

DOCKET NO. 453-04-0842.M5

AMERICAN RISK FUNDING INSURANCE CO., Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
COTTON MERRITT, D.C., Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

I. PROCEDURAL HISTORY

Petitioner, American Risk Funding Insurance Co. (Carrier), appeals a decision of an Independent Review Organization (IRO) ordering reimbursement to Cotton Merritt, D.C. (Provider) in the amount of \$4,576.00. The ALJ finds that Carrier has failed to show that the chiropractic medical services in question were not medically necessary, except for patella joint mobilization, and orders the Carrier to reimburse Provider \$3,931.00 for those services.

The Administrative Law Judge convened a hearing on these issues on February 2, 2004. The hearing was concluded and the record closed that date. Provider was represented by Cotton Merritt, D.C. and the Carrier was represented by Attorney Jane Stone.

II. EVIDENCE AND BASIS FOR DECISION

The documentary record in this case consisted of a set of documents from the Carrier, including a treatment time-line for the Claimant, the medical records of the Claimant for the injury in question, the IRO finding in the matter, and the curriculum vitae of Carrier witness Samuel M. Bierner, M.D. Provider testified on behalf of himself, and Dr. Bierner testified on behalf of the Carrier. Based on the evidence, the ALJ concludes that Provider's claim should be approved, for the most part. The particular facts, reasoning, and legal analysis in support of this decision are set forth below in the Findings of Fact and Conclusions of Law. In summary, the ALJ accepts Dr.

Merritt's testimony that most of these chiropractic services were medically necessary. The ALJ accepts the testimony of the Carrier's witness, Dr. Bierner, that the patella joint mobilization modality provided no benefit toward post-surgery knee rehabilitation.

III. FINDINGS OF FACT

1. On ____, ____ (Claimant) suffered a compensable injury to his left knee when he stepped into a man hole while unloading a heavy piece of machinery off the bed of a truck.
2. Claimant's injury is covered by worker's compensation insurance written for Claimant's employer by American Risk Funding Insurance Co. (the Carrier).
3. Provider Cotton Merritt, D.C., seeks reimbursement from the Carrier of \$4,576.00 for active and passive chiropractic services associated with treatment of Claimant's knee injury for dates of service between August 12 and October 14, 2002, and one office visit on October 23, 2002.
4. The Carrier denied reimbursement of the expenses identified in Finding of Fact No. 3.
5. Provider timely requested dispute resolution by the Texas Workers' Compensation Commission (TWCC) through an Independent Review Organization (IRO).
6. The TWCC's Medical Review Division (MRD) issued its findings and decision on September 11, 2003, approving the decision of the IRO and concluding that the disputed expenses were medically necessary. Carrier timely appealed this decision.
7. Active and passive chiropractic therapy services and chiropractic office visits provided by Provider between August 12 and October 14, 2002, and an office visit on October 23, 2002, were medically necessary and were warranted for treatment of Claimant's knee injury, except for CPT Code 97265 for joint mobilization.
8. Provider was able to show that the passive modalities such as massage, myofascial release, ultrasound, and interferential stimulation help healing in soft tissues, thus promoting overall healing to the knee joint.
9. Carrier was able to show that all CPT Code 97265 billings, for joint mobilization, were unnecessary for treatment of Claimant's knee injury, because persuasive testimony indicated manipulation of the patella itself was not medically necessary to treat Claimant's knee injury. That code was billed on 15 different dates of services at \$43.00 per visit for total charges of \$645.00.

10. Although the Carrier was able to show that CPT Code 97250 for myofascial release, and 97124 for message therapy were substantially the same treatments, the Carrier was not able to show that both of these codes were billed on the same day. Thus, neither code is properly disallowed on any date of service.
11. The exercise lunges Provider had Claimant perform were medically necessary for quadricep strengthening and did not further injure Claimant ' s left knee.
12. The amount in dispute of \$4,576.00 minus disallowed charges of \$645.00 equals total charges due Provider from Carrier of \$3,931.00.
13. The parties were given proper notice of the February 2, 2004, hearing.

IV. CONCLUSIONS OF LAW

1. The Texas Workers ' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR 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 TEX. LABOR CODE ANN. §413.031 and TEX. GOV ' T CODE ANN. ch. 2003.
3. The Notice of Hearing issued by the Commission conformed to the requirements of TEX. GOV ' T CODE ANN. §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
4. Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LABOR CODE §413.031.
5. The treatment provided to the Claimant, except for the joint mobilization of the patella, was reasonably required by the nature of Claimant ' s injury. TEX. LABOR CODE ANN. § 408.021.
6. Provider should be reimbursed for the fees incurred in providing treatment to Claimant in the amount of \$3,931.00.

ORDER

IT IS THEREFORE, ORDERED that American Risk Funding Insurance Co. reimburse Provider for fees incurred in treating the Claimant between August 12 and October 23, 2002, in the amount of \$3,931.00.

ISSUED March 22, 2004.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**