

AMERICAN HOME ASSURANCE COMPANY, Petitioner	‘	BEFORE THE STATE OFFICE
	‘	
	‘	
V.	‘	OF
	‘	
SCD BACK AND JOINT CLINIC, LTD Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company, (Petitioner) requested a hearing following a December 19, 2003, Decision of the Texas Workers' Compensation Commission (Commission). The Commission, relying upon a November 25, 2003, decision of Ziroc, an Independent Review Organization (IRO), authorized reimbursement for chiropractic services¹ provided by SCD Back and Joint Clinic, Ltd. (Respondent) to injured worker _____ (Claimant).

The amount in dispute is \$7,056.00. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that chiropractic services provided by Respondent from October 3, 2002 through April 9, 2003, were reasonable and medically necessary and should be reimbursed.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened and closed on June 21, 2004, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. Peter Macaulay represented Petitioner and William Maxwell represented Respondent. Neither party objected to notice or jurisdiction.

II. DISCUSSION

¹ The IRO granted reimbursement for all services including joint mobilization, manual traction, office visits, massage, myofascial release, diathermy, range of motion tests, therapeutic exercises and group exercises, physical performance tests, and electrical stimulation.

Claimant suffered a work-related injury on _____, when a bicycle fell from a rack hitting Claimant in the lower back and buttocks. The bicycle caused toy boxes to fall hitting Claimant in head and lower back. Claimant complained of pain in the right side of her low back, right hip, neck, upper back, and groin area. Claimant was initially treated with conservative care, including active and passive modalities. Claimant did not respond to the more conservative treatment consequently, on March 1, 2002, an arthroscopic subacromial decompression and an open repair of a chronic rotator cuff tear was performed on Claimant.

In the fall of 2002, Claimant went through a series of tests, and Kenneth Berliner, M.D., referred Claimant to Mohammed Etminan, M.D., who recommended epidural steroid injections (ESIs). Respondent was monitoring Claimant once a month in November, October, and December 2002. On December 18, 2002, Respondent performed a series of range of motion tests to establish a baseline for Claimant. On February 3, 2003, David Baily, D.C.,² began a daily active rehabilitation program in preparation for her ESI on February 6, 2003. Following the ESI, Respondent continued active and passive treatments until April 9, 2003. Dr. Baily's SOAP notes and testimony indicated that Claimant had an increase in strength and functional improvement, which allowed Claimant return to work on a limited basis on February 27, 2003. Petitioner denied reimbursement for the services rendered from October 3, 2002 through April 9, 2003.

Petitioner's expert witness, Robert Hamby, D.C., only reviewed the December 3, 2002, date of service. Consequently, Petitioner's case was based on the record. Petitioner relied on the August 26, 2002, report of William Gaines, Jr., M.D., which indicated that Claimant did not need more physical therapy and should return to work. The credibility of Dr. Gaines' report was damaged by Dr. Baily's testimony. Dr. Baily testified that there was personal animosity between Dr. Gaines and himself and that the services were medically necessary.

Petitioner had the burden of proof. Petitioner failed to prove by a preponderance of the

² Dr. Bailey works for Respondent.

evidence that the chiropractic services were not reasonable and medically necessary. Respondent is entitled to reimbursement for the chiropractic services, which were provided Claimant between October 3, 2002, and April 9, 2003, in the amount of \$7,056.00.

II. FINDINGS OF FACT

1. _____ (Claimant) suffered a work-related injury on _____.
2. On March 1, 2002, an arthroscopic subacromial decompression and an open repair of a chronic rotator cuff tear was performed on Claimant.
3. Mohammed Etminan, M.D., recommended epidural steroid injections (ESIs) to treat Claimant's condition.
4. The ESI was performed on February 6, 2003.
5. SCD Back and Joint Clinic, Ltd. (Respondent) was monitoring Claimant once a month in November, October, and December 2002.
6. On December 18, 2002, Respondent performed a series of range of motion tests to establish a baseline for Claimant.
7. On February 3, 2003, David Baily, D.C., began a daily active rehabilitation program in preparation for her ESI on February 6, 2003.
8. Following the ESI, Respondent continued active and passive treatments until April 9, 2003.
9. Claimant had an increase in strength and functional improvement, which allowed Claimant return to work on a limited basis on February 27, 2003.
10. Respondent billed American Home Assurance Company (Petitioner) for treatment consisting of joint mobilization, manual traction, office visits, massage, myofascial release, diathermy, range of motion tests, therapeutic exercises and group exercises, physical performance tests, and electrical stimulation.
11. Six to eight weeks of physical therapy after the ESI was medically necessary and not unreasonable.
12. Physical therapy immediately preceding the ESIs was reasonable.
13. The treatment dates in issue are October 3, 2002, through April 9, 2003.
14. Petitioner denied Respondent reimbursement for the chiropractic services provided Claimant between October 3, 2002, through April 9, 2003, as not medically necessary.

15. The Texas Workers' Compensation Commission (Commission), acting through an Independent Review Organization (IRO), Ziroc, found that the chiropractic services provided by Respondent between October 3, 2002, through April 9, 2003, were medically necessary for the treatment of Claimant.
16. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH) regarding the medical necessity of the chiropractic services provided to Claimant between October 3, 2002, through April 9, 2003.
17. The hearing convened and closed on June 21, 2004, with State Office of Administrative Hearings (SOAH) ALJ Stephen J. Pacey presiding. Peter Macaulay represented Petitioner and William Maxwell represented Respondent.
18. The amount in dispute is \$7,056.00.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. ' 413.031(k), and TEX. GOV ' T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV ' T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV ' T CODE ANN. ' ' 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).
6. The chiropractic services provided by Respondent from October 3, 2002, through April 9, 2003, were reasonable and medically necessary.

ORDER

THEREFORE IT IS ORDERED that SCD Back and Joint Clinic, Ltd. is entitled to reimbursement from American Home Assurance Company for charges, plus any applicable interest, associated with chiropractic services provided to injured worker _____ from October 3, 2002, through April 9, 2003.

SIGNED August 16, 2004.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**