrier denied payment in the amount of \$3,330 for the medical services for the treatment referred to in Findings of Fact Nos. 6 and 7, on the basis that treatment was not medically necessary.
9. A cervical MRI was unremarkable, and revealed only mild changes at C5-6.
10. According to Dorothy Ann Leong, M.D., Aaron L. Combs, M.D., and W. Bryan Woods, D.C., who reviewed the Claimant's medical records, the treatment referred to in Findings of Fact Nos. 6 and 7 was not medically necessary.

11. According to Michael C. Pelfrey, Ph. D, Psychologist, the Claimant's test results were those of a person who would present herself as physically ill even with no clinical evidence; the Claimant did not appear to have any problems with short-term memory, intermediate memory, and concentration, and she did well on abstract reasoning ability.
12. The Claimant's condition only showed minimal improvement from treatment provided from September 6, 2002, to October 21, 2002. The Claimant then voluntarily suspended treatment.
13. Treatment of the Claimant by the Provider resumed on February 20, 2003, and continued to June 2003.
14. On April 1, 2003, the Claimant rated her pain as seven out of ten, with ten being the worst level of pain on the scale, and she reported that she had had a headache all of the previous weekend.
15. The Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC).
16. On August 12, 2003, Envoy Medical Systems, LLC, an independent review organization certified by the Texas Department of Insurance, issued its decision finding that the medical services referred to in Findings of Fact Nos. 6 and 7 were not medically necessary. The MRD issued its findings and decision on August 21, 2003, concluding that the disputed expenses should not be paid, and the Provider timely appealed this decision.
17. TWCC sent notice of the hearing to the parties on October 15, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
18. The hearing on the merits convened January 26, 2004, before Michael J. Borkland, Administrative Law Judge. The Provider appeared *pro se*, and the Carrier was represented by Shelly Gatlin, attorney. The hearing concluded that same day.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE §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 TEX. LABOR CODE §413.031 and TEX. GOV'T CODE ch. 2003.
3. Based on Finding of Fact No. 17, the Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052.

4. The Provider has the burden of proving by a preponderance of the evidence that he should prevail in this matter. TEX. LABOR CODE §413.031.
5. Based on Findings of Fact Nos. 4, 5, and 9 - 14, the Provider failed to prove that reimbursement for treatment should be ordered.

ORDER

IT IS, THEREFORE, ORDERED that American Casualty Company shall not be required to reimburse J. Todd Whitehead, D.C. for the disputed services provided in treating the Claimant.

SIGNED March 25, 2004.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS