

**ACIG INSURANCE COMPANY,  
Petitioner**

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**BEFORE THE STATE OFFICE**

**VS.**

**OF**

**CODY DOYLE, D.C.,  
Respondent**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

The issue in this case is whether chiropractic services rendered between January 29, and March 29, 2003, were medically necessary to treat the Claimant’s compensable injury. The Administrative Law Judge finds they were not.

**I. DISCUSSION**

The Claimant injured his lower back and chest on \_\_\_ when the counter weight of a backhoe hit him in the head by while it was turning, causing him to fall into some pipes. He was treated initially by Kerry Irons, M.D., who released him on July 26, 2001, at “maximum medical improvement” (MMI) with “no permanent impairment anticipated.” Ex. 3 at 24. Eighteen months later, the Claimant presented to the office of Cody Doyle, D.C., (Provider) with complaints of pain in his lower back. The Provider treated the Claimant from January 29, 2003, to March 29, 2003, with a variety of chiropractic modalities, primarily joint mobilizations and group and individual physical therapy. The ACIG Insurance Company (Carrier) denied payment for the services on grounds of medical necessity. The Provider appealed and the Independent Review Organization (IRO) assigned by the Texas Workers’ Compensation Commission (TWCC) reviewed the claim. The IRO determined that the services were medically necessary, with the exception of certain dates of service that were withdrawn by the Provider. The Carrier appealed.

The Carrier argues that the compensable injury is not related to the treatment rendered due to the eighteen-month gap in treatment; that the treatment rendered was inappropriate because the Claimant had reached maximum medical improvement; and that the Claimant failed to make any significant improvement during his course of treatment with the Provider. The Provider argues that medical necessity, not compensability, is at issue in this hearing. Further, the Provider maintains that the Carrier has the burden of proof and failed to demonstrate that the Claimant’s care was not medically necessary as the IRO found. The Provider disagrees that a finding of MMI means that the Claimant is not entitled to additional health care under TEX. LAB. CODE ANN. § 408.021.

The Carrier raised enough questions regarding the treatment of the Claimant to meet its burden to demonstrate that the care provided to the Claimant was not medically necessary to treat the compensable injury. First, the eighteen-month gap between the treatment provided by Dr. Irons and by the Provider is largely unexplained. The Claimant suffered a soft tissue injury that appeared to have been resolved based upon the documentation provided.

The Provider failed to explain the eighteen-month gap in treatment or to provide a complete work history of the Claimant between the time he left the employer with whom he was employed at

the time of the injury and the time he presented to the Provider. The Provider testified that the

Claimant quit his job shortly after his release from Dr. Irons because he was apparently unable to work, but there was no further explanation of what occurred between that time and his seeking additional medical attention. While the compensability of an injury may not be challenged in an appeal to the State Office of Administrative Hearings concerning medical necessity, the services provided must still be demonstrated to have been medically necessary to treat *the compensable injury*. The record in this matter fails to establish a connection between the complaints treated by the Provider and the underlying compensable injury.

Additionally, there are conflicts between the Designated Doctor examination and the Provider's findings. On February 17, 2003, the Provider found "the lumbar range of motion to be moderately to severely restricted in all planes." Ex. 3 at 38. On that same date, the Designated Doctor, Dr. Richard E. Scott, D.O., found that he had "good lumbar range of motion in all planes. He is without complaints in forward bending, lumbar extension and left and right-side bending." Ex. 3 at 49. On that same day, Dr. Scott also found that the Claimant suffered from no spasm, while the Provider finds that there was a "moderate to severe muscle spasm in the myofascial structures of the lumbar spine." Ex. 3 at 38. Dr. Scott's examination revealed that the Claimant was in little or no pain, while the Claimant, on the same day, apparently reported to the Provider that he was in significant pain at 5 on a 10-point scale.

The ALJ finds that the record in this matter weighs in favor of the Carrier.

## II. FINDINGS OF FACT

1. The Claimant injured his lower back and chest on \_\_\_\_, when the counter weight of a backhoe hit him in the head while it was turning, causing him to fall into some pipes.
2. He was treated initially by Kerry Irons, M.D. and was released on July 26, 2001, at maximum medical improvement (MMI) with no permanent impairment anticipated.
3. Eighteen months later, the Claimant presented to the office of Cody Doyle, D.C., (Provider) with complaints of pain in his lower back. The Provider treated the Claimant from January 29, 2003 to March 29, 2003, with a variety of chiropractic modalities, primarily joint mobilizations and group and individual physical therapy.
3. The ACIG Insurance Company (Carrier) denied payment for the services on grounds of medical necessity.
4. The Provider withdrew the following dates from consideration: 2/3/03 and 4/11/03-4/25/03.
5. The Medical Review Division office (MRD) of the Texas Workers' Compensation Commission found, based upon a decision issued by an independent review organization, that the chiropractic services were medically necessary.
6. The Carrier appealed the decision of the MRD to the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing was sent December 1, 2003. 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.

8. The hearing was convened on May 12, 2004, with Administrative Law Judge (ALJ) Janet Dewey presiding and representatives for the Carrier and the Provider participating. After the parties filed written closing briefs, the record closed on June 2, 2004.
9. There are no medical records from the time that the Claimant last saw Dr. Irons and was found to be at maximum medical impairment with no permanent incapacity to the time he first visited the Provider.
10. The Claimant suffered a soft tissue injury that appeared to have been resolved based upon the documentation provided.
11. The Provider failed to explain the eighteen-month gap in treatment or to provide a complete work or medical history of the Claimant between the time he left the employer with whom he was employed at the time of the injury and the time he presented to the Provider.
12. The chiropractic services provided to the Claimant between January 29, 2003, to March 29, 2003, were not medically necessary to treat the compensable injury.

### **III. CONCLUSIONS OF LAW**

1. The 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 (Vernon 2000 and Supp. 2004).
2. The Carrier timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) §148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. The Carrier has the burden of proof in this proceeding under 28 TAC § 148.21(h).
5. The chiropractic services provided to the Claimant between January 29, 2003, to March 29, 2003 were not medically necessary to treat the compensable injury as is required by TEX. LAB. CODE ANN. § 408.021.

**ORDER**

**IT IS, THEREFORE, ORDERED** the Carrier is not required to reimburse the Provider for chiropractic services rendered from January 29, 2003, to March 29, 2003.

**SIGNED July 22, 2004.**

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**JANET R. DEWEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**