

**SOAH DOCKET NO. 453-04-1811.M5
TWCC MR NO. [M5-04-0209-01]**

GHADA KOUDSI, D.C., Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	OF
	§	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

I. SUMMARY

Ghada Koudsi, D.C., (Provider) appealed the decision of Envoy Medical Systems, LP, an independent review organization certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) tracking number M5-04-0209-01, denying reimbursement for medical services provided to the Claimant. This decision orders that Insurance Company of the State of Pennsylvania (Carrier) is not required to reimburse the Provider for the amount claimed.

The Administrative Law Judge (ALJ) convened a hearing on April 8, 2004. The hearing was concluded and the record closed that date. The Provider appeared via telephone, along with Peter Rogers, attorney, and the Claimant. The Carrier was represented by Steve Tipton, attorney.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Provider \$12,218¹ plus interest for medical services provided between October 3, 2002, and March 6, 2003,

¹ This amount was determined from the Provider's table of disputed services. (Exh. 1, pages 14 - 34). The Carrier's post-hearing brief stated that the dollar amounts in the table of disputed services do not equal the 1996 Medical Fee Guideline MAR amounts. The Carrier provided the MAR amounts for each of the contested CPT Codes; however, it is unnecessary for the ALJ to recalculate the amounts because no reimbursement is being ordered.

and billed under CPT Codes 99080 (special reports), 97110 (therapeutic exercises), 99213 (office visit for established patient), 99212 (office visit), 99265 (joint mobilization), 97122 (traction), 97250 (myofascial release), 97035 (ultrasound), 97014 (electrical stimulation), and 97024 (diathermy). 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 three sets of medical records (Exh. 1 - 287 pages, Exh. 2 - 121 pages, and Exh. 3 - 1 page). Also, testimony was taken from the Claimant, the Provider, and Bill W. Timberlake, D.C.

The Claimant, a ___-year old female, suffered a sprain/strain to the right shoulder and cervical area of the spine on _____, from the repetitive motion of applying tape to aircraft parts. The Claimant was diagnosed with impingement syndrome.

The Claimant began treatment with the Provider on _____, and continued until March 6, 2003.² The Carrier denied payment for treatment beginning October 3, 2002. The Claimant had surgery on June 12, 2003, which found right shoulder impingement, a partial tear of the rotator cuff which did not require repair, and joint arthritis.

The Provider testified that she provided chiropractic treatment, including various shoulder exercises, which allowed the Claimant to work light duty for six hours per day beginning in

October 2002, and continuing until the time of surgery. The Claimant was working full time when she began seeing the Provider and did so until she began light duty work in October 2002.

The Carrier argued that the treatment provided to the Claimant was not medically necessary for the treatment of impingement syndrome. Dr. Timberlake, who has practiced chiropractic since

² The Claimant did not receive treatment from June to October 2002. In January 2003, TWCC determined that the injury was compensable.

1964, testified that impingement primarily results from degenerative changes and requires surgery for treatment. He specifically testified that there were no unusual circumstances supporting the level of chiropractic treatment provided to the Claimant, which included back-to-back sessions and delivery of joint mobilization, myofascial release, and manual traction in the same session. Additionally, he stated that ultrasound and diathermy are not effective treatment for impingement syndrome. Finally, Dr. Timberlake testified that the deltoid exercises prescribed by the Provider were not effective, aggravated the Claimant's injury, and were not supported as proper treatment by the medical literature.

Based on the evidence, the ALJ concludes that the treatment provided to the Claimant from October 3, 2002, to March 6, 2003, was not medically necessary and reasonably required to treat the Claimant's injury. While it is true that the Claimant temporarily felt better after being treated by the Provider, her work level actually diminished to light duty after she began seeing the Provider in October 2002. The overwhelming medical evidence established that the treatment was not medically necessary because it did not tend to cure or relieve the effects naturally resulting from the compensable injury and did not promote recovery. The Claimant's condition only seemed to improve after surgical intervention in June 2003. The Provider should not be reimbursed for the services delivered to the Claimant.

III. FINDINGS OF FACT

1. On _____, the Claimant suffered a sprain/strain to the right shoulder and cervical area of the spine from the repetitive motion of applying tape to aircraft parts.
2. The Claimant's injury is covered by worker's compensation insurance written for the Claimant's employer by the Insurance Company of the State of Pennsylvania (Carrier).
3. The Claimant was diagnosed with impingement syndrome.
4. Ghada Kouksi, D.C. (Provider) provided chiropractic treatment to the Claimant from _____, to March 6, 2003. Contested dates of service are October 3, 2002, through March 6, 2003.

5. The Provider treated the Claimant's injury and billed its services under CPT Codes 99080 (special reports), 97110 (therapeutic exercises), 99213 (office visit for established patient), 99212 (office visit), 99265 (joint mobilization), 97122 (traction), 97250 (myofascial release), 97035 (ultrasound), 97014 (electrical stimulation), and 97024 (diathermy).
6. The Carrier denied payment in the amount of \$12,218 for the medical services and treatment referred to in Findings of Fact Nos. 4 and 5, on the basis that treatment was not medically necessary.
7. The treatment referred to in Findings of Fact Nos. 4 and 5 was not medically necessary.
 1. Impingement syndrome primarily results from degenerative changes and requires surgery for treatment.
 2. There were no unusual circumstances supporting the level of chiropractic treatment provided to the Claimant.
 3. Ultrasound and diathermy are not effective treatment for impingement syndrome.
 4. The deltoid exercises prescribed by the Provider were not effective, aggravated the Claimant's injury, and were not supported as proper treatment by medical literature.
8. The treatment referred to in Findings of Facts Nos. 4 and 5 did not tend to cure or relieve the effects naturally resulting from the compensable injury and did not promote recovery.
9. The Claimant's condition only seemed to improve after surgical intervention in June 2003.
10. The Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC).
11. On November 3, 2003, Envoy Medical Systems, LP, 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. 4 and 5 were not medically necessary. The MRD issued its findings and decision on November 6, 2003, concluding that the disputed expenses should not be paid, and the Provider timely appealed this decision.
12. TWCC sent notice of the hearing to the parties on December 31, 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.
13. The hearing on the merits convened April 8, 2004, and all parties appeared and participated. 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. 12, 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 she should prevail in this matter. TEX. LABOR CODE §413.031.
5. Based on Findings of Fact Nos. 7 - 9, the Provider failed to prove that reimbursement for treatment should be ordered.
6. Based on Findings of Fact Nos. 7 - 9 and Conclusions of Law Nos. 4 and 5, the Carrier is not required to reimburse the Provider for the amount claimed.

ORDER

IT IS, THEREFORE, ORDERED that the Insurance Company of the State of Pennsylvania shall not be required to reimburse Ghada Koudsi, D.C. for the disputed services provided in treating the Claimant.

SIGNED May 20, 2004.

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