SOAH DOCKET NO. 453-04-1646.M5R

THOMAS S. SOLBY, D.C.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
INSURANCE COMPANY OF THE	§	
STATE OF PENNSYLVANIA,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**
	§	

DECISION AND ORDER

Thomas S. Solby, D.C. (Provider) appealed the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) declining to order reimbursement of $1,000 for hot/cold pack treatments (CPT Code 97010), mechanical traction (CPT Code 97012), electric stimulation (CPT Code 97014), and office visits with manipulation (CPT Code 99213-MP) that he provided to Claimant on 12 dates of service between August 16, 2002, and May 12, 2003. The Insurance Company of the State of Pennsylvania (Carrier) denied reimbursement on the basis that the treatments were not reasonable or medically necessary. The Administrative Law Judge (ALJ) finds the disputed treatments were reasonable and medically necessary. Therefore, Carrier is to reimburse Provider $1,000.

I. PROCEDURAL HISTORY

ALJ Sharon Cloninger convened the hearing on March 3, 2004, in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Provider appeared and represented himself. Carrier was represented by William J. Grove, Jr., attorney. The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law below. After evidence was presented, the hearing concluded and the record closed that same day.

II. BACKGROUND

Claimant injured her low back on ___, while working as a fleet service clerk for an airline, when she fell off the bottom step of a high truck lift, landing on her lumbar spine and buttocks. She was diagnosed with lumbar sprain/strain. On ___, she was found to be at maximum medical

improvement (MMI) and on ___, was given a whole body impairment rating of nine percent.[1]

Before Claimant became Provider's patient in April 1999, she received extensive chiropractic treatment in the form of both passive and active modalities from Vaughn Brozek, D.C.; facet injections; epidural steroid injections; injections into the sacroiliac joint; and participated in work conditioning and work hardening programs. She eventually returned to work and, with the exception of some periodic exacerbations of her chronic low back condition, was able to perform all her regular work duties. Whenever an exacerbation of her injury occurred, Claimant returned to Provider for minimal additional care, which allowed her to continue to perform her work duties until her April 2002 retirement. The disputed treatments, all for recurrences of Claimant's chronic low back condition, were provided after Claimant's retirement, and include office visits with manipulation, hot/cold pack treatments, mechanical traction, and electric stimulation, all passive modalities.

Provider's request for reimbursement for the treatments was denied by Carrier. Provider appealed Carrier's denial before the Commission's Medical Review Division (MRD). On October 27, 2003, the MRD denied Provider's appeal following its review of an October 17, 2003 decision issued by an independent review organization (IRO) finding the treatments were not medically necessary.

III. APPLICABLE LAW

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 injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE § 408.021(a).

IV. EVIDENCE AND DISCUSSION

Provider testified on his own behalf, and four of his proffered exhibits were admitted. The ALJ also took official notice of prior decisions offered by Provider. Carrier offered two exhibits, which were admitted, and called one witness.

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1 Eight of the nine percent of Claimant's whole body impairment was based on Claimant's spondylolysis/spondylolisthesis, accompanied by medically documented injury and a minimum of six months of medically documented pain, recurrent muscle spasm, or rigidity. (Carrier's Ex. 1, 115). Spondylolysis is disintegration or dissolution of a vertebra, and spondylolisthesis is the forward displacement of a lumbar vertebra on the one below it and especially of the fifth lumbar vertebra on the sacrum producing pain by compression of nerve roots. *Merriam-Webster's Medical Dictionary* (1995), p. 653. The remaining one percent was attributed to Claimant's decreased range of motion.

A. Provider's Testimony

Provider testified that Claimant is a complicated patient, because she is in her 60s, is overweight, and has degenerative spine disease, all of which increase the likelihood that she will suffer exacerbations of her compensable injury. He noted that after Claimant was injured, she was able to perform her duties an overwhelming amount of the time until her retirement, with minimal treatment for exacerbations of her compensable injury. He said the disputed treatments provided after Claimant's retirement relieved her symptoms and allowed her to perform activities of daily living. He explained that something as simple as bending to tie a shoe can cause an exacerbation of a low back injury. He said Claimant's May 12, 2003, treatment followed her flight home from a vacation trip to France, and explained that prolonged sitting on a flight can exacerbate a back injury.

According to Provider, treatment guidelines clearly indicate that acute exacerbations should be treated the same as an initial acute injury, to include passive modalities. He pointed out that Claimant's case chart notes document physical conditions which were relieved by the treatment provided on the disputed dates.

B. Testimony of Stephen Tomko, D.C.

Dr. Tomko testified on behalf of Carrier that Provider's treatment of Claimant up until her retirement was reasonable, because of exacerbations she suffered due to her job duties, but that her post-retirement treatments were not reasonable and medically necessary, because the degenerative changes to her spine as set out in her whole body impairment assessment predispose her to back pain, even without injury. He said the recurring pain experienced by Claimant after her retirement is not outside what would be expected with her MMI. He said that Claimant's activities at home are not as labor intensive as those at the airport, and because as a retiree Claimant has more control over her environment, her recurring back pain is not related to or emanating from her compensable injury, but rather due to the normal degenerative changes related to her age.

C. Documentary Evidence

Claimant's medical records contain both subjective and objective evidence that her recurring low back pain is related to her compensable injury and that the passive modalities administered by Provider relieved her pain. Claimant stated during her October 23, 2002, visit with Provider that her back had become painful even without excessive or heavy activity on her part, whereas she reported during her December 13, 2002, visit that doing house repair had caused a recurrence of back pain. During her February 28, 2003 visit, she said there was no particular cause for the exacerbation, the pain is always there, but it gets a lot worse at times. On all disputed dates, Claimant said her low

back felt better after treatment. Following her May 12, 2003 treatment, Claimant said care from Provider has allowed her to continue to perform all her daily activities.

V. ANALYSIS

The issue in this case is whether the disputed treatments were medically reasonable and necessary to treat Claimant's compensable injury. The question to be resolved is whether Claimant's recurring back pain on the disputed dates of service, after her retirement, was due to her compensable injury, or due to her age, weight, and the degeneration of her spine. Carrier argues that Claimant's treatment was reasonable and medically necessary up to the time of her retirement, because the nature of her work as a fleet service clerk caused exacerbations of her compensable injury, but that post-retirement, the treatment was not reasonable and medically necessary because any recurring low back pain she experienced was most likely due to her age, weight, and the degeneration of her spine. However, there is no evidence that Claimant's age, weight, or the degenerative conditions of her spine were any different in the months before her retirement than they were in the months immediately following her retirement. Although Claimant's activities of daily living presumably put less stress on her back than she incurred while working as a fleet service clerk, the medical records indicate she experienced the exact same symptoms both before and after retirement. The ALJ concludes that the post-retirement symptoms were due to Claimant's compensable injury and not due to Claimant's age, weight, and degenerative spine condition, or to new conditions incurred after retirement.

In addition, the ALJ finds Dr. Solby's explanation that passive care is a vital component of treatment for acute injuries, and that Claimant's flare-ups of her compensable injury constitute acute injuries, to be persuasive. The ALJ finds that Provider proved the disputed treatments were reasonable and medically necessary to relieve the effects naturally resulting from Claimant's compensable injury. Therefore, Provider is entitled to reimbursement of $1,000 from Carrier.

VI. FINDINGS OF FACT

1. Claimant sustained a compensable work-related injury to her low back when she fell off the bottom step of a high truck lift on ___, while working as a fleet service clerk for an airline whose workers' compensation insurance carrier at the time was the Insurance Company of the State of Pennsylvania (Carrier).

2. Claimant was diagnosed to have lumbar sprain/strain.

3. Thomas S. Solby, D.C. (Provider) began treating Claimant in April 1999.

4. Claimant retired from her job in April 2002.

5. Claimant suffered exacerbations of her compensable injury after she retired.

6. Provider treated Claimant for recurring back pain related to her compensable injury from August 16, 2002, through May 12, 2003, using office visits with manipulation, hot/cold packs, electric stimulation, and mechanical traction.

7. Passive modalities such as manipulation, hot/cold packs, electric stimulation, and mechanical traction are a vital component of all acute care intervention and appropriate treatment for the recurring back pain suffered by Claimant.

8. Treatment provided by Provider to Claimant from August 16, 2002, through May 12, 2003, was reasonable and medically necessary to relieve the effects resulting from her compensable injury, in that her objective symptomology was relieved with the use of manipulation and passive therapeutic modalities, Claimant indicated immediate improvement in her presenting symptoms, and Claimant was able to perform her activities of daily living following treatment.

9. Provider sought reimbursement of $1,000 from Carrier for the treatments rendered to Claimant, which included:

    a. office visits with manipulation (CPT Code 99213-MP) on August 16, August 30, October 23, November 4, November 8, November 11, and December 13, 2002; and on January 17, February 28, April 2, April 11, and May 12, 2003;

    b. hot/cold packs (CPT Code 97010) on August 16, August 30, November 4, November 8, and December 13, 2002; and on January 17, February 28, April 2, April 11, and May 12, 2003;

    c. electric stimulation (CPT Code 97014) on August 16, August 30, October 23, November 4, November 8, and December 13, 2002; and on January 17, February 28, April 2, April 11, and May 12, 2003;

    d. and mechanical traction (CPT Code 97012) on August 16, October 23, November 8, November 11, and December 13, 2002; and on January 17, February 28, and May 12, 2003.

10. Carrier denied Provider's claim for the above services on the basis that the treatments were not reasonable or medically necessary.

11. On August 6, 2003, Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division (MRD), asking for reimbursement of $1,000 for the above-described services.

12. The MRD issued a decision on October 27, 2003, stating that Provider did not prevail on the issue of medical necessity, after its review of the October 17, 2003 IRO decision issued in this dispute.

13. On November 17, 2003, Provider appealed the MRD decision to the State Office of Administrative Hearings (SOAH).

14. On December 17, 2003, notice of the hearing in this case was mailed to Provider and Carrier.

15. 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.

16. On March 3, 2004, SOAH Administrative Law Judge Sharon Cloninger held a hearing on the Petitioner's appeal in the William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Provider appeared and represented himself, and Carrier was represented by William J. Grove, Jr., attorney. The hearing concluded and the record closed that same day.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented in this case, pursuant to the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. §413.031.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.

3. Provider timely filed notice of appeal of the decision of TWCC's MRD, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.

4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC § 148.4(b).

5. As the party appealing the MRD decision, Provider had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC §148.21(h) and (i).

6. Based on the above Findings of Fact and pursuant to TEX. LABOR CODE § 408.021(a), Provider's treatment of Claimant's compensable injury was reasonable and medically necessary.

7. Based on the above Findings of Fact and Conclusions of Law, Provider's appeal should be granted, and Provider should be reimbursed $1,000.

ORDER

Provider had the burden of proof in this case. Provider met its burden. **IT IS, THEREFORE**, **ORDERED THAT** the Insurance Company of the State of Pennsylvania is to reimburse Thomas S. Solby, D.C., $1,000.

SIGNED April 27, 2004.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS